



**ELEMENT FINANCIAL CORPORATION**

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS  
TO BE HELD ON SEPTEMBER 20, 2016**

**and**

**MANAGEMENT INFORMATION CIRCULAR**

**with respect to proposed**

**PLANS OF ARRANGEMENT**

**involving**

**ELEMENT FINANCIAL CORPORATION, ECN CAPITAL CORP., 2510204 ONTARIO INC. AND INFOR  
ACQUISITION CORP.**

**July 28, 2016**

**This Notice, Management Information Circular and the accompanying materials require your immediate attention. If you are in doubt as to how to deal with these documents or the matters they refer to, please consult your professional advisors. If you have any questions or require more information with regard to voting your securities, please contact Kingsdale Shareholder Services, Element's proxy solicitation and information agent, by telephone at 416-867-2272 or toll-free at 1-866-581-0510 or by email at [contactus@kingsdaleshareholder.com](mailto:contactus@kingsdaleshareholder.com).**



## ELEMENT FINANCIAL CORPORATION

### Invitation to Shareholders

On behalf of the Board of Directors and management, we are pleased to invite you to join us at our special meeting (the “**Meeting**”) of common shareholders of Element Financial Corporation (the “**Corporation**” or “**Element**”). The Meeting will be held at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Suite 4000, 199 Bay Street, Toronto, Ontario, Canada on Tuesday, September 20, 2016 at 9:00 a.m. (Eastern time).

As a holder of common shares, you have the right to vote your shares on the matters that are considered at the Meeting. Please take the time to consider the information in this circular. It is important that you exercise your vote, either in person at the Meeting, or by Internet, telephone or completing and sending in your proxy.

On February 16, 2016, we announced that our Board of Directors unanimously approved in principle the reorganization of Element into two separate publicly-traded companies (the “**Spin-Out Transaction**”) that Element believes will be better able to pursue independent strategies and opportunities for growth and ultimately enhance long-term value for shareholders. If implemented, the reorganization would result in Element (which will be renamed “**Element Fleet Management Corp.**”) continuing as a fleet management company focused on generating revenue and earnings based on the continued service to Element’s existing fleet management business. The reorganization would also result in the creation of a new commercial finance company (to be named “**ECN Capital Corp.**”) with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business. On July 25, 2016, Element announced that ECN Capital Corp. will acquire all of the shares of INFOR Acquisition Corp. (“**IAC**”), other than IAC common shares held by ECN Capital Corp. or any of its affiliates, in exchange for shares of ECN Capital Corp. The acquisition of IAC is a separate transaction to the Spin-Out Transaction, and is expected to close after completion of the Spin-Out Transaction.

**Spin-Out Transaction** The Board of Directors has determined unanimously that the reorganization is in the best interests of Element and is unanimously recommending that shareholders **VOTE FOR** the reorganization and the matters related thereto and **VOTE FOR** the new equity plans of ECN Capital Corp.

**IAC Transaction** The Board of Directors also determined unanimously (subject to recusals) that the acquisition of IAC by ECN Capital Corp. is in the best interests of Element, and is unanimously recommending (subject to recusals) that shareholders **VOTE FOR** the issuance of ECN Capital Corp. common shares in connection with the acquisition of IAC by ECN Capital Corp. Each of these matters are to be considered at the Meeting and are described in the accompanying management information circular.

Element has received underwriters’ commitments for the establishment of separate senior credit facilities for Element Fleet Management Corp. and ECN Capital Corp. following completion of the Spin-Out Transaction. Under such commitments (i) Element’s existing senior credit facility will be amended and restated so as to provide an aggregate of US\$4.0 billion in three year revolving funding in favour of Element Fleet and (ii) a new separate and distinct US\$2.5 billion three year revolving senior credit facility for ECN Capital Corp. will be established.

The Board of Directors is making these recommendations for the following reasons (among others):

- The reorganization will provide shareholders with enhanced value by creating independent investment opportunities in a fleet management company (Element Fleet Management Corp.) focused on generating revenue and earnings based on the continued service to Element's existing fleet management business, and in a commercial finance company (ECN Capital Corp.) with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business.
- At closing of the reorganization, Element shareholders will own 100% of the outstanding common shares of each of Element Fleet Management Corp. and ECN Capital Corp.
- The reorganization will provide each company with a sharper business focus, which will permit each company to pursue independent business strategies best suited to their respective business plans, and allow them to pursue business, financial strategies and appropriate credit ratings aligned with each separate business.
- The establishment of separate public companies is expected to allow investors, analysts and potential strategic partners to more accurately compare and evaluate each company on a stand-alone basis.
- Element expects that over time the separate companies will, in the aggregate, achieve a higher long-term valuation compared to the valuation that would be accorded if all of Element's assets continued to be held within the same company.
- Each company will be led by experienced directors and executives who have delivered strong shareholder returns and have demonstrated success building Element and who have the requisite experience and expertise to pursue growth of their respective companies.
- The reorganization will generally occur on a tax-deferred basis for Element shareholders resident in Canada who hold their common shares as capital property.
- The reorganization will allow each company to provide business-specific incentives to key personnel, thereby enhancing each company's ability to better attract, retain and motivate key personnel.
- The acquisition of IAC by ECN Capital Corp. will provide ECN Capital Corp. with timely access to capital to fund and accelerate future growth, and also results in the strengthening of the ECN Board of Directors and senior management.

Following this letter is the formal notice of the Meeting and management information circular. The management information circular provides important information about the matters to be voted on at the Meeting, the details of the reorganization (including conditions to its completion), information about Element Fleet Management Corp. and ECN Capital Corp. and their respective businesses following completion of the reorganization, information about IAC and its acquisition by ECN Capital Corp., the detailed reasons for the Board of Directors' recommendation of the reorganization, the equity plans of ECN Capital Corp., and the share issuance in connection with the IAC arrangement, certain risks associated with the reorganization and the risks of an investment in Element Fleet Management Corp. and ECN Capital Corp. as separate companies if the reorganization is completed, the tax consequences of the reorganization to Canadian shareholders, and certain potential tax consequences of the reorganization to U.S. shareholders. **Shareholders should read the circular carefully and consult with your advisors before you cast your vote.**

**Your vote is extremely important.** In order for the reorganization to proceed, it must be approved by at least two-thirds of the votes cast by holders of Element common shares voting (in person or by proxy) at

the Meeting. The new equity plans of ECN Capital Corp. and the issuance of ECN Capital Corp. common shares in connection with the acquisition of IAC must be approved by over one-half of the votes cast by holders of Element common shares voting (in person or by proxy) at the Meeting. **Given the importance of the matters to be considered at the Meeting, we urge you to VOTE FOR the reorganization and the matters related thereto, to VOTE FOR the new equity plans of ECN Capital Corp., and to VOTE FOR the issuance of ECN Capital Corp. common shares in connection with the acquisition of IAC, all as described in the accompanying notice of the Meeting, by promptly submitting the enclosed form of proxy or otherwise providing your voting instructions as soon as possible in accordance with the instructions and before the deadlines specified in the circular.** If you have any questions or require more information with regard to voting your securities, please contact Kingsdale Shareholder Services, Element's proxy solicitation and information agent, by telephone at 416-867-2272 or toll-free at 1-866-581-0510 or by email at [contactus@kingsdaleshareholder.com](mailto:contactus@kingsdaleshareholder.com).

Completion of these matters is also subject to certain other conditions, including the approval of the Ontario Superior Court of Justice and the receipt of all required consents and approvals. If the reorganization is approved by shareholders and all other conditions are satisfied, Element expects the reorganization to be completed on or about October 3, 2016. However, there can be no assurances regarding the ultimate timing of the reorganization or that the reorganization will be completed at all.

Thank you for your continued support and we look forward to welcoming you at the Meeting.

*"William Lovatt"*

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**William Lovatt**  
***Chairman of the Board***

*"Steven K. Hudson"*

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**Steven K. Hudson**  
***Chief Executive Officer***

July 28, 2016

**NOTICE OF SPECIAL MEETING  
OF SHAREHOLDERS OF ELEMENT FINANCIAL CORPORATION**

**NOTICE IS HEREBY GIVEN** that a special meeting (the “**Meeting**”) of the holders (the “**Shareholders**”) of common shares (“**Element Common Shares**”) of Element Financial Corporation (“**Element**” or the “**Corporation**”) will be held at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Suite 4000, 199 Bay Street, Toronto, Ontario, Canada on Tuesday, September 20, 2016 at 9:00 a.m. (Eastern time) for the following purposes:

- (a) to consider, pursuant to an order (the “**Interim Order**”) of the Ontario Superior Court of Justice dated July 28, 2016, and, if deemed advisable, to pass, with or without variation, a special resolution (the “**Element Arrangement Resolution**”), the full text of which is set forth in Appendix A to the accompanying management information circular (the “**Management Information Circular**”), approving the arrangement (the “**Element Arrangement**”) under section 182 of the *Business Corporations Act* (Ontario) (the “**OBCA**”) involving Element, ECN Capital Corp. (“**ECN Capital**”) and 2510204 Ontario Inc. (“**Subco**”) pursuant to the plan of arrangement (the “**Element Plan of Arrangement**”) included in Appendix D to the accompanying Management Information Circular, pursuant to which, among other things, Shareholders will receive one new common share of Element Fleet Management Corp. and one common share of ECN Capital, a new public company, in exchange for each Element Common Share held (as described in the accompanying Management Information Circular);
- (b) if the Element Arrangement Resolution is passed, to consider and, if deemed advisable, to pass, with or without variation, an ordinary resolution (the “**ECN Capital Equity Plans Resolution**”), the full text of which is set forth in Appendix B to the accompanying Management Information Circular, approving, on behalf of ECN Capital and ECN Capital’s shareholders, the equity-based compensation plans (substantially in the forms set forth in Appendix O, Appendix P and Appendix Q to the accompanying Management Information Circular) for ECN Capital;
- (c) if the Element Arrangement Resolution is passed, to consider and, if deemed advisable, to pass, with or without variation, an ordinary resolution (the “**Share Issuance Resolution**”), the full text of which is set forth in Appendix C to the accompanying Management Information Circular, authorizing ECN Capital to issue such number of common shares in the capital of ECN Capital (the “**ECN Capital Common Shares**”) as is necessary to acquire all of the outstanding common shares of INFOR Acquisition Corp. (“**IAC**”) (other than IAC common shares held by ECN Capital or any of its affiliates) pursuant to the plan of arrangement (the “**IAC Plan of Arrangement**”) included in Appendix D to the accompanying Management Information Circular, all as more particularly described in the Circular; and
- (d) to transact such further or other business as may properly come before the Meeting or any adjournment(s) or postponement(s) thereof.

Specific details of the matters to be put before the Meeting are set forth in the accompanying Management Information Circular.

Only holders of Element Common Shares of record at the close of business on July 29, 2016 will be entitled to vote at the Meeting, or any adjournment(s) or postponement(s) thereof.

Under the Element Plan of Arrangement, the Interim Order and section 185 of the OBCA (as modified by the Interim Order), registered holders of Element Common Shares have the right to dissent in respect of the Element Arrangement Resolution and, if the Element Arrangement becomes effective, to be paid the fair value of their Element Common Shares in accordance with the Element Plan of Arrangement, the Interim Order and section 185 of the OBCA (as modified by the Interim Order). This right of dissent is

described in the accompanying Management Information Circular. **Shareholders who wish to dissent and who fail to strictly comply with the dissent procedures set out in the accompanying Management Information Circular may lose any right of dissent. Beneficial owners of Element Common Shares registered in the name of a broker, custodian, nominee or other intermediary who wish to dissent should be aware that ONLY A REGISTERED OWNER OF ELEMENT COMMON SHARES IS ENTITLED TO EXERCISE RIGHTS OF DISSENT.**

If you are a registered Shareholder and are unable to attend the Meeting in person, please exercise your right to vote by completing, signing, dating and returning the enclosed form of proxy to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation c/o Computershare Investor Services Inc., 100 University Avenue, 8th Floor, North Tower, Toronto, Ontario, M5J 2Y1, fax number 1 (866) 249-7775 or to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation at the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, fax number 1 (888) 772-8129. In order to be valid for use at the Meeting, proxies must be received by Computershare Investor Services Inc. or the Senior Vice President, General Counsel & Corporate Secretary of the Corporation not later than 5:00 p.m. (Eastern Time) on September 16, 2016 or, if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern Time) on the day which is two business days preceding the date of the adjourned or postponed Meeting, or any further adjournment or postponement thereof. If you have any questions or require more information with regard to voting your securities, please contact Kingsdale Shareholder Services, Element's proxy solicitation and information agent, by telephone at 416-867-2272 or toll-free at 1-866-581-0510 or by email at [contactus@kingsdaleshareholder.com](mailto:contactus@kingsdaleshareholder.com).

**If you are a *non-registered Shareholder*, please complete and return these materials in accordance with the instructions provided to you by your broker or other intermediary. If you are a non-registered Shareholder and do not complete and return the materials in accordance with those instructions, you may lose the right to vote at the Meeting, either in person or by proxy.**

DATED the 28<sup>th</sup> day of July, 2016.

By Order of the Board of Directors

*"Jim Nikopoulos"*

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**Jim Nikopoulos**

**Senior Vice President, General Counsel &  
Corporate Secretary**

**MANAGEMENT INFORMATION CIRCULAR  
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## NOTICE TO READERS

This Management Information Circular is furnished in connection with the solicitation of proxies by and on behalf of the management of Element for use at the Meeting and any adjournment(s) or postponement(s) thereof for the purposes set forth in the accompanying Notice of Meeting and in this Management Information Circular. In this Management Information Circular, references to “we”, “us” and “our” are references to Element. All defined terms used in this Management Information Circular but not otherwise defined herein have the meanings set forth under “*Glossary of Terms*”. Except where otherwise expressly noted, information in this Management Information Circular is given as of July 28, 2016.

## THE ARRANGEMENTS

All summaries of, and references to, the Element Arrangement or the IAC Arrangement (collectively referred to as the “Arrangements” in this Management Information Circular) are qualified in their entirety by reference to the complete text of, as applicable, the Element Plan of Arrangement and the IAC Plan of Arrangement (collectively referred to as the “Plans of Arrangement” in this Management Information Circular), copies of which may be found in the Arrangement Agreement attached as Appendix D to this Management Information Circular. **You are urged to carefully read the full text of the Arrangement Agreement (including the Plans of Arrangement attached thereto).** Further details of the Arrangements are contained in the sections entitled “*The Element Arrangement*” and “*The IAC Arrangement*”.

## VOTING AND PROXIES

Further information as to voting and proxies is contained in the section of this Management Information Circular entitled “*Voting Information and General Proxy Matters*”.

## CURRENCY

All dollar references in this Management Information Circular are in Canadian dollars unless otherwise indicated.

## PRESENTATION OF FINANCIAL INFORMATION

This Management Information Circular includes select non-IFRS measures to analyze performance. Non-IFRS measures used by the Corporation to analyze performance include adjusted operating expenses, adjusted operating income or before-tax adjusted operating income, adjusted operating expense ratio, adjusted operating income on average earning assets, adjusted operating income on average common shareholders’ equity, after-tax adjusted operating income, after-tax adjusted operating income attributable to common shareholders, after-tax adjusted operating income per share, after-tax adjusted operating income on average earning assets, after-tax adjusted operating income on average common shareholders’ equity, after-tax pro forma diluted adjusted operating income per share, allowance for credit losses as a percentage of finance receivables, annualized loss rate or annual loss rate, average cost of borrowing, average debt outstanding, average common shareholders’ equity, average financial leverage or average financial leverage ratio, average net financial income margin yield, average portfolio yield, average outstanding earning assets or average earning assets, average outstanding finance receivables or average finance receivables, average equipment under operating lease, average investment in managed fund, average tangible leverage ratio, earning assets or total earning assets or finance earning assets, finance assets or total finance assets, financial leverage or financial leverage ratio, financial revenue or total revenue, free operating cash flow, gross average yield, gross interest expense, gross interest income, net interest income and rental revenue, net before provisions for credit losses, operating expense ratio, other effects of dilution adjusted operating income basis, management fees and other revenues, pro forma diluted average number of shares outstanding, portfolio average remaining life (in months), provision for credit loss as a percentage of average finance receivables, rental revenue, net, and tangible leverage ratio.

## INFORMATION CONTAINED IN THIS MANAGEMENT INFORMATION CIRCULAR

Certain information in this Management Information Circular has been taken from or is based on documents that are expressly referred to in this document. All summaries of, and references to, documents that are specified in this document as having been filed, or that are contained in documents specified as having been filed, on SEDAR are qualified in their entirety by reference to the complete text of those documents as filed, or as contained in documents filed, under Element's profile at [www.sedar.com](http://www.sedar.com), as applicable. Shareholders are urged to read carefully the full text of those documents, which may also be obtained upon request and without charge from the Corporation by contacting the Senior Vice-President, General Counsel & Corporate Secretary of the Corporation by email at [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com) or by mail at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1.

## INFORMATION FOR UNITED STATES SHAREHOLDERS

The securities to be issued to Shareholders pursuant to the Element Arrangement described in this Management Information Circular have not been and will not be registered under the 1933 Act or any state securities laws, and are being issued in reliance on the exemption from registration under the 1933 Act set forth in Section 3(a)(10) thereof. Section 3(a)(10) of the 1933 Act provides an exemption from registration under the 1933 Act for offers and sales of securities issued in exchange for one or more outstanding securities where the terms and conditions of the issuance and exchange of such securities have been approved by a court authorized to grant such approval after a hearing upon the fairness of the terms and conditions of the issuance and exchange at which all persons to whom the securities will be issued have the right to appear. The Court is authorized to conduct a hearing at which the fairness of the terms and conditions of the Element Arrangement will be considered. The Court issued the Interim Order on July 28, 2016 and, subject to the approval of the Element Arrangement by the Shareholders at the Meeting on September 20, 2016, it is expected that the hearing on the Element Arrangement will be held on September 21, 2016 at 10:00 a.m. (Eastern Time) at the Ontario Superior Court of Justice in Toronto, at 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7. All Shareholders are entitled to appear and be heard at this hearing. The Final Order will constitute a basis for the exemption from the registration requirements of the 1933 Act provided by Section 3(a)(10) thereof with respect to the securities to be issued pursuant to the Element Arrangement. Prior to the hearing on the Final Order, the Court will be informed of this effect of the Final Order. See "*The Element Arrangement — Approvals and Other Conditions Precedent to the Element Arrangement — Court Approval*" in this Management Information Circular.

The solicitation of proxies for the Meeting made pursuant to this Management Information Circular is not subject to the requirements applicable to proxy statements under the 1934 Act by virtue of an exemption applicable to foreign private issuers (as defined in Rule 3b-4 under the 1934 Act). The securities to be issued to Shareholders pursuant to the Arrangement described in this Management Information Circular will not be listed for trading on any United States stock exchange or registered under the 1934 Act. Accordingly, the solicitations and transactions contemplated in this Management Information Circular are made in the United States for securities of a Canadian issuer in accordance with Canadian corporate and securities laws, and this Management Information Circular has been prepared solely in accordance with disclosure requirements applicable in Canada. Shareholders in the United States should be aware that such requirements are different from those of the United States applicable to registration statements under the 1933 Act and proxy statements under the 1934 Act.

The financial statements and *pro forma* and historical financial information included or incorporated by reference in this Management Information Circular have been prepared in accordance with IFRS and are subject to Canadian auditing standards and auditor independence standards and thus are not comparable in all respects to financial statements prepared in accordance with United States GAAP and subject to standards of the Public Company Accounting Oversight Board. Likewise, information concerning the operations of Element and ECN Capital and their respective Subsidiaries contained herein has been prepared in accordance with IFRS disclosure standards, which are not comparable in all respects to United States disclosure standards.

The enforcement by investors of civil liabilities under the United States securities laws may be adversely affected by the fact that Element and ECN Capital and some of their respective Subsidiaries are organized under the laws of jurisdictions outside the United States, that most of their officers and directors are residents of countries other than the United States, that the experts named in this Management Information Circular are residents of countries other than the United States and that a significant portion of the assets of Element and ECN Capital and their respective Subsidiaries and substantially all of the assets of certain such persons are located outside the United States. As a result, it may be difficult or impossible for Shareholders in the United States to effect service of process within the United States upon Element or ECN Capital, their respective officers or directors or the experts named herein, or to realize against them upon judgments of courts of the United States predicated upon civil liabilities under the federal securities laws of the United States or “blue sky” laws of any state within the United States. In addition, Shareholders in the United States should not assume that the courts of Canada: (a) would enforce judgments of United States courts obtained in actions against such persons predicated upon civil liabilities under the federal securities laws of the United States or “blue sky” laws of any state within the United States; or (b) would enforce, in original actions, liabilities against such persons predicated upon civil liabilities under the federal securities laws of the United States or “blue sky” laws of any state within the United States.

For a summary of potential material U.S. federal income tax consequences to U.S. Holders arising from and relating to the Arrangements, see “*Material Income Tax Consequences — Material U.S. Federal Income Tax Consequences to Shareholders*”.

The securities to be issued to Shareholders pursuant to the Element Arrangement will be freely transferable under U.S. federal securities laws, except by persons who are “affiliates” (as such term is understood under U.S. securities laws) of Element and ECN Capital after the Element Effective Date, or were “affiliates” of Element and ECN Capital within 90 days prior to the Element Effective Date. Persons who may be deemed to be “affiliates” of an issuer include individuals or entities that control, are controlled by, or are under common control with, the issuer, whether through the ownership of voting securities, by contract, or otherwise, and generally include executive officers and directors of the issuer as well as principal shareholders of the issuer. Any resale of such securities by such an affiliate (or former affiliate) may be subject to the registration requirements of the 1933 Act, absent an exemption therefrom. See “*The Element Arrangement — Approvals and Other Conditions Precedent to the Element Arrangement — Element Arrangement Securities Law Matters — United States Securities Laws*”.

**NONE OF THE ARRANGEMENTS, THIS MANAGEMENT INFORMATION CIRCULAR OR THE SECURITIES ISSUABLE PURSUANT TO THE ARRANGEMENTS HAVE BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES REGULATORY AUTHORITY IN ANY STATE OF THE UNITED STATES, NOR HAS ANY OF THE FOREGOING AUTHORITIES OR ANY CANADIAN SECURITIES COMMISSION PASSED UPON OR ENDORSED THE MERITS OF THE ARRANGEMENTS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE.**

### **FORWARD-LOOKING INFORMATION**

This Management Information Circular includes and incorporates statements that are prospective in nature that constitute forward-looking information and/or forward-looking statements within the meaning of applicable securities laws (collectively, “**forward-looking statements**”). Forward-looking statements include, but are not limited to, statements concerning the completion and proposed terms of, and matters relating to, the Arrangements and the expected timing related thereto, the tax treatment of the Arrangements, the expected operations, financial results and condition of Element and ECN Capital following the Arrangements, each company’s future objectives and strategies to achieve those objectives, the future prospects of each company as an independent company, the listing or continued listing of each company on the TSX, any market created for either company’s shares, the estimated cash flow, capitalization and adequacy thereof for each company following the Arrangements, the expected benefits of the Arrangements to, and resulting treatment of, Shareholders, holders of options and units, and each company, the anticipated effects of the Arrangements, the estimated costs of the Arrangements, the

satisfaction of the conditions to consummate the Arrangements, the expected terms of credit facilities and other funding arrangements, the expected terms of the Separation Agreement, Transition Services Agreement and other intercompany arrangements, as well as other statements with respect to management's beliefs, plans, estimates and intentions, and similar statements concerning anticipated future events, results, circumstances, performance or expectations that are not historical facts. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "outlook", "objective", "may", "will", "expect", "intend", "estimate", "anticipate", "believe", "should", "plans" or "continue", or similar expressions suggesting future outcomes or events.

Forward-looking statements reflect management's current beliefs, expectations and assumptions and are based on information currently available to management, management's historical experience, perception of trends and current business conditions, expected future developments and other factors which management considers appropriate. With respect to the forward-looking statements included in or incorporated into this Management Information Circular, we have made certain assumptions with respect to, among other things, the anticipated approval of the Element Arrangement, the ECN Capital Equity Plans Resolution and the Share Issuance Resolution by Shareholders and the Court, as applicable, the anticipated receipt of any required regulatory approvals and consents (including the final approval of the TSX), the expectation that each of Element, Subco, ECN Capital and IAC will comply with the terms and conditions of the Arrangement Agreement, the expectation that no event, change or other circumstance will occur that could give rise to the termination of the Arrangement Agreement, that no unforeseen changes in the legislative and operating framework for the respective businesses of Element and ECN Capital will occur, that each company will meet its future objectives and priorities, that each company will have access to adequate capital to fund its future projects and plans, that each company's future projects and plans will proceed as anticipated, as well as assumptions concerning general economic and industry growth rates, commodity prices, currency exchange and interest rates and competitive intensity.

Readers are cautioned not to place undue reliance on forward-looking statements, as there can be no assurance that the future circumstances, outcomes or results anticipated or implied by such forward-looking statements will occur or that plans, intentions or expectations upon which the forward-looking statements are based will occur. By their nature, forward-looking statements involve known and unknown risks and uncertainties and other factors that could cause actual results to differ materially from those contemplated by such statements. Factors that could cause such differences include, but are not limited to: conditions precedent or approvals required for the Arrangements not being obtained; the potential benefits of the Arrangements not being realized; the risk of tax liabilities as a result of the Arrangements, and general business and economic uncertainties and adverse market conditions; the potential for the combined trading prices of Element Common Shares and ECN Capital Common Shares after the Arrangements being less than the trading price of Element Common Shares immediately prior to the Element Arrangement; there being no established market for the Element Fleet Common Shares or the ECN Capital Common Shares; Element's ability to delay or amend the implementation of all or part of the Arrangements or to proceed with the Arrangements even if certain consents and approvals are not obtained on a timely basis; indemnity obligations that Element and ECN Capital will owe to each other following the Element Arrangement; the reduced diversity of Element and ECN Capital as separate companies; the costs related to the Arrangements that must be paid even if the Arrangements are not completed; the risk that Element or ECN Capital may default in its obligations under the Separation Agreement and/or ancillary agreements; obtaining approvals and consents, or satisfying other requirements, necessary or desirable to permit or facilitate completion of the Arrangements; global financial markets, general economic conditions, competitive business environments, and other factors may negatively impact Element Fleet's financial condition; Element has grown very rapidly, which may cause significant challenges; Element Fleet's stock price could decline as a result of Securities Industry Analyst Research Reports limiting or ceasing coverage of Element Fleet or downgrading its stock; future factors that may arise making it inadvisable to proceed with, or advisable to delay, all or part of the Arrangements; the inability to achieve certain conditions precedent relating to the Share Issuance Resolution or the IAC Arrangement; the potential inability or unwillingness of current Shareholders to hold Element Common Shares and/or ECN Capital Common Shares following the Arrangements. For a further description of these and other factors that could cause actual results to differ materially from the forward-looking statements included in or incorporated into this Management Information Circular, see the risk

factors discussed under "*Risk Factors*" in this Management Information Circular as well as the risks factors included in the Corporation's annual information form and management's discussion and analysis for the year ended December 31, 2015 and for the interim period ended March 31, 2016 and as described from time to time in the reports and disclosure documents filed by the Corporation with Canadian securities regulatory agencies and commissions and under the heading "*Risk Factors*" in Appendix L. This list is not exhaustive of the factors that may impact the Corporation's forward-looking statements. These and other factors should be considered carefully and readers should not place undue reliance on Element's forward-looking statements. As a result of the foregoing and other factors, there can be no assurance that actual results will be consistent with these forward-looking statements.

**All forward-looking statements included in and incorporated into this Management Information Circular are qualified by these cautionary statements. The forward-looking statements contained herein are made as of the date of this Management Information Circular and except as required by applicable law, Element and ECN Capital undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.**

**Readers are cautioned that the actual results achieved will vary from the information provided herein and that such variations may be material. Consequently, there are no representations by Element or ECN Capital that actual results achieved will be the same in whole or in part as those set out in the forward-looking statements.**

## GLOSSARY OF TERMS

The following is a glossary of certain terms used in this Management Information Circular, including the summary hereof.

**“1933 Act”** means the United States Securities Act of 1933, as amended, and all rules and regulations thereunder.

**“1934 Act”** means the United States Securities Exchange Act of 1934, as amended, and all rules and regulations thereunder.

**“ad hoc Committee”** means the *ad hoc* independent committee of the Board of Directors comprising William Lovatt (Chairman of the Board and a member of the Board’s audit committee and credit committee), Paul Stoyan (Chair of the Board’s C&CG Committee) and Pierre Lortie (Chair of the Board’s credit committee), each of whom will be directors of ECN Capital upon completion of the Element Arrangement) which considered the IAC Arrangement.

**“Adjusted Conversion Price”** has the meaning given to it under the heading *“Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities – Debentures”*.

**“Affiliate”** means, when describing a relationship between two Persons, that either one of them is under the direct or indirect control of the other, or each of them is directly or indirectly controlled by the same Person.

**“allowable capital loss”** has the meaning given to it under the heading *“Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses”*.

**“Amended and Restated Element Option Plan”** means the Element Financial Corporation Share Option Plan enacted June 1, 2010, and amended and restated May 17, 2011 and May 13, 2014, as amended and restated by the Board prior to or pursuant to the Element Arrangement.

**“Arrangement Agreement”** means the arrangement agreement dated July 25, 2016 among Element, ECN Capital, Subco and IAC relating to the Element Arrangement and the IAC Arrangement, as may be amended, supplemented or otherwise modified from time to time, attached to this Circular as Appendix D.

**“Arrangements”** means, collectively, the Element Arrangement and the IAC Arrangement.

**“Articles of Arrangement”** means the articles of arrangement of Element in respect of the Element Arrangement in the form required by the OBCA to be sent to the OBCA Director following the issuance of the Final Order.

**“BMO”** means BMO Nesbitt Burns Inc., financial advisor to Element in connection with the Element Arrangement.

**“Board”** or **“Board of Directors”** means the Board of Directors of Element.

**“business day”** means a day, other than a Saturday, Sunday or statutory or civic holiday in Ontario, when banks are generally open for the transaction of business in Toronto, Ontario.

**“Butterfly Multiple”** means an amount equal to the fraction (A)/(B) where:

- (A) is the Subco Share Number; and
- (B) is the aggregate number of Element Common Shares issued and outstanding immediately after the step set forth in Section 2.3(a) of the Element Plan of Arrangement.

**“Butterfly Proportion”** means an amount equal to the fraction (A)/(B) where:

- (A) is the volume weighted average trading price of the ECN Capital Common Shares on the TSX for the first five trading days commencing on the date upon which the ECN Capital Common Shares commence trading on the TSX following the completion of the Element Arrangement; and
- (B) is the sum of the amount determined under (A) above, plus the volume weighted average trading price of the Element Common Shares on the TSX for the first five trading days commencing on the date upon which the Element Common Shares commence trading on the TSX without any entitlement to the ECN Capital Common Shares (including both prior to and following the Element Effective Date).

**“Canada-U.S. Tax Convention”** has the meaning given to it under the heading *“Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Not Resident in Canada – Dividends on Element Fleet Common Shares or ECN Capital Common Shares (Post-Element Arrangement)”*.

**“Certificate of Arrangement”** means the Certificate of Arrangement to be issued by the OBCA Director under the OBCA giving effect to the Element Arrangement.

**“Class A Exchange Ratio”** means in respect of each IAC Class A Share and IAC Funding Class B Share, the fraction equal to (A)/(B), where:

- (A) is a fraction equal to (i) the IAC Net Assets as of the close of business on the second business day immediately preceding the IAC Effective Date, divided by (ii) the aggregate number of IAC Class A Shares and IAC Funding Class B Shares issued and outstanding immediately prior to the IAC Effective Time (other than IAC Class A Shares for which IAC Shareholders have validly exercised rights of redemption in respect of the IAC Arrangement); and
- (B) is a fraction equal to (i) the aggregate fair market value of ECN Capital on the Element Effective Date, as determined by the Board, divided by (ii) the aggregate number of ECN Capital Common Shares issued and outstanding immediately prior to the IAC Effective Time.

**“Class B Exchange Ratio”** means in respect of each IAC Founder Class B Share, the fraction equal to (A)/(B), where:

- (A) is a fraction equal to (i) the sum of (a) \$4,500,000 and (b) 6% of the IAC Net Assets as of the close of business on the second business day immediately preceding the IAC Effective Date divided by (ii) the aggregate number of IAC Founder Class B Shares issued and outstanding immediately prior to the IAC Effective Time; and
- (B) is a fraction equal to (i) the aggregate fair market value of ECN Capital on the Element Effective Date, as determined by the Board, divided by (ii) the aggregate number of ECN Capital Common Shares issued and outstanding immediately prior to the IAC Effective Time.



**“Commercial Finance Business”** means the businesses currently carried on by Element and its Affiliates consisting of, among other things, the commercial and vendor finance, the rail finance, and aviation finance businesses, and includes the assets and liabilities pertaining thereto held by any of Element or its Affiliates immediately prior to the Element Effective Time.

**“Computershare Investor Services”** means Computershare Investor Services Inc. at its offices in Toronto, Ontario, in its capacity as registrar and transfer agent for the Element Common Shares.

**“control”** means, when applied to a relationship between two Persons, that a Person (the “first Person”) is considered to control another Person (the “second Person”) if: (a) the first Person, directly or indirectly, beneficially owns or exercises control or direction over securities, interests or contractual rights of the second Person carrying votes which, if exercised, would entitle the first Person to elect a majority of the directors of the second Person, or a majority of any other Persons who have the right to manage or supervise the management of the business and affairs of the second Person, unless that first Person holds the voting securities only to secure a debt or similar obligation; (b) the second Person is a partnership, other than a limited partnership, and the first Person, together with any Person controlled by the first Person, holds more than 50% of the interests (measured by votes or by value) of the partnership; or (c) the second Person is a limited partnership and the general partner of the limited partnership is the first Person or any Person controlled by the first Person, and the term “controlled” has a corresponding meaning.

**“Conversion Price”** has the meaning given to it under the heading “*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities – Debentures*”.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“CRA”** means the Canada Revenue Agency.

**“Debentures”** has the meaning given to it under the heading “*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities – Debentures*”.

**“Demand for Payment”** has the meaning given to it under the heading “*The Element Arrangement – Dissenting Shareholders’ Rights*”.

**“Dissent Notice”** has the meaning given to it under the heading “*The Element Arrangement – Dissenting Shareholders’ Rights*”.

**“Dissent Procedures”** means the dissent procedures set forth in the Element Plan of Arrangement, the Interim Order and Section 185 of the OBCA (as modified by the Interim Order), as described under “*The Element Arrangement – Dissenting Shareholders’ Rights*”.

**“Dissent Right”** means the right of dissent which each Dissenting Shareholder is entitled to exercise in respect of the Element Arrangement in strict compliance with the Dissent Procedures.

**“Dissenting Non-Resident Shareholder”** has the meaning given to it under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Not Resident in Canada – Dissenting Non-Resident Shareholders*”.

**“Dissenting Resident Shareholder”** has the meaning given to it under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Dissenting Resident Shareholders*”.

**“Dissenting Shareholder”** means a Registered Shareholder that complies with the Dissent Procedures to exercise his, her or its Dissent Right and has not withdrawn such dissent prior to the Element Effective Time.

**"Distribution"** means the issuance of the ECN Capital Common Shares to holders of the Element Common Shares of record as of the Distribution Record Date pursuant to the Element Arrangement.

**"Distribution Payment Date"** means the date on which the Distribution occurs (which, for greater certainty, will be the same date as the Element Effective Date).

**"Distribution Record Date"** means the close of business on the last trading day on the TSX immediately prior to the Element Effective Date, which Distribution Record Date is currently expected to be September 30, 2016, or such other date as the Board and the ECN Capital Board may select.

**"ECN Capital"** means ECN Capital Corp., an OBCA corporation.

**"ECN Capital Annual Carve-Out Combined Financial Statements"** means the audited carve-out combined financial statements of ECN Capital as at and for the years ended December 31, 2015, 2014 and 2013, together with the notes thereto and the auditors' report thereon, attached in Appendix M.

**"ECN Capital Arrangement Options"** means the ECN Capital Options to be granted pursuant to Section 2.3(l) of the Element Plan of Arrangement.

**"ECN Capital Board"** means the Board of Directors of ECN Capital.

**"ECN Capital C&CG Committee"** means the Compensation and Corporate Governance Committee of the ECN Capital Board.

**"ECN Capital Carve-Out Combined Financial Statements"** means the ECN Capital Annual Carve-Out Combined Financial Statements and the ECN Capital Interim Carve-Out Combined Financial Statements.

**"ECN Capital Common Shares"** means the common shares in the capital of ECN Capital having the terms and conditions set out in Exhibit II to the Element Plan of Arrangement included in Appendix D.

**"ECN Capital DSU Plan"** means ECN Capital's deferred share unit plan pursuant to which ECN Capital DSUs may be granted, substantially in the form attached as Appendix P, to be considered pursuant to the ECN Capital Equity Plans Resolution.

**"ECN Capital DSUs"** means the deferred share units to be granted under the ECN Capital DSU Plan.

**"ECN Capital Equity Plans"** means, collectively, the ECN Capital Option Plan, the ECN Capital DSU Plan and the ECN Capital Unit Plan.

**"ECN Capital Equity Plans Resolution"** means the ordinary resolution in the form attached as Appendix B approving, on behalf of ECN Capital and ECN Capital Shareholders, (i) the ECN Capital Option Plan in the form attached as Appendix O, (ii) the ECN Capital DSU Plan attached as Appendix P and (iii) the ECN Capital Unit Plan attached as Appendix Q, each as it may be amended or varied at or at any time prior to the Meeting.

**"ECN Capital Interim Carve-Out Combined Financial Statements"** means the unaudited interim condensed carve-out combined financial statements of ECN Capital as at and for the three months ended March 31, 2016 and 2015, together with the notes thereto, attached in Appendix M.

**"ECN Capital Option Plan"** means ECN Capital's share option plan, substantially in the form attached as Appendix O, to be considered pursuant to the ECN Capital Equity Plans Resolution.

**"ECN Capital Options"** means the options to purchase ECN Capital Common Shares granted under the ECN Capital Option Plan (including the ECN Capital Arrangement Options).

**“ECN Capital Pro Forma Financial Statements”** means the unaudited *pro forma* consolidated financial statements of ECN Capital, after giving effect to the Element Arrangement and to the acquisition of IAC by ECN Capital pursuant to the IAC Plan of Arrangement, as at and for the three months ended March 31, 2016 and as at and for the year ended December 31, 2015, together with notes and assumptions thereto, attached as Appendix N.

**“ECN Capital PSUs”** means the performance share units to be granted under the ECN Capital Unit Plan.

**“ECN Capital Reorganization Shares”** means the shares designated as the reorganization preferred shares in the capital of ECN Capital.

**“ECN Capital RSUs”** means the restricted share units that may be granted under the ECN Capital Unit Plan.

**“ECN Capital Shareholders”** means the holders of ECN Capital Common Shares at the applicable time.

**“ECN Capital Unit Plan”** means ECN Capital’s share unit plan pursuant to which ECN Capital RSUs and ECN Capital PSUs may be granted, substantially in the form attached as Appendix Q, to be considered pursuant to the ECN Capital Equity Plans Resolution.

**“Element”** or **“Corporation”** means Element Financial Corporation, an OBCA corporation, which is expected to be renamed “Element Fleet Management Corp.” as of the Element Effective Time.

**“Element 2014 Debenture Indenture”** means the indenture dated June 18, 2014 pursuant to which the Element 2014 Debentures are issued.

**“Element 2014 Debentures”** means the \$345 million aggregate principal amount of 5.125% convertible debentures due June 30, 2019, issued on June 18, 2014 pursuant to the Element 2014 Debenture Indenture.

**“Element 2015 Debenture Indenture”** means the indenture dated May 29, 2015 pursuant to which the Element 2015 Debentures are issued.

**“Element 2015 Debentures”** means the \$575 million aggregate principal amount of 4.25% convertible debentures due June 30, 2020, issued on May 29, 2015 pursuant to the Element 2015 Debenture Indenture.

**“Element Annual Financial Statements”** means the audited consolidated financial statements of Element as at and for the years ended December 31, 2015 and 2014, together with the notes thereto and the auditors’ report thereon.

**“Element Arrangement”** means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the Element Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement, the Element Plan of Arrangement or at the direction of the Court.

**“Element Arrangement Fairness Opinion”** means a fairness opinion of BMO Nesbitt Burns Inc. dated as of July 21, 2016, addressed to the Board to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received by Shareholders under the Element Arrangement is fair, from a financial point of view, to the Shareholders, a copy of which is attached as Appendix E.

**“Element Arrangement Resolution”** means the special resolution of Shareholders approving the Element Plan of Arrangement as required by the OBCA and the Interim Order, in the form attached as Appendix A, as it may be amended or varied at or at any time prior to the Meeting.

**“Element Butterfly Shares”** means the new class of special shares in the capital of Element having the rights, privileges, restrictions and conditions set out in Exhibit I to the Element Plan of Arrangement.

**“Element C&CG Committee”** means the Compensation and Corporate Governance Committee of the Board.

**“Element Common Shares”** means, prior to the Element Arrangement, the existing common shares in the capital of Element and, after the Element Arrangement, the Element Fleet Common Shares.

**“Element Debenture Indentures”** means the Element 2015 Debenture Indenture and the Element 2014 Debenture Indenture.

**“Element DSU”** means a deferred share unit issued by Element pursuant to the Element DSU Plan.

**“Element DSU Holder”** means a Person who has been granted one or more Element DSUs under the Element DSU Plan.

**“Element DSU Plan”** means the Element Financial Corporation Deferred Share Unit Plan for Directors and Executives, amended and restated effective as of May 13, 2013.

**“Element Effective Date”** means the effective date of the Element Arrangement, being the date shown on the Element Certificate of Arrangement, which date is currently expected to be on or about October 3, 2016.

**“Element Effective Time”** means 9:00 a.m. (Eastern Time) on the Element Effective Date.

**“Element Fleet”** means, after the completion of the transactions set forth in Section 2.3(s) of the Element Plan of Arrangement, Element Fleet Management Corp., an OBCA corporation.

**“Element Fleet Common Shares”** means the Post-Arrangement Element Common Shares, as defined in the Arrangement Agreement, being the common shares in the capital of Element Fleet following completion of the Element Arrangement.

**“Element Fleet Options”** means the Post-Arrangement Element Options, as defined in the Arrangement Agreement, being the options to purchase Element Fleet Common Shares granted under the Amended and Restated Element Option Plan as part of the Element Arrangement.

**“Element Fleet Pro Forma Financial Statements”** means the unaudited historical *pro forma* consolidated financial statements of Element as at and for the three months ended March 31, 2016, together with the notes and assumptions thereto, attached as Appendix J.

**“Element Interim Financial Statements”** means the unaudited condensed consolidated interim financial statements of Element as at and for the three months ended March 31, 2016 and 2015, together with the notes thereto.

**“Element Option Holder”** means a Person who holds an Element Option.

**“Element Option Plan”** means, prior to the Element Arrangement, the Element Financial Corporation share option plan established June 1, 2010, as amended and restated May 17, 2011 and May 13, 2014, or after the Element Arrangement, the **“Amended and Restated Element Option Plan”**, as applicable.

**“Element Options”** means the options to purchase Element Common Shares granted under the Element Option Plan

**“Element PSU”** means a performance share unit issued by Element pursuant to the Element Unit Plan.

**“Element Plan of Arrangement”** means the plan of arrangement attached as Appendix A to the Arrangement Agreement, as amended or supplemented from time to time in accordance with the terms thereof, the terms of the Arrangement Agreement or made at the discretion of the Court, with the consent of Element, ECN Capital and Subco, each acting reasonably.

**“Element PSU Holder”** means a Person who has been granted one or more Element PSUs under the Element Unit Plan.

**“Element RSU”** means a restricted share unit granted under the Element Unit Plan.

**“Element Unit Plan”** means Element’s share unit plan established in February, 2014 pursuant to which Element RSUs and Element PSUs may be granted.

**“Exchange Ratio”** means the Class A Exchange Ratio and the Class B Exchange Ratio, as applicable.

**“Final Order”** means the final order of the Court to be made in connection with approval of the Element Arrangement, as such order may be varied or amended by the Court at any time prior to the Element Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or amended on appeal.

**“Fleet Management Business”** means the businesses currently carried on by Element and its Affiliates other than the Commercial Finance Business, and includes, among other things, the fleet finance vertical and related fleet management services, and all the assets and liabilities pertaining thereto held by any of Element or its Affiliates immediately prior to the Element Effective Time. For greater certainty, the Fleet Management Business does not include any portion of the Commercial Finance Business.

**“Form 54-101F7”** means Form 54-101F7 – *Request for Voting Instructions Made by Intermediary*.

**“GAAP”** means Canadian generally accepted accounting principles for publicly accountable enterprises, being International Financial Reporting Standards as issued by the International Accounting Standards Board, as adopted by the Canadian Accounting Standards Board.

**“IFRS”** means international financial reporting standards as adopted by the International Accounting Standards Board.

**“IAC”** means Infor Acquisition Corp., an OBCA corporation.

**“IAC Arrangement”** means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the IAC Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement, the IAC Plan of Arrangement or at the direction of the Court.

**“IAC Arrangement Fairness Opinion”** means a fairness opinion of PricewaterhouseCoopers LLP dated as of July 25, 2016, addressed to the Board to the effect that, as of such date, and based upon various factors including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders, a copy of which is attached as Appendix F.

**“IAC Board”** or **“IAC Board of Directors”** means the Board of Directors of IAC.

**“IAC Certificate of Arrangement”** means the certificate of arrangement to be issued by the OBCA Director under the OBCA giving effect to the IAC Arrangement.

**“IAC Class A Shares”** means the existing Class A Restricted Voting Shares in the capital of IAC.

**“IAC Class B Shares”** means the existing Class B Shares in the capital of IAC.

**“IAC Effective Date”** means the effective date of the IAC Arrangement, being the date shown on the IAC Certificate of Arrangement.

**“IAC Effective Time”** means 12:10 a.m. (Eastern Time) on the IAC Effective Date; provided that if the IAC Effective Date occurs on the Element Effective Date, the “IAC Effective Time” shall be 9:30 a.m. (Eastern Time).

**“IAC Founder Class B Shares”** means IAC Class B Shares acquired at a purchase price of \$0.008 per share prior to the initial public offering of IAC.

**“IAC Funding Class B Shares”** means IAC Class B Shares acquired at a purchase price of \$10.00 per share in connection with the initial public offering of IAC.

**“IAC Net Assets”** means an amount, determined in accordance with the Arrangement Agreement, equal to all IAC assets (including all funds from the initial public offering of IAC held in escrow), less the sum of (a) all liabilities of IAC to and including the IAC Effective Date (including all escrowed underwriters’ commissions related to such initial public offering and all accrued or estimated fees and expenses in connection with the IAC Arrangement or otherwise) and (b) the aggregate amount of escrowed funds to be paid in respect of Class A IAC Shares for which IAC Shareholders have validly exercised rights of redemption in respect of the IAC Arrangement.

**“IAC Plan of Arrangement”** means the plan of arrangement attached as Appendix B to the Arrangement Agreement, as amended or supplemented from time to time in accordance with the terms thereof, the terms of the Arrangement Agreement or made at the discretion of the Court, with the consent of ECN Capital and IAC, each acting reasonably.

**“IAC Shareholders”** means the registered holders of IAC Shares at the applicable time.

**“IAC Shares”** means the IAC Class A Shares and the IAC Class B Shares.

**“IAC Warrants”** means the warrants issued by IAC entitling each holder thereof to purchase one IAC Class A Share in accordance with the terms and conditions of such warrants.

**“Interested Parties”** has the meaning given to it under the heading “*The Element Arrangement – Fairness Opinion of BMO*”.

**“Interim Order”** means the interim order of the Court dated July 28, 2016 issued under section 182 of the OBCA providing, among other things, for declarations and directions with respect to the Element Arrangement and the Meeting, a copy of which is attached as Appendix H, as such order may be varied or amended at any time prior to the Meeting.

**“Intermediary”** means, with respect to a Non-Registered Shareholder, an intermediary such as a broker, investment dealer, bank, trust company, trustee or administrator that holds Element Common Shares on behalf of such Non-Registered Shareholder.

**“IRS”** means the Internal Revenue Service.

**“Management Information Circular”** means this management information circular issued by Element in connection with the Meeting, including all appendices referred to herein and the documents incorporated by reference herein.

**“Material Adverse Effect”** means, in respect of any corporation, any change, event or occurrence that has, or would have, a material and adverse effect upon the business, operations, assets, liabilities,

capitalization, financial condition or results of operation of that corporation and its Affiliates considered as a whole.

**“Meeting”** means the special meeting of Shareholders to be held at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Suite 4000, 199 Bay Street, Toronto, Ontario, Canada on Tuesday, September 20, 2016 at 9:00 a.m. (Eastern time), and any adjournment(s) or postponement(s) thereof, to consider and to vote on: (a) the Element Arrangement Resolution; (b) subject to the approval of the Element Arrangement Resolution, the ECN Capital Equity Plans Resolution; (c) subject to the approval of the Element Arrangement Resolution, the Share Issuance Resolution and (d) such other matters as may properly come before the meeting.

**“MI 61-101”** means Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*.

**“NI 54-101”** means National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*.

**“Non-Registered Shareholder”** has the meaning given to it under *“Voting Information and General Proxy Matters – Non-Registered Shareholders”*.

**“Non-Resident Shareholder”** has the meaning given to it under the heading *“Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Not Resident in Canada”*.

**“Notice of Application”** means the notice of application with respect to the application for the Final Order, which notice of application is attached as Appendix I.

**“Notice of Meeting”** means the notice of special meeting which accompanies this Management Information Circular.

**“OBCA”** means the *Business Corporations Act* (Ontario), as amended.

**“OBCA Director”** means the Director appointed pursuant to section 278 of the OBCA.

**“Offer to Pay”** has the meaning given to it under the heading *“The Element Arrangement – Dissenting Shareholders’ Rights”*.

**“OSC”** means the Ontario Securities Commission.

**“Participating Shareholder”** means a Shareholder, other than a Dissenting Shareholder.

**“Person”** means any individual, partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, government, regulatory authority or other entity.

**“PFIC”** has the meaning given to it under the heading *“Material Income Tax Consequences – Material U.S. Federal Income Tax Consequences to Shareholders – Passive Foreign Investment Company Rules Applicable to the Arrangements”*.

**“Plans of Arrangement”** means, collectively, the Element Plan of Arrangement and the IAC Plan of Arrangement.

**“Pre-Element Arrangement Transactions”** has the meaning given to it under the heading *“The Element Arrangement – Pre-Element Arrangement Transactions – Separation of the Commercial Finance Business and the Fleet Management Business”*.

“**PwC**” means PricewaterhouseCoopers LLP, an Ontario limited liability partnership (which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity), financial advisor to Element in connection with the IAC Arrangement.

“**Record Date**” means the close of business on July 29, 2016.

“**Registered Shareholder**” means a registered holder of Element Common Shares.

“**Regulation S**” means Regulation S under the 1933 Act.

“**Resident Participating Shareholder**” means each Resident Shareholder that is a Participating Shareholder.

“**Resident Shareholder**” has the meaning given to it under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada*”.

“**RRIFs**” has the meaning given to it under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Eligibility for Investment*”.

“**RRSPs**” has the meaning given to it under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Eligibility for Investment*”.

“**SEDAR**” means the System for Electronic Document Analysis and Retrieval, accessible at [www.sedar.com](http://www.sedar.com).

“**Separation Agreement**” has the meaning given to it under the heading “*The Element Arrangement – Arrangement Agreement and Related Agreements - Separation Agreement and Ancillary Agreements*”.

“**Series A Shares**” means Element’s outstanding 6.60% Cumulative 5-Year Rate Reset Preferred Shares, Series A of the Corporation, issued on December 17, 2013.

“**Series C Shares**” means Element’s outstanding 6.50% Cumulative 5-Year Rate Reset Preferred Shares, Series C, issued on March 7, 2014.

“**Series E Shares**” means Element’s outstanding 6.40% Cumulative 5-Year Rate Reset Preferred Shares, Series E, issued on June 18, 2014.

“**Series G Shares**” means Element’s outstanding 6.50% Cumulative 5-Year Rate Reset Preferred Shares, Series G, issued on May 29, 2015.

“**Share Issuance Resolution**” means the ordinary resolution of Shareholders (other than certain interested Shareholders) authorizing ECN Capital to issue such number of ECN Capital Common Shares as is necessary to acquire all of the outstanding IAC Shares (other than IAC Shares held by ECN Capital or any of its Affiliates) pursuant to the IAC Plan of Arrangement, which resolution is in the form attached as Appendix C, as it may be amended or varied at or at any time prior to the Meeting.

“**Shareholders**” means the holders of Element Common Shares at the applicable time.

“**Special Committee**” means the *ad hoc* independent committee of Element’s Board of Directors, comprised of William Lovatt (Chairman of the Board of Directors and the Board’s audit committee and credit committee), Pierre Lortie (Chair of the Board’s credit committee) and Richard Venn (Vice Chairman



of the Board of Directors and Chair of the Board's risk committee and a member of the Element C&CG Committee), to oversee the separation process in respect of the Element Arrangement.

**"Subco"** means 2510204 Ontario Inc., an OBCA corporation and, immediately prior to the Element Effective Time, a direct wholly-owned Subsidiary of Element.

**"Subco Arrangement Options"** means options to purchase Subco Shares granted pursuant to the Element Plan of Arrangement.

**"Subco FMV"** means the fair market value as of the Element Effective Date of 100% of the issued and outstanding of Subco Shares, as determined by the Board.

**"Subco Share Number"** means the number obtained by dividing the Subco FMV by \$1.00.

**"Subco Shares"** means common shares in the capital of Subco.

**"Subsidiary"** means, in respect of a specified Person, a second Person that is controlled, directly or indirectly, by the specified Person, and includes a Subsidiary of the second Person.

**"Tax Act"** means the *Income Tax Act* (Canada), including the regulations promulgated thereunder, as amended.

**"Tax Proposals"** means all specific proposals to amend the Tax Act and the regulations thereunder (including comfort letters) that have been publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date of this Management Information Circular.

**"taxable capital gain"** has the meaning given to it under the heading "*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses*".

**"TFSAs"** has the meaning given to it under the heading "*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Eligibility for Investment*".

**"Transferred Property"** means all of the issued and outstanding Subco Shares held by Element immediately prior to the Element Effective Time.

**"Transition Services Agreement"** has the meaning given to it under the heading "*The Element Arrangement – Arrangement Agreement and Related Agreements*".

**"TSX"** means the Toronto Stock Exchange.

**"United States"** or **"U.S."** means the United States, as defined in Rule 902(I) under Regulation S.

**"U.S. Holder"** has the meaning given to it under the heading "*Material Income Tax Consequences – Material U.S. Federal Income Tax Consequences to Shareholders – Scope of this Disclosure – U.S. Holders*".

## QUESTIONS AND ANSWERS

*The following briefly addresses some questions you may have regarding the proposed spinoff by Element of its Commercial Finance Business pursuant to a court-approved plan of arrangement, the acquisition of IAC by ECN Capital, and certain other related matters described in this document. These answers are only summary and are qualified in their entirety by the more detailed information that follows. In addition, they may not address all the questions that may be important to you as a Shareholder. Accordingly, we urge you to review the more detailed information contained elsewhere in the Management Information Circular, as well as the appendices attached hereto and the documents incorporated by reference herein. Certain capitalized terms used below are defined in the Glossary of Terms herein. The cross-references included below are to the sections identified in the Management Information Circular.*

**To ensure representation of your Element Common Shares at the Meeting whether or not you attend the Meeting, please complete, sign and return your proxy form or, if you are not a registered shareholder, please refer to Question No. 8 below under “— Voting and Proxies” for a description of the procedures to be followed to vote your Element Common Shares.**

### VOTING AND PROXIES

**1. What do I need to do to ensure my Element Common Shares are voted FOR the Element Arrangement Resolution, FOR the ECN Capital Equity Plans Resolution and FOR the Share Issuance Resolution?**

There are three ways that you can vote your Element Common Shares if you are a Registered Shareholder. You may vote in person at the Meeting, you may complete and sign the enclosed proxy form appointing the named persons or some other person you choose to represent you and vote your Element Common Shares at the Meeting or you may vote via the Internet or telephone by following the instructions provided on the form of proxy.

If you wish to vote in person at the Meeting, you do not need to complete or return the proxy form. Your vote will be taken and counted at the Meeting. Even if you plan to attend the Meeting, you may find it convenient to express your views in advance by completing and returning the proxy form. Completing, signing and returning your proxy form does not preclude you from attending the Meeting in person nor will it limit your right to vote in person if you attend the Meeting.

If you do not wish to attend the Meeting or do not wish to vote in person, your proxy will be voted for or against the resolutions in accordance with your instructions as specified thereon on any ballot that may be called at the Meeting. In the absence of such instructions, your Element Common Shares will be voted FOR: (a) the approval of the Element Arrangement Resolution; (b) the approval of the ECN Capital Equity Plans Resolution; and (c) the approval of the Share Issuance Resolution. A proxy must be in writing and must be executed by the Registered Shareholder or by the Registered Shareholder's attorney authorized in writing or, if the Registered Shareholder is a corporation, by an officer or attorney thereof duly authorized.

On the other hand, if you are a Registered Shareholder and wish to exercise your right to dissent in respect of the Element Arrangement, you must deliver to Element (at the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, or by fax at 1 (888) 772-8129), Attention: Senior Vice President, General Counsel & Corporate Secretary, at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the date of the Meeting (or any adjournment(s) or postponement(s) thereof), a written objection to the Element Arrangement Resolution. Any failure to strictly comply with the dissent procedures set out in the accompanying Management Information Circular may result in the loss or unavailability of your right of dissent. See “*The Element Arrangement – Dissenting Shareholders’ Rights*”.

Additionally, the Corporation may use the Broadridge QuickVote™ service to assist Non-Registered Shareholders with voting their Element Common Shares. Non-Registered Shareholders may be contacted by Kingsdale Shareholder Services to conveniently obtain a vote directly over the telephone. Broadridge then tabulates the results of all instructions received and provides the appropriate instructions respecting the voting Element Common Shares to be represented at the Meeting.

***If your shares are not registered in your name, but are instead registered in the name of a nominee, please see Question No. 8 of this section for voting instructions.***

## **2. Who is entitled to vote?**

Shareholders as of the close of business on July 29, 2016 or their duly appointed proxies will be entitled to attend the Meeting or to register to vote.

## **3. Who is soliciting my proxy?**

**This Management Information Circular is furnished in connection with the solicitation, by or on behalf of the management of Element, of proxies to be used at the Meeting or at any adjournment thereof, to vote your Element Common Shares FOR the Element Arrangement Resolution, FOR the ECN Capital Equity Plans Resolution and FOR the Share Issuance Resolution.** It is expected that the solicitation of proxies will be primarily by mail, but proxies may also be solicited personally, by advertisement or by telephone, by directors, officers or employees of Element without special compensation, or by Computershare Investor Services at nominal cost. The cost of solicitation will be borne by Element. Computershare Investor Services is responsible for tabulation of proxies. In addition, Element has retained Kingsdale Shareholder Services as proxy solicitation and information agent in connection with the solicitation of proxies for the Meeting.

## **4. What do I do with my completed form of proxy?**

Return the completed, dated and signed form of proxy in the enclosed envelope or otherwise to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation c/o Computershare Investor Services Inc., 100 University Avenue, 8th Floor, North Tower, Toronto, Ontario, M5J 2Y1, fax number 1 (866) 249-7775 or to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation at the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, fax number 1 (888) 772-8129 so that it arrives not later than 5:00 p.m. (Eastern Time) on September 16, 2016 (unless such proxy submissions deadline is waived by the Board) or, if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern Time) on the day which is two business days preceding the date of the adjourned or postponed Meeting. As well, Registered Shareholders and Non-Registered Shareholders who received these materials through Computershare Investor Services may vote via the Internet or by telephone by following the instructions provided on the form of proxy. A control number is provided on the proxy form for this purpose. All Element Common Shares represented by a properly executed proxy received by Computershare Investor Services prior to such time will be voted in accordance with your instructions as specified in the proxy, on any ballot that may be called at the Meeting.

## **5. How will my Element Common Shares be voted if I return my proxy?**

The persons named in the form of proxy will vote your Element Common Shares in accordance with your instructions. **In the absence of such instructions, however, your Element Common Shares will be voted FOR the Element Arrangement Resolution, FOR the ECN Capital Equity Plans Resolution and FOR the Share Issuance Resolution. See “*Voting Information and General Proxy Matters*”.**

**6. If I change my mind, can I take back my proxy once I have given it?**

Yes. A Registered Shareholder who has given a proxy may revoke it by depositing an instrument in writing signed by the Registered Shareholder or by the Registered Shareholder's attorney, who is authorized in writing, or by transmitting, by telephonic or electronic means, a revocation signed by electronic signature by the Registered Shareholder or by the Registered Shareholder's attorney, who is authorized in writing, to or at the registered office of the Corporation not later than 5:00 p.m. (Eastern Time) on September 16, 2016 or, if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern Time) on the day which is two business days preceding the date of the adjourned or postponed Meeting, or with the Chair of the Meeting on the day of, and prior to the start of, the Meeting or any adjournment thereof.

Note that the participation by a Registered Shareholder in a vote by ballot at the Meeting would automatically revoke any proxy that has been previously given by the Registered Shareholder in respect of business covered by that vote.

A Non-Registered Shareholder who received these materials through an Intermediary should follow the instructions provided by the Intermediary.

**7. How can I contact Element's transfer agent?**

Computershare Investor Services Inc.  
100 University Avenue  
8th Floor, North Tower,  
Toronto, Ontario  
Canada M5J 2Y1  
Telephone: 1 (514) 982-7555 or 1 (800) 564-6253  
Fax number 1 (514) 982 7635 or 1 (888) 453-0330

**8. If my Element Common Shares are not registered in my name but are held in the name of a nominee (a bank, trust company, securities broker, trustee or other), how do I vote my Element Common Shares?**

***If you are a Non-Registered Shareholder who received these materials through Computershare Investor Services, then follow the instructions set out in Question No. 4 above.***

If you are a Non-Registered Shareholder who did not receive these materials through Computershare Investor Services, there are, as discussed in the Management Information Circular, two ways that you can vote your Element Common Shares held by your nominee. Applicable securities laws require your nominee to seek voting instructions from you in advance of the Meeting. Accordingly, you will receive or have already received from your nominee either a request for voting instructions or a proxy form for the number of Element Common Shares you own. Every nominee has its own signing and return instructions, which should be carefully followed by Non-Registered Shareholders to ensure that their Element Common Shares are voted at the Meeting. Accordingly, for your Element Common Shares to be voted for you, please follow the voting instructions provided by your nominee.

However, if you wish to vote in person at the Meeting, insert your own name in the space provided on the request for voting instructions or proxy form to appoint yourself as proxyholder and follow the signing and return instructions of your nominee. Non-Registered Shareholders who appoint themselves as proxyholders should, at the Meeting, present themselves to a representative of Computershare Investor Services. Do not otherwise complete the form sent to you as your vote will be taken and counted at the meeting.

See "Voting Information and General Proxy Matters – Registered Shareholders" and "Voting Information and General Proxy Matters – Non-Registered Shareholders".

## THE ELEMENT ARRANGEMENT AND RELATED MATTERS

### 9. What am I being asked to vote on at the Meeting?

Shareholders will be voting on the approval of the Element Arrangement Resolution which provides for, among other things, the reorganization of Element into two separate publicly traded companies and a number of related matters. Subject to the approval of the Element Arrangement Resolution, Shareholders will also be voting on (i) the approval of the ECN Capital Equity Plans Resolution which will establish equity plans for ECN Capital which are substantially similar to the plans currently in place at Element and (ii) the approval of the Share Issuance Resolution which provides for the issuance by ECN Capital of such number of ECN Capital Common Shares as is necessary to acquire all of the outstanding IAC Shares (other than IAC Shares held by ECN Capital or any of its Affiliates). Further descriptions of the matters covered by each of these resolutions are described in the section titled “*Voting Information and General Proxy Matters – Procedure and Votes Required*”.

For more information on the reorganization, see “*The Element Arrangement*”. For a description of the ECN Capital Equity Plans, please refer to the section in Appendix L entitled “*Options to Purchase Securities*”. For more information on ECN Capital’s acquisition of all of the IAC Shares, see “*The IAC Arrangement*”.

### 10. Why is the Element Arrangement being proposed?

With a view to enhancing Shareholder value, Element is proposing to separate into two public companies: “Element Fleet Management Corp.”, which will operate the Fleet Management Business, and a new entity, “ECN Capital Corp.”, which will result from Element spinning off the Commercial Finance Business. The spinoff creates two distinct public companies: one continuing as a fleet management company focused on generating revenue and earnings based on the continued service to Element’s existing Fleet Management Business; the other a new commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business. The Board of Directors is recommending the Element Arrangement for the following reasons (among others):

- The reorganization will provide shareholders with enhanced value by creating independent investment opportunities in a fleet management company (Element Fleet Management Corp.) focused on generating revenue and earnings based on the continued service to Element’s existing Fleet Management Business, and in a commercial finance company (ECN Capital Corp.) with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business.
- At closing of the Element Arrangement, shareholders will own 100% of the outstanding common shares of each of Element Fleet Management Corp. and ECN Capital Corp.
- The reorganization will provide each company with a sharper business focus, which will permit each company to pursue independent business strategies best suited to their respective business plans, and allow them to pursue business, financial strategies and appropriate credit ratings aligned with each separate business.
- The establishment of separate public companies is expected to allow investors, analysts and potential strategic partners to more accurately compare and evaluate each company on a stand-alone basis.
- Element expects that over time the separate companies will, in the aggregate, achieve a higher long-term valuation compared to the valuation that would be accorded if all of Element’s assets continued to be held within the same company.

- Each company will be led by experienced directors and executives who have delivered strong shareholder returns and have demonstrated success building Element and who have the requisite experience and expertise to pursue growth of their respective companies.
- The reorganization will generally occur on a tax-deferred basis for Participating Shareholders resident in Canada who hold their Element Common Shares as capital property.
- The reorganization will allow each company to provide business-specific incentives to key personnel, thereby enhancing each company's ability to better attract, retain and motivate key personnel.

See "*The Element Arrangement – Reasons for the Element Arrangement*" and "*The Element Arrangement– Background to the Element Arrangement*".

#### **11. What approvals are required for the Element Arrangement to become effective?**

For the Element Arrangement to proceed, the Element Arrangement Resolution must be approved by at least two-thirds of all the votes cast by Shareholders, in person or by proxy, at the Meeting.

As well as the necessary Shareholder approvals, the principal approval required will be that of the Superior Court of Justice of Ontario, which, under the OBCA, must approve the Arrangement. It is expected that the hearing on the Element Arrangement will be held on September 21, 2016 at 10:00 a.m. (Eastern Time) at the Ontario Superior Court of Justice in Toronto at 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7, or as soon thereafter as counsel may be heard, provided that Shareholders approve the Element Arrangement. The Notice of Application for the hearing in connection with the approval of the Element Arrangement is included as Appendix I to the Management Information Circular and should be read for more detailed information in respect of the hearing. In addition, conditional approval has been received from the TSX to list the ECN Capital Common Shares and to continue to list the Element Common Shares on the TSX, subject to Element fulfilling all of the requirements of the TSX, and such listings are a condition of closing of the Element Arrangement.

The consummation of the Element Arrangement is also subject to other customary conditions. See "*The Element Arrangement – Procedure for the Element Arrangement Becoming Effective and Anticipated Timing*" for further information.

#### **12. What are the tax consequences to me if the Element Arrangement is effected?**

##### *Material Canadian Federal Income Tax Consequences to Shareholders*

In general, a Participating Shareholder who is a resident of Canada for purposes of the Tax Act and who holds his or her Element Common Shares as capital property will not realize a capital gain or capital loss for purposes of the Tax Act as a result of the Element Arrangement unless the Participating Shareholder chooses to realize a capital gain or capital loss in accordance with, and to the extent permitted under, the Tax Act. Assuming that a Participating Shareholder does not choose to realize a capital gain or a capital loss on the Element Arrangement, the adjusted cost base of the Element Common Shares will generally be allocated between the ECN Capital Common Shares and the Element Fleet Common Shares based upon the relative fair market values of such shares immediately after the disposition of the Element Common Shares as part of the Element Arrangement. Following the Element Effective Date, Element will advise Shareholders of its estimate of the appropriate proportionate allocation.

In general, a Participating Shareholder who is not a resident of Canada for the purpose of the Tax Act and who holds his or her Element Common Shares as capital property will not be subject to tax under the Tax Act solely as a result of the consummation of the Element Arrangement.

For a more detailed description of the Canadian federal income tax consequences to Shareholders as a result of the Element Arrangement, see the section of the Management Information Circular entitled "*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders*". Shareholders should consult their own tax advisors with respect to their particular circumstances.

#### *Material U.S. Federal Income Tax Consequences to Shareholders*

A summary of potential material United States federal income tax consequences to Shareholders that are U.S. Holders arising from and relating to the Element Arrangement is provided in the section of the Management Information Circular entitled "*Material Income Tax Consequences - Material U.S. Federal Income Tax Consequences to Shareholders.*"

### **13. When is the Element Arrangement likely to occur?**

It is presently anticipated that, if approved, the Element Arrangement will become effective on or about October 3, 2016. The Board of Directors may, however, decide to delay or not to proceed with the Element Arrangement despite receipt of all required approvals and consents.

### **14. If the Element Arrangement is effected, what do Shareholders receive?**

Shareholders of record as of the Distribution Record Date will receive, for each Element Common Share held, one common share of Element Fleet Management Corp. and one common share of a new public company, called ECN Capital Corp. See "*The Element Arrangement – Details of the Element Arrangement – Steps of the Element Arrangement*" and "*The Element Arrangement – Trading of Shares on the TSX*"

### **15. If the Element Arrangement is effected, what does a Shareholder have to do in order to receive the ECN Capital Common Shares to which it is entitled?**

Shareholders do not have to take any action in order to receive those shares. Shareholders will not be required to send in certificates representing their Element Common Shares in order to receive the ECN Capital Common Shares that they are entitled to receive under the Element Arrangement. If the Element Arrangement becomes effective, on or about the Element Effective Date, certificates for the ECN Capital Common Shares will be distributed to the Shareholders of record as of the Distribution Record Date. The Element Common Share certificates will represent the Element Fleet Common Shares until replaced against transfer.

### **16. When must I be a Shareholder in order to receive ECN Capital Common Shares?**

It is anticipated that, on the second trading day immediately prior to the Distribution Record Date and continuing through the Distribution Payment Date, the TSX will establish a "*due bill*" market for the Element Common Shares such that Shareholders who hold Element Common Shares at the close of business on the Distribution Payment Date will be entitled to receive ECN Capital Common Shares.

If no "*due bill*" market is established, Shareholders of record at the close of business on the Distribution Record Date will receive the ECN Capital Common Shares. See "*The Element Arrangement – Trading of Shares on the TSX*".

Any Shareholders who have duly exercised their Dissent Right and, following the dissent process under the OBCA, are ultimately entitled to be paid fair value for their Element Common Shares will instead be entitled to the fair value of such shares and will not receive Element Fleet Common Shares or ECN Capital Common Shares. See "*The Element Arrangement – Dissenting Shareholders' Rights*"

**17. What will be the impact of the Element Arrangement on the market price and trading of my Element Common Shares?**

Element expects that the market price of an Element Common Share will be adjusted to reflect the consequences of the spinoff of the Commercial Finance Business as contemplated by the Element Arrangement. Shareholders will hold two separate, freely tradable securities upon the effectiveness of the Element Arrangement: Element Fleet Common Shares and ECN Capital Common Shares. Element expects that “*due bill*” in the Element Common Shares and “*when issued*” trading markets in the Element Fleet Common Shares and the ECN Capital Common Shares will develop prior to the Distribution Payment Date, and as such, the trading in the Element Common Shares will not be interrupted or disrupted during the Element Arrangement process. There can be no guarantee that the trading prices of the ECN Capital Common Shares or the Element Fleet Common Shares will reflect the trading in these “*due bill*” or “*when issued*” markets. See “*The Element Arrangement – Trading of Shares on the TSX*”

**18. What is the IAC Arrangement and what is its purpose?**

Following completion of the Element Arrangement, ECN Capital will be a new commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business. In pursuing its growth plan, ECN Capital expects to access a variety of sources of capital. As an initial step in this plan, Element and ECN Capital have agreed to the combination of ECN Capital with IAC pursuant to the IAC Arrangement. The IAC Arrangement will result in, among other things, the acquisition by ECN Capital of all the outstanding IAC Shares in exchange for ECN Capital Common Shares.

At the time of the closing of the IAC Arrangement, IAC is expected to have, and ECN Capital is expected to obtain, net cash assets of approximately \$220 million (less any redemptions up to the permitted amount). The primary purpose of the IAC Arrangement is to provide immediate access to capital to fund and accelerate ECN Capital’s future growth plans. See “*The IAC Arrangement – Reasons for the IAC Arrangement*” and “*The IAC Arrangement - Arrangement Agreement and Details of the IAC Arrangement*”.

**19. Why are Shareholders being asked to vote on the Share Issuance Resolution?**

Under the TSX Company Manual, shareholder approval is not required for a share issuance in connection with an acquisition where less than 25% of the issued and outstanding shares, on a non-diluted basis, will be issued or issuable in payment of the purchase price for the acquisition. In connection with the IAC Arrangement, assuming no redemptions of IAC Class A Shares, ECN Capital expects to issue approximately 13% of its common shares to former IAC shareholders.

However, since the number of ECN Capital Common Shares to be issued by ECN Capital pursuant to the IAC Arrangement will be determined based on the fair market value of ECN Capital at the closing of the Element Arrangement, and such determination will not be based on the historic trading prices of ECN Capital Common Shares (as the ECN Capital Common Shares will not yet be listed for trading), the TSX has required Element to obtain separate Shareholder approval for the issuance of ECN Capital Common Shares in payment of the purchase price pursuant to the IAC Arrangement as a condition to approving the listing of such shares on the TSX. For more information on the exchange ratios under the IAC Arrangement, including the manner in which fair market value of ECN Capital will be determined, see “*The IAC Arrangement – Share Issuance Resolution*” and “*The IAC Arrangement – Other Matters Relating to the IAC Arrangement - IAC Exchange Ratios*”.

**20. Is the Element Arrangement conditional on the completion of the IAC Arrangement?**

No. The IAC Arrangement is a separate transaction to the Element Arrangement. The IAC Arrangement is subject to separate regulatory approvals, separate court approval, and IAC Shareholder approval at a special meeting of IAC Shareholders expected to be held subsequent to the completion of the Element



Arrangement. The IAC Arrangement is also subject to approval of the Share Issuance Resolution. Completion of the Element Arrangement is not conditional in any way on the IAC Arrangement.

**21. Who should I contact if I have questions regarding the Arrangements?**

Answers to many of your questions may be found in the accompanying Management Information Circular. However, you may wish to consult (i) your professional advisor, (ii) Kingsdale Shareholder Services, Element's proxy solicitation and information agent, by telephone at 416-867-2272 or toll-free at 1-866-581-0510 or by email at [contactus@kingsdaleshareholder.com](mailto:contactus@kingsdaleshareholder.com) or (iii) Element's transfer agent, Computershare Investor Services Inc. at 1-514-982-7555, or toll free at 1-800-564-6253.

## SUMMARY

*The information set out below is intended to be a summary only and is qualified in its entirety by the more detailed information appearing elsewhere in this document, including the appendices hereto and the documents incorporated by reference herein. This document should be read carefully and in its entirety as it provides important information regarding Element and the transactions summarized below. Certain capitalized words and terms used in this summary are defined in the Glossary of Terms.*

### **The Meeting**

Element has called the Meeting to consider: (a) the Element Arrangement Resolution; (b) subject to the approval of the Element Arrangement Resolution, the ECN Capital Equity Plans Resolution; and (c) subject to the approval of the Element Arrangement Resolution, the Share Issuance Resolution. The Element Arrangement Resolution provides for, among other things, the reorganization of Element into two separate publicly-traded companies: (1) Element Fleet and (2) ECN Capital. The Meeting will be held at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Suite 4000, 199 Bay Street, Toronto, Ontario, Canada on Tuesday, September 20, 2016 at 9:00 a.m. (Eastern Time).

For further details on the Meeting, see the section entitled “*The Meeting*” and for information on voting Element Common Shares at the Meeting, see the section entitled “*Voting Information and General Proxy Matters*”. For a description of the ECN Capital Equity Plans, please refer to the section in Appendix L entitled “*Options to Purchase Securities*”. For further details on ECN Capital’s acquisition of all of the outstanding IAC Shares (other than IAC Shares held by ECN Capital or any of its Affiliates) and the Share Issuance Resolution, see “*The IAC Arrangement*”.

### **The Element Arrangement**

The purpose of the Element Arrangement and the related transactions is to reorganize Element into two separate publicly-traded companies: (1) Element Fleet Management Corp., which would operate Element’s existing Fleet Management Business and become the world’s largest publicly traded fleet management company and (2) ECN Capital, which will operate Element’s existing Commercial Finance Business and will transition into an asset management business. The Element Arrangement will result in, among other things, Participating Shareholders holding all of the outstanding Element Fleet Common Shares and ECN Capital Common Shares. For a summary of what is proposed under the Element Arrangement, and the related transactions to occur prior to and after the Element Arrangement, see the section entitled “*The Element Arrangement*”.

### ***Reasons for the Element Arrangement***

The Board of Directors believes that the separation of the Fleet Management Business and the Commercial Finance Business into two separate publicly traded companies will provide a number of benefits to Element, ECN Capital and the Shareholders, including (among other things): providing shareholders with enhanced value by creating independent investment opportunities in a fleet management company focused on generating revenue and earnings based on the continued service to Element’s existing Fleet Management Business, and in a commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business; providing Participating Shareholders with 100% ownership of each company at the closing of the Element Arrangement; providing each company with a sharper business focus, which will permit each company to pursue independent business strategies best suited to their respective business plans and allow them to pursue business, financial strategies and appropriate credit ratings aligned with each separate business; enabling investors, analysts and potential strategic partners to more accurately compare and evaluate each company, which Element expects can, over time, enable the separate companies to, in the aggregate, achieve a higher long-term valuation compared to the valuation that would be accorded if all of Element’s assets continued to be held within the same company; enabling each company to pursue independent growth strategies that may not be available to them as

part of a consolidated business; allowing each company to make independent capital allocation decisions, which is expected to lead to an appropriately focused alignment of debt capacity with the individual cash generation profile and growth opportunities of each company; enabling each company to be led by experienced directors and executives who have delivered strong shareholder returns and demonstrated success building Element and who have the requisite experience and expertise to pursue growth of their respective companies; allowing the reorganization to occur on a tax-deferred basis for Participating Shareholders resident in Canada who hold their Element Common Shares as capital property; and allowing each company to provide business-specific incentives to key personnel, enhancing each company's ability to better attract, retain and motivate key personnel.

See further details under the heading "*The Element Arrangement – Reasons for the Element Arrangement*" and "*The Element Arrangement – Background to the Element Arrangement*".

### ***Fairness Opinion of BMO***

Element initially contacted BMO regarding a potential advisory assignment in October, 2015. The Board retained BMO pursuant to an engagement letter effective November 1, 2015 to act as Element's financial advisor with respect to the strategic review process that ultimately resulted in the proposed Element Arrangement. In connection with the engagement, BMO, on July 21, 2016, rendered to the Board an oral opinion, subsequently confirmed by delivery of a written opinion, dated July 21, 2016, to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received under the Element Arrangement is fair, from a financial point of view, to the Shareholders.

In providing the Element Arrangement Fairness Opinion, BMO considered certain aspects of the Element Arrangement and the Arrangement Agreement, excluding the terms of the IAC Arrangement. The full text of the Element Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the Element Arrangement Fairness Opinion and the review undertaken by BMO in connection with rendering its opinion, is attached as Appendix E to this Management Information Circular. The summary of the Element Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the Element Arrangement Fairness Opinion carefully and in its entirety. The Element Arrangement Fairness Opinion does not constitute a recommendation to any Shareholder as to how such Shareholder should vote with respect to the resolutions to be considered by Shareholders at the Meeting or any other matter. For further details, see the section entitled "*The Element Arrangement – Fairness Opinion of BMO*".

### ***Recommendation of the Board Regarding the Element Arrangement***

The Board, having considered, among other things, the reasons for the Element Arrangement and the Element Arrangement Fairness Opinion from BMO with respect to the Element Arrangement, has unanimously determined that the Element Arrangement is in the best interests of Element. **The Board has unanimously approved the Element Arrangement, the terms of the Arrangement Agreement (as it relates to the Element Arrangement) and the transactions contemplated thereby, and unanimously recommends that Shareholders vote FOR the Element Arrangement Resolution, and subject to the approval of the Element Arrangement Resolution, FOR the ECN Capital Equity Plans Resolution.**

### ***Certain Effects of the Element Arrangement***

Immediately after giving effect to the Element Arrangement:

- Participating Shareholders will continue to own 100% of the common shares of Element as Element Fleet Common Shares;
- Element will, both directly and indirectly through its Subsidiaries, continue to own and operate the Fleet Management Business;
- Participating Shareholders will own 100% of the common shares of ECN Capital, a new public company;
- ECN Capital will, both directly and indirectly through its Subsidiaries, own and operate the Commercial Finance Business;
- Element Option Holders will hold Element Fleet Options and ECN Capital Arrangement Options;
- Element DSU Holders who (a) remain with Element will hold Element DSUs to be adjusted in accordance with the terms of such Element DSUs and the Element DSU Plan, and (b) depart Element in connection with the Element Arrangement will have their Element DSUs, as adjusted in accordance with their terms, redeemed in accordance with the terms of such Element DSUs and the Element DSU Plan, subject to certain arrangements in respect of Element DSU Holders who are U.S. taxpayers; and
- Element PSU Holders will continue to hold Element PSUs to be adjusted in accordance with the terms of such Element PSUs and the Element Unit Plan.

For a detailed summary of all the steps of the Element Arrangement and certain effects of the Element Arrangement, see the sections entitled “*The Element Arrangement – Details of the Element Arrangement – Certain Effects of the Element Arrangement*”.

### ***Distribution of ECN Capital Common Shares Pursuant to the Element Arrangement***

Prior to the Distribution Record Date, certificates representing the Element Common Shares (other than those of Dissenting Shareholders that are deemed under the Element Arrangement to be cancelled at the Element Effective Time) will represent both the Element Fleet Common Shares and the ECN Capital Common Shares to be issued to Registered Shareholders under the Element Arrangement. On or about the Element Effective Date, there will be delivered to each Registered Shareholder of record as of the Distribution Record Date, without any action required on the part of Shareholders certificates or other evidentiary documentation representing the ECN Capital Common Shares to which such holder is entitled pursuant to the Element Arrangement. Following the Distribution Record Date, the certificates representing Element Common Shares will represent only Element Fleet Common Shares and no longer represent ECN Capital Common Shares.

See the section entitled “*The Element Arrangement – Distribution of ECN Capital Common Shares*” and “*The Element Arrangement – Stock Exchange Listings*”.

### ***Trading of Shares on the TSX***

Element expects that the TSX will implement “*due bill*” trading for the Element Common Shares such that any Element Common Share traded during the period commencing on the second trading day immediately prior to the Distribution Record Date and ending on the Distribution Payment Date will automatically carry the right to receive one ECN Capital Common Share.

Element expects that a "*when issued*" or "*if, as and when issued*" market for the ECN Capital Common Shares and the Element Common Shares (which will be Element Fleet Common Shares after the Element Effective Date pursuant to the Element Arrangement) will be made available on the TSX two trading days prior to the Distribution Record Date until the opening of trading on the first trading day following the Distribution Payment Date.

Upon completion of the Element Arrangement, Element Fleet Common Shares will trade on the TSX under the trading symbol "EFN" and ECN Capital Common Shares will trade under the trading symbol "ECN".

For further details, see "*The Element Arrangement – Trading of Shares on the TSX*".

#### ***Treatment of Outstanding Element Options***

Pursuant to the Element Arrangement, each outstanding Element Option will ultimately be exchanged for one Element Fleet Option to be granted by Element and one ECN Capital Arrangement Option to be granted by ECN Capital. The original exercise price of each outstanding Element Option will be allocated, in a pro rata manner as described herein, to the Element Fleet Option and the ECN Capital Arrangement Option acquired by such holder in the exchange for such Element Option.

Except as noted in this Management Information Circular, the Element Fleet Options and ECN Capital Arrangement Options received by an Element Option Holder under the Element Arrangement will have substantially the same terms as those of the Element Options for which they were exchanged.

The ECN Capital Arrangement Options will be granted under the ECN Capital Option Plan which would become effective as part of the Element Arrangement pursuant to the ECN Capital Equity Plans Resolution. Except as noted in this Management Information Circular, the ECN Capital Option Plan will have terms substantially the same as those contained in the Element Option Plan (as amended as described herein).

On July 21, 2016, the Board approved non-material amendments to the Element Option Plan to accommodate the treatment of outstanding Element Options under the Element Arrangement as described above. These amendments provide that Element Options held by Element employees who are to become ECN Capital employees after the Element Effective Date would not immediately be subject to the termination provisions of the Element Option Plan. These amendments will be included in the Amended and Restated Element Option Plan. No approval of Shareholders is required for the Amended and Restated Element Option Plan to become effective.

For further details, see the section entitled "*The Element Arrangement – Treatment of Outstanding Element Options*".

#### ***Treatment of Outstanding Element DSUs***

For Element DSU Holders who are to remain on the Board or as employees of Element Fleet following the Element Arrangement, the number of their outstanding Element DSUs will be adjusted as described herein pursuant to the terms of the Element DSU Plan to reflect the difference in the fair market value of an Element Common Share resulting solely from the Element Arrangement, such that the aggregate fair market value of their Element DSUs immediately prior to the spin-off and the aggregate fair market value of their Element DSUs immediately after the spin-off is the same. This adjustment will provide those plan participants with an aggregate value immediately following the spin-off equal to the aggregate value of the Element DSUs they held immediately before the spin-off. The Element DSUs will remain obligations of Element.

Element DSU Holders who are to leave the Board or depart as employees of Element Fleet following the Element Arrangement will have their Element DSUs, as adjusted in accordance with their terms,

redeemed in accordance with the terms of such Element DSUs and the Element DSU Plan. This treatment will be subject to certain arrangements in respect of Element DSU Holders who are U.S. taxpayers

For further details, see the section entitled “*The Element Arrangement – Treatment of Outstanding Element DSUs*”.

#### ***Treatment of Outstanding Element PSUs***

All Element PSU Holders will have the number of their outstanding Element PSUs adjusted, as described herein, pursuant to the terms of the Element Unit Plan to reflect the effect of the Element Arrangement on the Element Common Shares such that the Element PSUs are treated in a manner similar to the Element Common Shares in the Element Arrangement. The Element PSUs will remain obligations of Element.

There are currently no Element RSUs outstanding, and no Element RSUs will be issued prior to the Element Arrangement.

For further details, see the section entitled “*The Element Arrangement – Treatment of Outstanding Element PSUs*”.

#### ***Treatment of Preferred Shares, Debentures, Credit Facilities and other Funding Arrangements***

Each of Element’s outstanding series of preferred shares will remain outstanding obligations of Element Fleet following the Element Arrangement.

Element’s Debentures will also remain outstanding obligations of Element Fleet following the Element Arrangement, and the Board has determined to adjust the conversion prices of the Debentures after the Element Effective Date in a manner equitable in the circumstances so as to reflect the effect of the Element Arrangement. Such adjustment will be subject to the approval of the TSX.

Underwriters’ commitments have been received for the establishment of separate senior credit facilities in favour of Element Fleet and ECN Capital in conjunction with the Element Arrangement. The underwriters’ commitments contemplate that, in conjunction with the Element Arrangement, (i) Element’s existing credit agreement will be amended and restated with Element Fleet Management Corp. and Element Fleet Management (US) Corp. as co-borrowers to provide for an aggregate of US\$4.0 billion in three year revolving funding for Element Fleet Management Corp. and (ii) a separate and distinct US\$2.5 billion senior three-year revolving credit facility will be established in favour of ECN Capital and ECN Capital US Holdings Corp., ECN Capital’s wholly-owned U.S. subsidiary, as co-borrowers.

It is expected that Element’s current fleet lease securitization program and two U.S. asset-backed securitization programs will remain in place following the Element Arrangement

For further details, see “*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities*”.

#### **Approvals and Other Conditions Precedent to the Element Arrangement**

##### ***Approval of Shareholders Required for the Element Arrangement Resolution***

The Interim Order provides that the percentage of votes required to pass the Element Arrangement Resolution will be at least two-thirds of the votes cast by Shareholders, voting in person or by proxy, at the Meeting. See “*Voting Information and General Proxy Matters – Procedure and Votes Required*”.

### ***Court Approval***

An arrangement under the OBCA requires court approval. Subject to the terms of the Arrangement Agreement, and subject to the approval of the Element Arrangement Resolution by Shareholders at the Meeting in the manner required by the Interim Order, Element currently intends to apply promptly to the Court for the Final Order approving the Element Arrangement. The Notice of Application and the Interim Order is attached as Appendix I.

The application for the Final Order approving the Element Arrangement is expected to be made on September 21, 2016, at 10:00 a.m. (Eastern Time), or as soon thereafter as counsel may be heard, at the Court located at 330 University Avenue, Toronto, Ontario, M5G 1R7. At the hearing, any Shareholder or any other interested party who wishes to participate or be represented or to present arguments or evidence may do so in accordance with the provisions of the Interim Order, provided that such a party shall serve on Element and file with the Court a notice of appearance as out in the Notice of Application and the Interim Order and satisfy any other requirements of the Court.

See the section entitled "*The Element Arrangement – Approvals and Other Conditions Precedent to the Element Arrangement – Court Approval*".

### ***TSX Approval***

The TSX has conditionally approved: (i) the listing on the TSX of the ECN Capital Common Shares to be issued pursuant to the Element Arrangement, the ECN Capital Option Plan, the ECN Capital DSU Plan and the ECN Capital Unit Plan (including the ECN Capital Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of ECN Capital Arrangement Options and settlement of ECN Capital DSUs, ECN Capital RSUs, and ECN Capital PSUs); (ii) the listing on the TSX of the Element Fleet Common Shares to be issued pursuant to the Element Arrangement and the Amended and Restated Element Option Plan (including the Element Fleet Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of Element Fleet Options) in substitution of the current listing of the Element Common Shares; and (iii) the listing on the TSX of the Element Butterfly Shares to be issued pursuant to the Element Arrangement. TSX approval of the adjustment to the terms of the Element 2014 Debentures and the Element 2015 Debentures, as determined by the Element Board pursuant to the Element Debenture Indentures, is also required and will be sought prior to the closing of the Element Arrangement.

Final approval will be subject to Element or ECN Capital, as applicable, fulfilling all of the applicable requirements of the TSX. Approval of the ECN Capital Common Shares to be issued pursuant to the IAC Arrangement will be subject to IAC obtaining the TSX approval that the IAC Arrangement is a "qualifying acquisition" of IAC under the applicable TSX rules. See the section entitled "*The Element Arrangement – Approvals and Other Conditions Precedent to the Element Arrangement – TSX Approval*" and see "*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities - Debentures*".

### ***Other Conditions Precedent to the Element Arrangement***

In addition to the receipt of the approvals, orders and rulings noted above, the completion of the Element Arrangement is subject to the satisfaction of certain other conditions under the Arrangement Agreement as described under the heading "*The Element Arrangement – Approvals and Other Conditions Precedent to the Element Arrangement – Other Conditions Precedent to the Element Arrangement*".

### ***Dissenting Shareholders' Rights***

A Registered Shareholder is entitled to dissent and be paid by Element the fair value of the holder's Element Common Shares determined as at the close of business on the business day before the Meeting (or any adjournment(s) or postponement(s) thereof) provided that the Element Arrangement Resolution is

passed, the Element Arrangement becomes effective and such Registered Shareholder provides Element with a Dissent Notice at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the date of the Meeting, or any adjournment(s) or postponement(s) thereof.

A Registered Shareholder who wishes to exercise Dissent Rights must provide to Element (at the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, or by fax at 1 (888) 772-8129), Attention: Senior Vice President, General Counsel & Corporate Secretary, at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the date of the Meeting (or any adjournment(s) or postponement(s) thereof), a written objection to the Element Arrangement Resolution. This right of dissent is described in detail under the heading "*The Element Arrangement – Dissenting Shareholders' Rights*". **Registered Shareholders who wish to dissent and who fail to strictly comply with the dissent procedures set out in this Management Information Circular may lose any right of dissent. Beneficial owners of Element Common Shares registered in the name of a broker, custodian, nominee or other Intermediary who wish to dissent should be aware that ONLY A REGISTERED OWNER OF ELEMENT COMMON SHARES IS ENTITLED TO EXERCISE RIGHTS OF DISSENT.**

### **The IAC Arrangement**

The primary purpose of the IAC Arrangement is to provide ECN Capital with immediate and timely access to capital to fund and accelerate ECN Capital's future growth plans. For a summary of what is proposed under the IAC Arrangement, the Share Issuance Resolution to be voted upon by Shareholders (other than certain interested Shareholders) in connection with the IAC Arrangement, and the related transactions to occur prior to and after the IAC Arrangement, see the section entitled "*The IAC Arrangement*".

### **Reasons for the IAC Arrangement**

The Board of Directors believes that the acquisition of all of the shares of IAC (other than IAC Shares held by ECN Capital or any of its Affiliates) will provide a number of benefits to ECN Capital and its shareholders, including (among other things), providing immediate and timely access to capital to fund and accelerate ECN Capital's future growth plans and strengthening the ECN Capital Board of Directors and senior management team.

See further details under the heading "*The IAC Arrangement – Reasons for the IAC Arrangement*" and "*The IAC Arrangement – Background to the IAC Arrangement*".

### **Fairness Opinion of PwC**

The Board retained PwC to provide a fairness opinion with respect to the IAC Arrangement. PwC, on July 21, 2016 delivered a draft opinion to the Board, and rendered an oral opinion to the *ad hoc* Committee on July 22, 2016, subsequently confirmed by delivery of a final written opinion, dated July 25, 2016, to the effect that, as of such date, and based upon and subject to various factors including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders. In providing the IAC Arrangement Fairness Opinion, PwC considered certain aspects of the IAC Arrangement and the Arrangement Agreement among other factors. The full text of the IAC Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the IAC Arrangement Fairness Opinion and the review undertaken by PwC in connection with rendering its opinion, is attached as Appendix F to this Management Information Circular. The summary of the IAC Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the IAC Arrangement Fairness Opinion carefully and in its entirety. The IAC Arrangement Fairness Opinion was prepared for the sole benefit of the Board and was one factor considered by the Board in respect of the IAC Arrangement (and is not to be relied upon by any other party), and does not constitute a recommendation to any Shareholder as to how such Shareholder



should vote with respect to the resolutions to be considered by Shareholders at the Meeting or any other matter. For further details, see the section entitled “*The IAC Arrangement – Fairness Opinion of PwC*”.

### ***Recommendation of the Board Regarding the IAC Arrangement***

The Board, having considered, among other things, the reasons for the IAC Arrangement, the recommendation of the *ad hoc* Committee of the directors of Element regarding the IAC Arrangement, and the IAC Arrangement Fairness Opinion from PwC with respect to the IAC Arrangement, has unanimously (subject to recusals) determined that the IAC Arrangement is in the best interests of Element. **The Board has unanimously (subject to recusals) approved the IAC Arrangement, the terms of the Arrangement Agreement (as it relates to the IAC Arrangement) and the transactions contemplated thereby, and unanimously (subject to recusals) recommends that Shareholders vote FOR the Share Issuance Resolution, subject to the approval of the Element Arrangement Resolution by the Shareholders.**

### ***Approvals and Other Conditions Precedent to the IAC Arrangement***

The IAC Arrangement will be subject to the approval of, among others, the Court, IAC Shareholders, the Share Issuance Resolution, the TSX and applicable securities regulators. In entering into the Arrangement Agreement, the board of directors of IAC has approved the IAC Arrangement and has unanimously agreed (subject to recusals) to recommend that shareholders of IAC vote in favour of the IAC Arrangement.

Element, ECN Capital and IAC anticipate that an interim order of the Court will establish that the percentage of votes required to pass the resolution approving the IAC Arrangement will be at least two-thirds of the votes cast by IAC Shareholders, voting in person or by proxy, at a special meeting of IAC Shareholders.

An arrangement under the OBCA also requires court approval. Subject to the terms of the Arrangement Agreement, and if the resolution is approved by IAC Shareholders at the special meeting in the manner required by the applicable interim order, IAC currently intends to apply promptly to the Court for a final order approving the IAC Arrangement.

The TSX will be required to approve the IAC Arrangement as the “qualifying acquisition” of IAC under the applicable TSX rules. The TSX has conditionally approved the listing of the ECN Common Shares (including the ECN Capital Common Shares which, following completion of the IAC Arrangement, will be issuable upon the exercise of the IAC Warrants), but the TSX’s final approval will be subject to ECN Capital and IAC, as applicable, fulfilling all of the applicable requirements of the TSX. ECN Capital will be required to obtain the TSX’s final approval to list the ECN Capital Common Shares to be issued pursuant to the IAC Arrangement.

In addition, prior to convening the special meeting of its shareholders, IAC will be required, in accordance with applicable securities laws, to obtain a final receipt for a prospectus setting forth, among other things, a description of ECN Capital’s business and operations. See “*The IAC Arrangement - Approvals and Other Conditions Precedent to the IAC Arrangement - Approvals for the IAC Arrangement*”.

### ***Rights of IAC Shareholders***

In accordance with IAC’s governing documents, IAC Shareholders will have a right to have their IAC Shares redeemed by IAC in connection with the qualifying acquisition, being the IAC Arrangement, and to receive their pro rata share of amounts then held in escrow, being the aggregate gross proceeds realized in connection with the issuance of the “Class A Units” (each comprised of an IAC Class A Share and one-half of an IAC Warrant) pursuant to IAC’s initial public offering. As with the Element Arrangement, shareholders of IAC will have a right to dissent in respect of the IAC Arrangement and to be paid fair

value by IAC in respect of their IAC Shares. See "*The IAC Arrangement - Approvals and Other Conditions Precedent to the IAC Arrangement – Rights of IAC Shareholders*".

### ***Other Matters Relating to the IAC Arrangement***

For a discussion of any interests of the insiders, management and directors of both Element Financial Corporation and ECN Capital in the IAC Arrangement, and for a discussion of the share exchange ratios and valuation work to be relied upon in connection with the IAC Arrangement, see "*The IAC Arrangement - Other Matters Relating to the IAC Arrangement - Interests of Element Management and Directors in the IAC Arrangement*".

### **Element Fleet Following the Element Arrangement**

Following completion of the Element Arrangement, Element, together with certain subsidiaries, will be renamed "Element Fleet Management Corp." and the Element Common Shares will continue to trade on the TSX under the trading symbol "EFN". Element Fleet Management Corp. will continue to own and operate the Fleet Management Business. For further details, see the section entitled "*Element Fleet Following the Element Arrangement*" and also see Appendix K.

### **ECN Capital Following the Arrangements**

ECN Capital will be a new publicly traded company with ECN Capital Common Shares and warrants traded on the TSX. ECN Capital will trade on the TSX under the trading symbol "ECN". ECN Capital will own and operate the Commercial Finance Business previously owned and operated by Element.

For a detailed description of ECN Capital following the completion of the Arrangements, see Appendix L.

### **Risk Factors**

Shareholders should be aware that there are various known and unknown risk factors in connection with the Element Arrangement and the ownership of Element Common Shares and ECN Capital Common Shares following the completion of the Element Arrangement. Shareholders should also be aware that there are various known and unknown risk factors in connection with the IAC Arrangement and the ownership of ECN Capital Common Shares following the completion of the IAC Arrangement. Shareholders should carefully consider the risks identified in this Management Information Circular under the heading "*Risk Factors*" and under the heading "*Risk Factors*" in Appendix L before deciding whether or not to approve the Element Arrangement.

### **Material Income Tax Consequences**

#### ***Certain Canadian Federal Income Tax Consequences to Shareholders***

In general, a Participating Shareholder who is a resident of Canada for purposes of the Tax Act and who holds his or her Element Common Shares as capital property will not realize a capital gain or capital loss for purposes of the Tax Act as a result of the Element Arrangement unless the Participating Shareholder chooses to realize a capital gain or capital loss in accordance with, and to the extent permitted under, the Tax Act. Assuming that a Participating Shareholder does not choose to realize a capital gain or a capital loss on the Element Arrangement, the adjusted cost base of the Element Common Shares immediately prior to the Element Arrangement will generally be allocated between the ECN Capital Common Shares and the Element Common Shares based upon the relative fair market values of such shares immediately after the disposition of the Element Common Shares as part of the Element Arrangement. Following the Element Effective Date, Element intends to advise Shareholders on its website of its estimate of the appropriate proportionate allocation.

In general, a Participating Shareholder who is not a resident of Canada for the purpose of the Tax Act and who holds his or her Element Common Shares as capital property will not be subject to tax under the Tax Act solely as a result of the consummation of the Element Arrangement.

For a more detailed description of the Canadian federal income tax consequences to Shareholders as a result of the Element Arrangement, see “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders*”. Shareholders should consult their own tax advisors with respect to their particular circumstances.

### ***Material U.S. Federal Income Tax Consequences to Shareholders***

A summary of potential material U.S. federal income tax consequences to Shareholders that are U.S. Holders arising from and relating to the Arrangements is provided in the section entitled “*Material Income Tax Consequences – Material U.S. Federal Income Tax Consequences to Shareholders*”.

### **Summary Financial Information**

For a summary of certain historical and *pro forma* consolidated financial information of Element and certain historical combined financial information of ECN Capital, see the sections entitled “*Summary Historical and Pro Forma Consolidated Financial Information*” in Appendix K and “*Summary Historical and Pro Forma Consolidated Financial Information*” in Appendix L, respectively.

## THE MEETING

### ***Time, Date and Place***

The Meeting will be held at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Suite 4000, 199 Bay Street, Toronto, Ontario, Canada on Tuesday, September 20, 2016 at 9:00 a.m. (Eastern Time).

### ***Record Date and Shares Entitled to Vote***

Element has fixed the close of business on July 29, 2016 as the Record Date for the determination of Shareholders entitled to receive notice of, to attend and to vote at the Meeting, or any adjournment(s) or postponement(s) thereof. Each Shareholder of record will be entitled to one vote per Element Common Share held on all matters to be acted upon at the Meeting.

### ***Business of the Meeting***

At the Meeting, the Shareholders will be asked to consider and vote upon, pursuant to the Interim Order, the Element Arrangement Resolution and, subject to the approval of the Element Arrangement Resolution, the ECN Capital Equity Plans Resolution and the Share Issuance Resolution. See "*Voting Information and General Proxy Matters – Procedure and Votes Required*".

Other than the Element Arrangement Resolution, the ECN Capital Equity Plans Resolution and the Share Issuance Resolution, each as described under "*Voting Information and General Proxy Matters – Procedure and Votes Required*", management knows of no other matter to come before the Meeting. The accompanying instrument of proxy confers discretionary authority upon the persons named therein with respect to amendments or variations to matters identified in the Notice of Meeting, and with respect to other matters which may properly come before the Meeting. If any other matters which are not known to management properly come before the Meeting, the shares represented by proxies in favour of management nominees will be voted on such matters in accordance with the best judgment of such nominees.

### ***Quorum and Votes Required for Certain Matters***

Two persons present at the opening of the Meeting who are entitled to vote thereat either as Shareholders or proxyholders will constitute a quorum for the Meeting. The Element Arrangement Resolution requires the affirmative vote of at least two-thirds of the votes cast by Shareholders who vote in respect thereof, in person or by proxy, at the Meeting while the ECN Capital Equity Plans Resolution must be approved by a majority of the votes cast by Shareholders voting in person or by proxy at the Meeting. The Share Issuance Resolution must be approved by a majority of the votes cast by Shareholders (other than certain interested Shareholders) voting in person or by proxy at the Meeting. See "*Voting Information and General Proxy Matters – Procedure and Votes Required*".

### ***How to vote at the Meeting***

#### **Registered Shareholders**

**IN PERSON:** at the Meeting (Registered shareholder). If you wish to vote in person at the meeting, do not complete or return the proxy form.

**INTERNET VOTING:** enter the 15-digit control number at [www.investorvote.com](http://www.investorvote.com)

**TELEPHONE**

1-866-732-8683 (toll free, Registered shareholder)

312-588-4290 (outside Canada and the United States for Registered shareholder)

**FAX**

On Fax write - To the Toronto office of Computershare, Attention: Proxy Department

1-866-249-7775 (toll free, within Canada and the United States only) (send both pages of your completed, signed Form of Proxy).

416-263-9524 (outside Canada and the United States).

**BY MAIL**

Computershare Investor Services Inc.

Attention: Proxy Department

8th Floor, 100 University Avenue,

Toronto, ON M5J 2Y1

**Canadian Beneficial Holders**

**INTERNET VOTING** – Enter your 16-digit control number to vote at [www.proxyvote.com](http://www.proxyvote.com)

**TELEPHONE:**

1-800-474-7493 (English) 1-800-474-7501 (French) – Enter your 16-digit control number and follow the instructions to vote your shares

**US Beneficial Holders**

**INTERNET VOTING** – Enter your 16-digit control number to vote at [www.proxyvote.com](http://www.proxyvote.com)

**TELEPHONE**

1-800-454-8683 - Enter your 16-digit control number and follow the instructions to vote your shares

**MOBILE VOTING:** Scan the QR code on your Form of Proxy / VIF with your Smartphone and follow the instructions

**THE ELEMENT ARRANGEMENT**

*The following contains only a summary of the Element Plan of Arrangement, the Element Arrangement, the rights of Dissenting Shareholders, the Arrangement Agreement and certain related agreements and matters. Shareholders are urged to read the more detailed information included elsewhere in, or incorporated by reference into, this Management Information Circular, including the Arrangement Agreement attached as Appendix D, Section 185 of the OBCA and the requirements of the Interim Order relating to the rights of Dissenting Shareholders attached as Appendix H and Appendix G, respectively.*

The reorganization of Element will create two separate publicly-traded companies that Element believes will be better able to pursue independent strategies and opportunities for growth and ultimately enhance long-term value for Shareholders. Element will be a fleet management company focused on generating revenue and earnings based on the continued service to Element's existing Fleet Management Business. ECN Capital will be a new commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business.

The reorganization is to be implemented through the Element Arrangement. The Element Arrangement effects a series of transactions resulting in, among other things, the transfer of the Commercial Finance Business to ECN Capital and the issuance to Participating Shareholders of all of the ECN Capital Common Shares. The Arrangement will result in, among other things, each Participating Shareholder receiving one ECN Capital Common Share and one Element Fleet Common Share for each Element

Common Share held by such Participating Shareholder before the Element Arrangement. Immediately after giving effect to the Element Arrangement, Participating Shareholders will hold all of the outstanding Element Common Shares and ECN Capital Common Shares.

### **Reasons for the Element Arrangement**

The Board of Directors, acting with the advice and assistance of its financial, legal, accounting and tax advisors and management, carefully evaluated the proposed internal corporate reorganization and the Element Arrangement and the Board of Directors has unanimously determined that the Element Arrangement is in the best interests of Element and recommends that the Shareholders vote **FOR** the Element Arrangement Resolution. In reaching these determinations, the Board considered, among other things, the factors and benefits summarized below. The potential factors and benefits described below are subject to a number of risks that could cause some or all of these factors benefits to not be realized, in whole or in part. See “*Risk Factors*”.

#### *Enhanced Value Through Independent Investment Opportunities*

The Element Arrangement will provide Shareholders with ownership of two independent investment opportunities to enhance Shareholder value, in respect of:

- Element Fleet, which will be focused on generating revenue and earnings based on the continued service to Element’s existing Fleet Management Business; and
- ECN Capital, which will be a new commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, and which will transition into an asset management business.

Shareholders will retain ownership in both companies immediately after the Element Effective Date, and prior to the IAC Arrangement, in the same proportionate voting and equity interest, directly or indirectly, in all of the assets currently held by Element. Going forward, Shareholders will have additional investment flexibility with respect to exposure to each type of investment as they will hold a direct interest in two public companies.

#### *Continued Participation by Shareholders*

Immediately after the Element Effective Date, and prior to the IAC Arrangement, Participating Shareholders will own 100% of the outstanding common shares of each company.

#### *Sharper Business and Strategic Focus*

The Fleet Management Business and Commercial Finance Business have different business models, investment technology, capital requirements and personnel needs, and accordingly require different short term and long term strategies. As a focused fleet management company, Element Fleet will operate in Canada, the United States, Australia, New Zealand and Mexico and provides comprehensive fleet services, customized fleet financing options, consulting expertise and technology innovation to support our customers’ fleet needs across many asset classes and vehicle types. Element’s full suite of fleet management services include vehicle acquisition, financing, licensing and regulatory compliance, telematics, risk and safety, accident management, fuel services, managed maintenance, usage and expense tracking, rental services, vehicle remarketing and, through our global alliance with BNP Arval, a customized approach to effectively manage the complexities of global fleets. ECN Capital will be a North American, high-growth commercial finance company focusing on rail finance, mid-ticket commercial and vendor finance, and aviation finance, and will continue its transition into a fee-based integrated structuring, advisory and asset management model with an initial focus on establishing a family of institutional funds within its core areas of expertise. Element Fleet and ECN Capital will have different business cycles, serve different markets, sell to different customers, be subject to different competitive

forces and require different short term and long term strategies. The separation into two independent companies, each with its own board of directors and separate proven management teams, will provide each company with devoted resources and a sharper business focus on their respective core markets and businesses. This will permit each company to pursue independent business strategies best suited to their respective business plans, and allow them to pursue business, financial strategies and appropriate credit ratings aligned with each separate business.

#### *Improved Market Understanding and Valuation*

By establishing two separate public companies with independent public reporting and a simplified corporate structure, investors, analysts and potential strategic partners should be able to more accurately compare and evaluate each company on a stand-alone basis against appropriate peers, benchmarks and performance criteria specific to that company. This should improve alignment of the two companies with their direct public company peers and facilitate sector-specific analyst coverage for each. Element believes that each separate company has its own unique set of compelling valuation drivers and attributes and Element expects that over time the separate companies will, in the aggregate, achieve a higher long-term valuation compared to the valuation that would be accorded if all of Element's assets continued to be held within the same company. Element also believes that the proposed separation may create greater clarity and certainty for potential strategic partners that want to evaluate business opportunities with each company.

#### *Independent and Unique Growth Opportunities*

Each of the two businesses has attractive and unique opportunities for both organic expansion and external growth through acquisitions, capital investments and geographic expansion. Separating the Fleet Management Businesses and Commercial Finance Business will enable each company to pursue independent growth strategies that may not be available to them as part of a consolidated business. Element will be able to focus on providing vehicle fleet leasing, management solutions and related service programs. ECN Capital will be able to focus on providing railcar leasing through vendor financing programs, servicing the mid-ticket finance segment of the equipment finance industry, and originating large equipment financing and leasing transactions, and expedite its transition into a fee-based integrated structuring, advisory and asset management model.

#### *Independent Capital Allocation*

As separate companies, Element Fleet and ECN Capital will have independent balance sheets, which will provide them with independent access to capital resulting in more focused capital allocation practices, including an appropriately focused alignment of debt capacity, leverage profiles and dividend policy with the individual cash generation profile and growth opportunities of each company. Element Fleet will be able to pursue improved investment grade credit ratings and benefit from the associated capital advantages enjoyed by other fleet companies. ECN Capital will transition to an asset management business with funding requirements and liquidity needs that may be met, in part, by institutional funds.

Element has received underwriters' commitments for the establishment of separate senior credit facilities following completion of the Element Arrangement, comprising a US\$4.0 billion amended and restated facility for Element Fleet and a new separate and distinct facility of US\$2.5 billion for ECN Capital.

#### *Experienced and Focused Leadership*

Each company will be led by experienced directors and executives who have delivered strong shareholder returns and have demonstrated success building Element and who have the requisite experience and expertise to pursue growth of their respective companies.

Steven Hudson, Element's current Chief Executive Officer, will lead ECN Capital as its Chief Executive Officer and will serve on the board of directors of Element Fleet. Bradley Nullmeyer, Element's current

President, will lead Element Fleet as its Chief Executive Officer and will serve on the board of directors of ECN Capital. Both Steven Hudson and Bradley Nullmeyer have over 30 years of experience and success in the equipment and asset finance business.

#### *Fairness of the Consideration*

BMO, on July 21, 2016, rendered to the Board an oral opinion, subsequently confirmed by delivery of a written opinion, dated July 21, 2016, to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received by the Shareholders under the Element Arrangement is fair, from a financial point of view, to the Shareholders.

The full text of the Element Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the Element Arrangement Fairness Opinion and the review undertaken by BMO in connection with rendering its opinion, is attached as Appendix E to this Management Information Circular. The summary of the Element Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the Element Arrangement Fairness Opinion carefully and in its entirety.

#### *Shareholder and Court Approval*

The procedures by which the Element Arrangement will be approved will be the requirement for approval of the Element Arrangement by 66⅔% of the votes cast at the Meeting by the holders of Element Common Shares, and the requirement for approval of the Element Arrangement by the Court after a hearing at which fairness to the Shareholders will be considered.

#### *Dissent Rights*

Registered Shareholders who oppose the Element Arrangement may, upon compliance with certain conditions, exercise their Dissent Rights and receive the fair value of their Element Common Shares in accordance with the Element Plan of Arrangement.

#### *Tax Treatment*

The Arrangement will generally occur on a tax-deferred basis for a Participating Shareholder resident in Canada who holds such Shareholder's Element Common Shares as capital property unless such Shareholder chooses to realize a capital gain or capital loss in accordance with and to the extent permitted under the Tax Act. In general, Participating Shareholders not resident in Canada who hold their Element Common Shares as capital property will not be subject to tax under the Tax Act solely as a result of the consummation of the Arrangement. A summary of potential material United States federal income tax consequences to U.S. Holders arising from and relating to the Arrangements is provided under the heading "*Material Income Tax Consequences – Material U.S. Federal Income Tax Consequences to Shareholders*".

#### *Better Ability to Attract, Retain and Motivate Key Personnel*

The separation of Element into two independent public companies will also enable each to provide business-specific incentives to key personnel. Compensation arrangements can more closely align the role of each executive and employee with the performance of the business that engages them, enhancing each company's ability to better attract, retain and motivate key personnel.

The foregoing are the material benefits considered by the Board in its evaluation of the Element Arrangement, but are not intended to be exhaustive. The Board of Directors also carefully considered the risks described under the heading "*Risk Factors*", and weighed those risks against the foregoing factors



and concluded that the foregoing factors outweigh such risks. In view of the wide variety of factors considered by the Board, and the complexity of these matters, the Board did not find it practicable to, and did not quantify or otherwise assign relative weights to the foregoing factors or risks. In addition, individual members of the Board may have assigned different weights to various factors and risks.

### **Background to the Element Arrangement**

The Board has considered the separation of Element's Fleet Management Business vertical and its commercial and vendor finance business vertical on a number of occasions, together with other available strategic alternatives for enhancing the value of Element. Over the course of this process, the Board has consulted with management of Element, and with financial, accounting, legal and tax advisors in order to assist it in evaluating the merits of the various alternatives.

In October 2015, Element initiated a strategic review process relating to the company's Canadian commercial and vendor finance business vertical, which included the assessment of the marketability of the Canadian commercial and vendor finance business vertical for the purpose of growing Element's fleet management services business. This strategic review led to a comprehensive review of all of Element's business units to ensure optimal operational and corporate structure, and to the conclusion that the Fleet Management Business is under-valued inside a larger corporate entity. In January 2016, Element publicly confirmed that it was proceeding with the strategic review process to unlock value in the fleet management services business vertical and the commercial and vendor finance business vertical, including the evaluation of potential non-material bolt on acquisitions that would immediately enhance the fundamental economics, marketability and value of the commercial and vendor finance business vertical.

At a meeting on February 9, 2016, the Board met to discuss a proposed strategic roadmap for Element to separate into two leading public companies to enhance shareholder value. The Board reviewed a presentation prepared by management, with assistance from Element's advisors, that provided an overview of (i) the rationale for the proposed separation, (ii) equity, debt, ratings and other considerations, (iii) business structural considerations, and (iv) a proposed timetable and steps for implementation of the separation. The Board was supportive of the proposed separation transaction, subject to management obtaining preliminary input from credit rating agencies, key lenders and other stakeholders to ensure that such constituencies would be supportive of the proposed separation.

The Board reconvened on February 16, 2016 to review and discuss the status of the follow-up items from the meeting a week earlier. Element's Board of Directors unanimously approved in principle the reorganization of Element into two separate publicly-traded companies that Element believes will be better able to pursue independent strategies and opportunities for growth and ultimately enhance long-term value for Shareholders. Following the Board's approval, Element publicly announced that it had approved plans to proceed with a separation transaction that would result in the separation of the business into two publicly traded companies – a leading global fleet management services company and a leading North American commercial finance company.

Following that announcement, Element's management, with the assistance of Element's financial, accounting, legal and tax advisors and under the supervision of Element's Board of Directors, continued to evaluate and refine the optimal structure, terms and timing for implementing this strategy.

On March 2, 2016, as part of a regularly-scheduled Board meeting, the Board received an update from Element management on the separation process, including investor and analyst community response to the February 16th separation announcement.

On April 5, 2016, the Board reviewed a proposed governance structure and management teams for the two public entities post-separation, as well as an indicative timeline and key dates. A high-level work plan was reviewed at the meeting, including accomplishments to date, advisors retained by Element to assist with the separation process, functional status review, separation guiding principles, working assumptions, approach and timeline, meeting cadence and next steps. At this meeting, the Board also appointed an *ad hoc* committee (the "**Special Committee**") of Element's Board of Directors, comprised of William Lovatt

(Chairman of the Board and a member of the Board's audit committee and credit committee), Pierre Lortie (Chair of the Board's credit committee) and Richard Venn (Vice Chairman of the Board of Directors and Chair of the Board's risk committee and a member of the Element C&CG Committee), to oversee the separation process, with a targeted operational separation of the Fleet Management Business and Commercial Finance Business by June 30, 2016.

Pursuant to an engagement letter effective November 1, 2015, the Board retained BMO to act as financial advisor for the separation transaction and to provide an opinion as to the fairness, from a financial point of view, of the consideration to be received by Shareholders under the Element Arrangement to the Shareholders.

The Special Committee met on May 10, 2016 and July 17, 2016 to receive updates on various aspects of the transaction, and to provide management with information on matters relating to the transaction. In addition, the Board received an update on the separation transaction at a meeting on May 11, 2016.

At a meeting on July 19, 2016, the Special Committee reviewed the terms of the Arrangement Agreement and a draft of this Management Information Circular. The Special Committee also reviewed presentations from each of the Corporation's financial, accounting, tax and legal advisors regarding the Element Arrangement. BMO provided the Special Committee with their preliminary views on the fairness, from a financial point of view, of the consideration to be received by the Shareholders under the Element Arrangement to the Shareholders. In addition, BMO provided the Special Committee with considerations regarding the proposed adjustments to the conversion prices for the outstanding Debentures. At the completion of the meeting, the Special Committee resolved to recommend the Element Arrangement to the Board. At the conclusion of the meeting, Mr. Venn recused himself and an *ad hoc* independent committee of the Board of Directors (the "**ad hoc Committee**") comprising William Lovatt, Paul Stoyan and Pierre Lortie (each of whom will be directors of ECN Capital upon completion of the Element Arrangement) considered the IAC Arrangement.

At a meeting of the Board on July 21, 2016, the Board received and reviewed the recommendation of the Special Committee. The Board then reviewed the terms of the Arrangement Agreement and a draft of this Management Information Circular. The Board also reviewed presentations from each of the Corporation's financial, accounting, tax and legal advisors regarding the Element Arrangement. BMO also provided the Board with their views on the fairness, from a financial point of view, of the consideration to be received by the Shareholders under the Element Arrangement to the Shareholders. At the completion of the meeting, the Board resolved to approve the Arrangement Agreement (with interested directors not voting in respect of the IAC Arrangement) and to make the recommendations described below under the heading "*The Element Arrangement – Recommendation of the Board regarding the Element Arrangement*". At the conclusion of the meeting, Messrs. Hudson and Venn recused themselves while the remainder of the Board considered the IAC Arrangement.

On July 22, 2016, the TSX conditionally approved the listing of ECN Capital, subject to compliance with standard listing requirements.

The Arrangement Agreement was signed by all parties on July 25, 2016 and the Element Arrangement was announced as part of Element's announcement of the terms of the Arrangement Agreement, giving effect to both the Element Arrangement and the IAC Arrangement.

### **Fairness Opinion of BMO**

Element initially contacted BMO regarding a potential advisory assignment in October, 2015. The Board retained BMO pursuant to an engagement letter effective November 1, 2015 to act as Element's financial advisor with respect to the strategic review process that ultimately resulted in the proposed Element Arrangement. In connection with the engagement, BMO, on July 21, 2016, rendered to the Board an oral opinion, subsequently confirmed by delivery of a written opinion, dated July 21, 2016, to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received by the Shareholders under the Element

Arrangement is fair, from a financial point of view, to the Shareholders. In providing the Element Arrangement Fairness Opinion, BMO considered certain aspects of the Element Arrangement and the Arrangement Agreement, excluding the terms of the IAC Arrangement. The full text of the Element Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the Element Arrangement Fairness Opinion and the review undertaken by BMO in connection with rendering its opinion, is attached as Appendix E to this Management Information Circular. The summary of the Element Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the Element Arrangement Fairness Opinion carefully and in its entirety.

The Element Arrangement Fairness Opinion was provided to the Board for its exclusive use only in considering the Element Arrangement and may not be used or relied upon by any person or for any other purpose without the prior written consent of BMO. Except for the inclusion of the Element Arrangement Fairness Opinion in its entirety and a summary thereof (in a form acceptable to BMO) in this Management Information Circular, the Element Arrangement Fairness Opinion is not to be reproduced, disseminated, quoted from or referred to (in whole or in part) without the prior written consent of BMO. BMO was not asked to prepare and did not prepare a formal valuation or appraisal of the securities or assets of Element, ECN Capital, Element Fleet or of any of its Affiliates, and the Element Arrangement Fairness Opinion should not be construed as such. The Element Arrangement Fairness Opinion is not, and should not be construed as, advice as to the price at which the securities of Element, ECN Capital or Element Fleet may trade at any time. BMO was not engaged to review any legal, tax or regulatory aspects of the Element Arrangement and the Element Arrangement Fairness Opinion does not address any such matters. BMO is providing the Element Arrangement Fairness Opinion based on the assumption that the Element Arrangement is expected to qualify as a “butterfly reorganization” under paragraph 55(3)(b) of the Tax Act and, accordingly, the Element Arrangement is expected to occur on a tax-deferred basis to both Element and ECN Capital for Canadian federal income tax purposes, and BMO has assumed that the Element Arrangement is not expected to result in any material adverse tax consequences for the Shareholders (other than Dissenting Shareholders) or to any of Element, Element Fleet, ECN Capital or their respective subsidiaries. BMO relied upon, without independent verification, the assessment by Element and its legal and tax advisors with respect to such matters. In addition, the Element Arrangement Fairness Opinion does not address the relative merits of the Element Arrangement as compared to any strategic alternatives that may be available to Element. The Element Arrangement Fairness Opinion does not constitute a recommendation to any Shareholder as to how such Shareholder should vote with respect to the resolutions to be considered by Shareholders at the Meeting or any other matter.

BMO acted as financial advisor to Element with respect to the Element Arrangement and will receive a fee from Element for such services, which will become payable only if the Element Arrangement is consummated. In addition, Element has agreed to reimburse BMO for its reasonable out-of-pocket expenses and to indemnify BMO for certain liabilities arising out of BMO’s engagement. BMO has provided financial advisory services to Element in the past 24 months. BMO and its affiliates may, in the future, in the ordinary course of its business, perform financial advisory or investment banking services for Element, ECN Capital, Element Fleet or any of their respective associates, affiliates or insiders (collectively, the “**Interested Parties**”). BMO and its affiliates act as traders and dealers, both as principal and agent, in major financial markets and, as such, may have and may in the future have positions in the securities of any Interested Party and, from time to time, may have executed or may execute transactions on behalf of any Interested Party or other clients for which it may have received or may receive compensation. As an investment dealer, BMO conducts research on securities and may, in the ordinary course of its business, provide research reports and investment advice to its clients on investment matters, including matters with respect to the Element Arrangement or Element.

The Board urges Shareholders to read the Element Arrangement Fairness Opinion carefully and in its entirety. See Appendix E to this Management Information Circular for the full text of the Element Arrangement Fairness Opinion.

## Recommendation of the Board Regarding the Element Arrangement

The Board, having considered, among other things, the reasons for the Element Arrangement and the Element Arrangement Fairness Opinion of BMO with respect to the Element Arrangement, has unanimously determined that the Element Arrangement is in the best interests of Element. **The Board has unanimously approved the Element Arrangement, the terms of the Arrangement Agreement (as it relates to the Element Arrangement) and the transactions contemplated thereby, and unanimously recommends that Shareholders vote:**

- **FOR the Element Arrangement Resolution, and, subject to the approval of the Element Arrangement Resolution by the Shareholders:**
- **FOR the ECN Capital Equity Plans Resolution.**

## Arrangement Agreement and Related Agreements

### *Arrangement Agreement*

Element, ECN Capital, Subco and IAC have entered into the Arrangement Agreement, which provides for, among other things, the terms of the Element Arrangement (including the Element Plan of Arrangement), the conditions to its completion, actions to be taken prior to and after the Element Effective Date and indemnities between the companies after the Element Effective Date, the substance of which is summarized below or elsewhere in this Management Information Circular.

Pursuant to the Arrangement Agreement, Element, ECN Capital and IAC have agreed to use commercially reasonable efforts and to do all things reasonably required to complete the transactions contemplated in the Arrangement Agreement. The Arrangement Agreement provides that the obligation of Element to complete the Element Arrangement is subject to receipt of a number of approvals and fulfillment of a number of conditions described under “*The Element Arrangement - Approvals and Other Conditions Precedent to the Element Arrangement*”. Notwithstanding fulfillment of all conditions and receipt of the contemplated approvals, Element may decide at any time before or after the Meeting, but prior to the issue under the OBCA of the Certificate of Arrangement giving effect to the Element Arrangement, to terminate the Arrangement Agreement and not to proceed with the Element Arrangement without notice to or the approval of the other parties to the Arrangement Agreement or the Shareholders. The Board considers it appropriate to retain the flexibility not to proceed with the Element Arrangement should some event occur after the Meeting and prior to the Element Effective Date which, in the opinion of the Board, makes it inappropriate to complete the Element Arrangement. The Element Arrangement Resolution also provides this discretion to the Board. The Board also considers it appropriate to retain flexibility not to proceed with the IAC Arrangement if the Board, after consultation with its financial, legal, accounting and tax advisors, determines in good faith that proceeding with the IAC Arrangement would prohibit, materially delay or materially impede consummation of the Element Arrangement.

Subject to applicable law and the terms of the Arrangement Agreement (including the Element Plan of Arrangement), the Arrangement Agreement may, at any time and from time to time before and after the holding of the Meeting, but not later than the Element Effective Date, be amended in respect of the Element Arrangement by written agreement of Element, ECN Capital and Subco, without, subject to applicable laws, further notice to or authorization on the part of the Shareholders or IAC Shareholders, but subject to written notice to IAC of any material amendment. The Element Arrangement Resolution also authorizes the Board to amend the Arrangement Agreement to the extent permitted therein in any manner not inconsistent with the Interim Order or Final Order, without further notice to or approval by the Shareholders.

Further, subject to applicable law and the terms of the Arrangement Agreement (including the IAC Plan of Arrangement), the Arrangement Agreement may, at any time and from time to time before and after the

holding of the special meeting of IAC Shareholders to approve the IAC Arrangement, but not later than the IAC Effective Date, be amended in respect of the IAC Arrangement by written agreement of the parties without, subject to applicable laws, further notice to or authorization on the part of Shareholders or IAC Shareholders.

Element has no present intention to amend the Arrangement Agreement or the Element Plan of Arrangement. However, it is possible that commercial, market or other factors or conditions could make it advisable to amend the Arrangement Agreement or the Element Plan of Arrangement. Element has also reserved the right in its sole discretion, subject to written notice to IAC of any material amendment, to amend the Arrangement Agreement to the extent that such amendment is necessary or desirable in connection with the Pre-Element Arrangement Transactions, the Element Arrangement, the Interim Order or the Final Order.

Pursuant to the Arrangement Agreement, each of Element, on the one hand, and ECN Capital, on the other hand, has agreed to indemnify and hold harmless the other party (and its representatives) against any loss suffered or incurred resulting from, among other things, a breach of a representation, warranty or covenant by the indemnifying party.

### ***Separation Agreement and Ancillary Agreements***

Prior to the Element Effective Time, Element, ECN Capital and Subco are expected to enter into a separation agreement (the “**Separation Agreement**”) and several ancillary agreements which are expected to provide for, among other things, the transfer of the Commercial Finance Business to Subco and certain arrangements governing the separation of the Commercial Finance Business. Further details regarding the expected terms of the Separation Agreement and the ancillary agreements are described below under the heading “*The Element Arrangement – Pre-Element Arrangement Transactions*”. The terms of the Separation Agreement and the ancillary agreements have not been finalized prior to finalizing this Management Information Circular. Changes, some of which may be material, may be made prior to the implementation of the Pre-Element Arrangement Transactions.

Pursuant to the Separation Agreement, Element and ECN Capital are expected to enter into a transition services agreement (the “**Transition Services Agreement**”) pursuant to which Element and ECN Capital will agree to provide each other, on a transitional basis, certain tax, accounting, finance and real estate services in order to facilitate the orderly transfer of the Commercial Finance Business to ECN Capital. Further details of the expected terms of the Transition Services Agreement are described in Appendix L under the heading “*Arrangements Between Element and ECN Capital*”.

### **Pre-Element Arrangement Transactions**

#### ***Formation of Subco and ECN Capital***

On March 21, 2016, Subco was formed under the OBCA in order to carry out the Element Arrangement.

On July 22, 2016, ECN Capital was formed under the OBCA in order to carry out the Element Arrangement. Until the Element Arrangement, ECN Capital will have no assets or liabilities, will conduct no operations and will not issue any shares in its capital stock.

#### ***Separation of the Commercial Finance Business and the Fleet Management Business***

The Commercial Finance Business is currently owned and operated by Element and/or certain Subsidiaries of Element. Prior to the Element Effective Time, the parties are expected to enter into the Separation Agreement and several ancillary agreements to complete the transfer from Element of ownership of the Commercial Finance Business to Subco through the direct and indirect transfer to Subco of the shares or other securities of these Subsidiaries and/or the assets and liabilities of Element related to the Commercial Finance Business (the “**Pre-Element Arrangement Transactions**”).

The Commercial Finance Business will be transferred on an “as-is”, “where-is” basis. The Separation Agreement is expected to provide for a full and complete mutual release and discharge of all liabilities existing or arising from all acts, events and conditions (including liabilities arising under contractual agreements or arrangements between or among such parties other than the Arrangement Agreement, the Separation Agreement and the ancillary agreements) occurring or existing before the Element Effective Date between Subco or any of its Subsidiaries, on the one hand, and Element or any of its Subsidiaries, on the other hand, except as will expressly be set forth in the Separation Agreement.

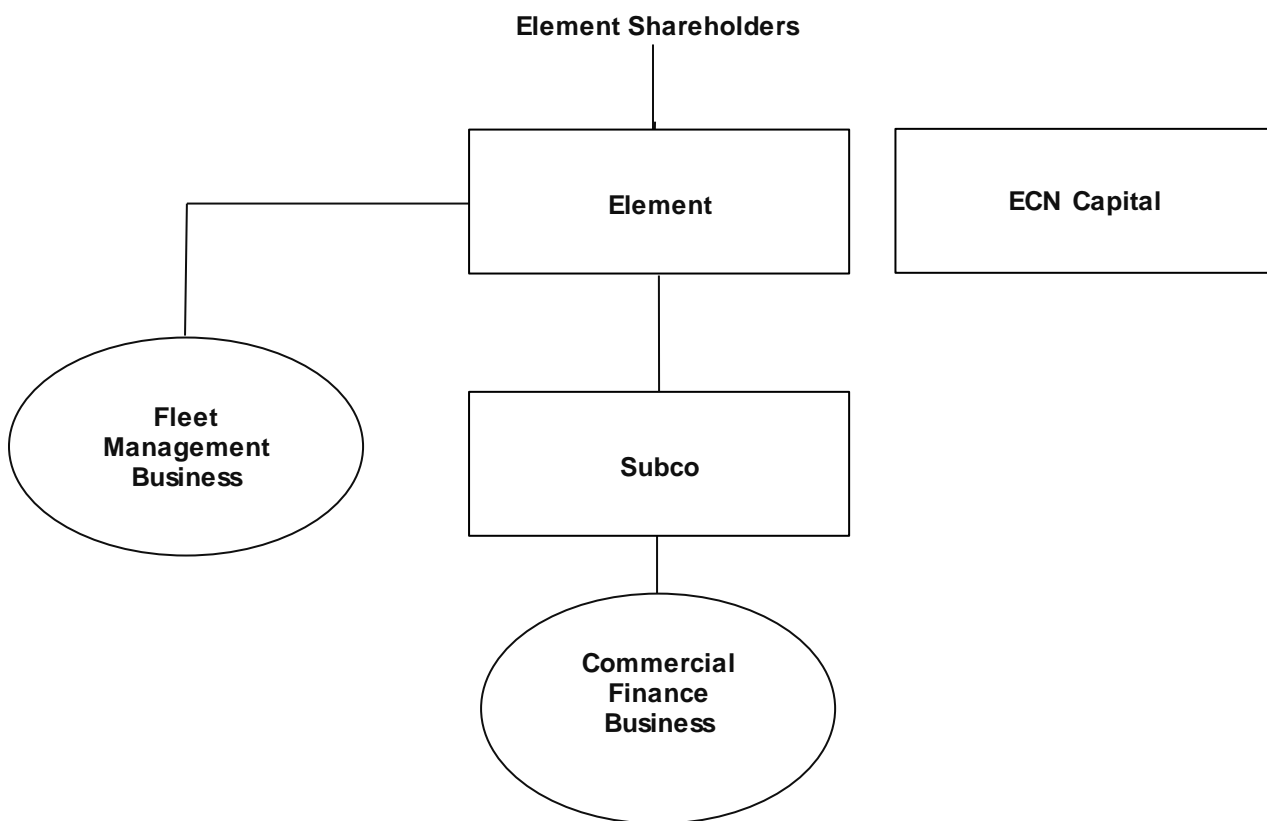
Under the terms of the Separation Agreement, it is expected that ECN Capital will generally agree to indemnify Element and its Affiliates from and against any liabilities associated with, among other things, the Commercial Finance Business, whether relating to the period, or arising, prior to, at or after the Element Effective Date. The Separation Agreement is expected to contain a reciprocal indemnity under which Element will generally agree to indemnify ECN Capital and its Affiliates from and against any liabilities relating to, among other things, the Fleet Management Business. Element and ECN Capital are also expected to indemnify each other with respect to non-performance of their respective obligations under the Separation Agreement.

The transfer of the Commercial Finance Business to Subco will be effective by the Element Effective Date and prior to the Element Effective Time. To the extent that certain of the legal documentation necessary to evidence any of the transfers contemplated by the Separation Agreement have not been completed prior to such time, the parties will agree to cooperate to complete such legal documentation as promptly as practicable following the Element Effective Time. In addition, each of the parties will agree to cooperate with each other and use reasonable commercial efforts to take or to cause to be taken all actions, and to do, or to cause to be done, all things reasonably necessary under applicable law or contractual obligations to consummate and make effective the transactions contemplated by the Separation Agreement and the ancillary agreements.

Other matters governed by the Separation Agreement are expected to include, among other things, responsibility for taxes, employee matters, access to books and records, confidentiality, insurance and dispute resolution.

### ***Pre-Element Arrangement Organizational Structure***

The following diagram sets out an abbreviated organizational structure of Element immediately prior to the implementation of the Element Arrangement and after giving effect to the Pre-Element Arrangement Transactions described above:



### **Details of the Element Arrangement**

#### ***Steps of the Element Arrangement***

Pursuant to the Element Plan of Arrangement, at the Element Effective Time, the following steps will occur and will be deemed to occur in the following order by operation of law without any further act, authorization or formality:

- (a) each Dissenting Shareholder's Element Common Shares will be transferred to Element in exchange for the right to be paid the fair value of such share from Element described below under the heading "*The Element Arrangement – Dissenting Shareholders' Rights*".
- (b) the articles of Element will be amended to change the designation of the Element Common Shares from "Common Shares" to "Class A Common Shares" and to change the voting rights attached to those Element Common Shares to two votes per share and to create and authorize Element to issue:
  - (i) an unlimited number of Element Fleet Common Shares, and
  - (ii) an unlimited number of Element Butterfly Shares,

each new class having the rights, privileges, restrictions and conditions set out in Exhibit I to the Element Plan of Arrangement;

- (c) pursuant to a reorganization of the capital of Element, each Element Common Share outstanding on the Element Effective Date held by a Participating Shareholder will be changed into one Element Fleet Common Share and a number (or fraction) of the Element Butterfly Shares equal to the Butterfly Multiple in accordance with section 168(1)(h) of the OBCA and subsection 86(1) of the Tax Act;
- (d) each Participating Shareholder will transfer to ECN Capital all such Participating Shareholder's Element Butterfly Shares in exchange for the issuance by ECN Capital of that number of ECN Capital Common Shares as is equal to the number of Element Common Shares held by such Participating Shareholder immediately before the Element Effective Time;
- (e) each Element Option Holder will exchange his or her Element Options outstanding on the Element Effective Date for Element Fleet Options and Subco Arrangement Options on the terms described below under the heading "*The Element Arrangement – Treatment of Outstanding Element Options*" and the Element Options so disposed will be cancelled;
- (f) Element will transfer the Transferred Property to ECN Capital in consideration for the issuance by ECN Capital to Element of that number of ECN Capital Reorganization Shares as is equal to the Subco Share Number;
- (g) ECN Capital will redeem from Element all of the ECN Capital Reorganization Shares and will issue to Element, in consideration therefor, a non-interest bearing demand promissory note in a principal amount equal to the aggregate redemption amount for the ECN Capital Reorganization Shares so redeemed;
- (h) Element will redeem from ECN Capital all of the Element Butterfly Shares and will issue to ECN Capital, in consideration therefor, a non-interest bearing demand promissory note in a principal amount equal to the aggregate redemption amount for the Element Butterfly Shares redeemed;
- (i) the non-interest bearing demand promissory notes referred to in (g) and (h) above will be set-off against each other in full satisfaction of the obligations of each issuer under its respective note;
- (j) each holder of a Subco Arrangement Option acquired by an Element Option Holder in accordance with (e) above will dispose of such Subco Arrangement Option and ECN Capital will grant one ECN Capital Arrangement Option to such holder and the Subco Arrangement Options so disposed of will be cancelled;
- (k) the articles of incorporation of ECN Capital will be amended by deleting the ECN Capital Reorganization Shares from the share capital which ECN Capital is authorized to issue;
- (l) the by-laws of ECN Capital will be the by-laws set out in Exhibit IV to the Element Plan of Arrangement, and such by-laws will be deemed to have been confirmed by the ECN Capital Shareholders;
- (m) the articles of Element will be amended by:
  - (i) deleting the Element Butterfly Shares and the "Class A Common Shares" from the share capital which Element is authorized to issue; and



- (ii) changing the name of Element from “Element Financial Corporation” to “Element Fleet Management Corp.”; and
- (n) ECN Capital will resolve to voluntarily dissolve Subco in accordance with Part XVI of the OBCA and subsection 88(1) of the Tax Act, and in connection therewith:
  - (i) all of the rights, title and interest of Subco in and to all of its property, assets and business of every kind and nature, real and personal, both tangible and intangible, and movable and immovable, wherever situate shall be transferred and assigned to ECN Capital; and
  - (ii) ECN Capital shall assume and become liable to pay, satisfy, discharge and observe, perform and fulfill all of the liabilities and obligations of Subco.

The Element Plan of Arrangement provides for a number of other actions, including the appointment of the directors of Element and ECN Capital identified under the heading “*Directors and Executive Officers*” in Appendix K and Appendix L, respectively, to this Management Information Circular. The above steps and the other steps of the Element Plan of Arrangement are set out in detail in the Element Plan of Arrangement included in Appendix D to this Management Information Circular.

#### ***Certain Effects of the Element Arrangement***

Immediately after giving effect to the Element Arrangement:

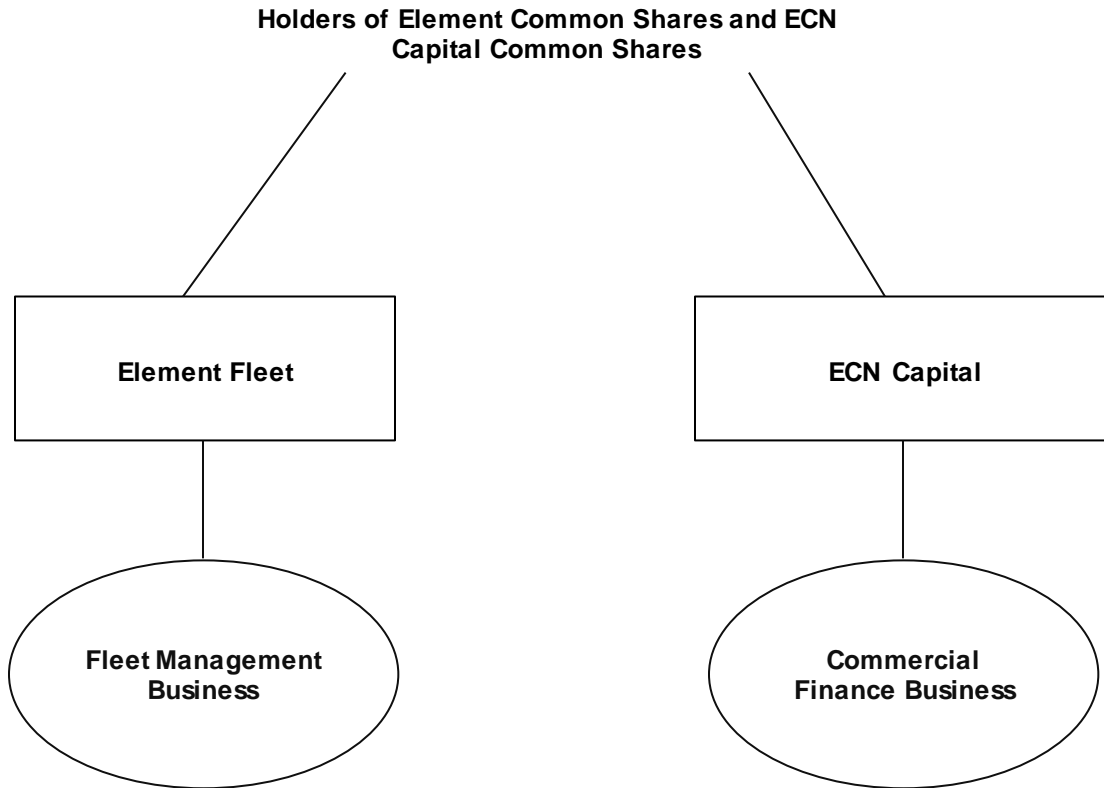
- Participating Shareholders will continue to own 100% of the common shares of Element as Element Fleet Common Shares;
- Element will, both directly and indirectly through its Subsidiaries, continue to own and operate the Fleet Management Business;
- Participating Shareholders will own 100% of the common shares of ECN Capital, a new public company;
- ECN Capital will, both directly and indirectly through its Subsidiaries, own and operate the Commercial Finance Business;
- Element Option Holders will hold Element Fleet Options and ECN Capital Arrangement Options;
- Element DSU Holders who (a) remain with Element will hold Element DSUs to be adjusted in accordance with the terms of such Element DSUs and the Element DSU Plan, and (b) depart Element in connection with the Element Arrangement will have their Element DSUs, as adjusted in accordance with their terms, redeemed in accordance with the terms of such Element DSUs and the Element DSU Plan, subject to certain arrangements in respect of Element DSU Holders who are U.S. taxpayers; and
- Element PSU Holders will continue to hold Element PSUs to be adjusted in accordance with the terms of such Element PSUs and the Element Unit Plan

It is estimated that immediately following completion of the Element Arrangement, based on the number of outstanding Element Common Shares as of July 15, 2016, an aggregate of approximately 386,704,197 Element Fleet Common Shares will be issued and outstanding, with the same number of ECN Capital Common Shares issued and outstanding, assuming that (a) no additional Element Common Shares are issued between the date of this Management Information Circular and the Element Effective Date (including pursuant to the exercise of Element Options), and (b) no Shareholders exercise Dissent Rights.

## Details After the Element Arrangement

### ***Organizational Structure After Element Arrangement***

The following diagram sets out an abbreviated organizational structure of Element Fleet and ECN Capital immediately following the implementation of the Element Arrangement.



### ***Relationship Between Element Fleet and ECN Capital After the Element Arrangement***

For details regarding certain contractual arrangements between Element Fleet and ECN Capital following completion of the Element Arrangement, refer to Appendix L under the heading “*Arrangements Between Element and ECN Capital*”.

Of the current directors and officers of Element, William Lovatt, Richard Venn, Joan Lamm-Tennant, Brian Tobin and Steven Hudson will continue as directors of Element Fleet. Bradley Nullmeyer and Paul Damp will be appointed directors of Element Fleet following completion of the Element Arrangement. Paul Stoyan, Pierre Lortie and Gordon Giffin will resign from the Element Board of Directors immediately following completion of the Element Arrangement and become directors of ECN Capital. William Lovatt, Bradley Nullmeyer, Steven Hudson and David Morris will also be appointed as directors of ECN Capital following completion of the Element Arrangement. Richard Venn will be appointed as the Chair of Element Fleet. William Lovatt will be appointed as the Chair of ECN Capital.

### **Distribution of ECN Capital Common Shares**

Following the Element Effective Time, share certificates representing Element Common Shares (other than those of Dissenting Shareholders that are deemed under the Element Arrangement to be cancelled at the Element Effective Time) will represent both the Element Fleet Common Shares and the ECN Capital Common Shares to be issued to Registered Shareholders under the Element Arrangement. On or

about the Element Effective Date, there will be delivered to each Registered Shareholder of record as of the Distribution Record Date, without any action required on the part of Shareholders, certificates representing the ECN Capital Common Shares to which such holder is entitled pursuant to the Element Arrangement. Following the Distribution Record Date, the certificates representing Element Common Shares will represent only Element Fleet Common Shares and no longer represent ECN Capital Common Shares.

Element expects that the TSX will implement "*due bill*" trading for the Element Common Shares such that any Element Common Share traded during the period commencing on the second trading day immediately prior to the Distribution Record Date and ending on the Distribution Payment Date will automatically carry the right to receive one ECN Capital Common Share.

Element expects that a "*when issued*" or "*if, as and when issued*" market for the ECN Capital Common Shares and the Element Common Shares (which will be Element Fleet Common Shares after the Element Effective Date pursuant to the Element Arrangement) will be made available on the TSX two trading days prior to the Distribution Record Date until the opening of trading on the first trading day following the Distribution Payment Date. On the first trading day immediately following the Distribution Payment Date, it is expected that the "*when issued*" or "*if, as and when issued*" market for the ECN Capital Common Shares will end and "*regular-way*" trading will begin. If the Element Arrangement is not approved and the Element Arrangement and the issuance of the ECN Capital Common Shares and the Element Fleet Common Shares does not occur, all "*when issued*" or "*if, as and when issued*" trades in the ECN Capital Common Shares and the Element Fleet Common Shares will not be settled and therefore will be null and void.

For more information on anticipated "*due bill*" trading or the "*when issued*" or "*if, as and when issued*" markets, see "*The Element Arrangement – Trading of Shares on the TSX*".

### **Treatment of Outstanding Element Options**

As of July 15, 2016 Element Options to purchase 22,820,466 Element Common Shares were outstanding. Under these outstanding Element Options, the exercise price per Element Common Share ranges from \$2.50 to \$19.13, with a weighted average exercise price of \$12.61. Under the Element Option Plan, Element Options may be granted to the employees, officers, directors, and consultants of the Corporation and its successors or Affiliates. The Element Option Plan provides that if there is a separation of the business of the Corporation or other capital adjustment of the Corporation, the Board may make appropriate substitution or adjustment in (a) the fair market value of the Element Common Shares for purposes of the Element Option Plan on any relevant date and/or any exercise price of unexercised Element Options; (b) the number or kind of shares or other securities or property issuable pursuant to the Element Option Plan; and (c) the number and kind of shares subject to unexercised Element Options theretofore granted and in the exercise price of those Element Options.

The Board, based on the recommendation of the Special Committee and the Chair of Element's C&CG Committee, determined that it would be in the best interests of Element for the outstanding Element Options to ultimately be exchanged for Element Fleet Options and ECN Capital Arrangement Options in the manner described below. In making its recommendation, the Special Committee and the Chair of Element's C&CG Committee considered, among other things, the terms of the Element Option Plan, legal analysis provided by Element's legal counsel and information and recommendations provided by Element's management. The Special Committee and Chair of Element's C&CG Committee concluded that exchanging the Element Options in the manner described below (a) is not inconsistent with the provisions of the Element Option Plan, and (b) preserves, but does not enhance, the economic benefit to Element Option Holders without altering the treatment of that benefit under the Tax Act.

Pursuant to the Element Arrangement, each outstanding Element Option will ultimately be exchanged for:

- one Element Fleet Option to be granted by Element that will, upon vesting, entitle the holder thereof to acquire one Element Fleet Common Share, and
- one ECN Capital Arrangement Option to be granted by ECN Capital that will, upon vesting, entitle the holder thereof to acquire one ECN Capital Common Share.

The original exercise price of each outstanding Element Option will be allocated to the Element Fleet Option and the ECN Capital Arrangement Option acquired by such holder in exchange for such Element Option, such that an amount equal to the Butterfly Proportion of the original exercise price (rounded up to the nearest whole cent) will be payable to ECN Capital for each ECN Capital Common Share acquired under the ECN Capital Arrangement Option and an amount equal to the remainder of the original exercise price (rounded up to the nearest whole cent) will be payable to Element for each whole Element Common Share acquired under the Element Fleet Option.

Except as noted above, the Element Fleet Options and ECN Capital Arrangement Options received by an Element Option Holder under the Element Arrangement will have substantially the same terms as those of the Element Options for which they were exchanged. For purposes of the Element Option Plan and the ECN Capital Option Plan, the Element Fleet Options and the ECN Capital Arrangement Options, respectively, shall be deemed to be a continuation of the earlier granted Element Option for which they are exchanged, as opposed to a new grant of options. Notwithstanding the requirements of the Element Option Plan, each holder of an Element Option at the time of the Element Arrangement that, in connection with the Element Arrangement, becomes a director, officer, employee or consultant of ECN Capital or one of its successors or Affiliates shall be permitted, for so long as he or she remains a director, officer, employee or consultant, as applicable, of ECN Capital or one of its successors or Affiliates, to hold and exercise his or her Element Fleet Options received as part of the Element Arrangement in accordance with their terms as though he or she remained a director, officer, employee or consultant, as applicable, of Element or its successors or Affiliates. If any such holder at any time is no longer a director, officer, employee or consultant of any of Element, ECN Capital or any of their respective successors or Affiliates, he or she shall be treated for purposes of the Element Option Plan as having ceased to be so employed or engaged with Element and its successors or affiliates and the rights under his or her Element Fleet Options shall be affected accordingly.

On July 21, 2016, the Board approved non-material amendments to the Element Option Plan to accommodate the treatment of outstanding Element Options under the Element Arrangement as described above. These amendments provide that Element Options held by Element employees who are to become ECN Capital employees after the Element Effective Date would not immediately be subject to the termination provisions of the Element Option Plan. These amendments are included in the Amended and Restated Element Option Plan and no approval of Shareholders will be required for the granting of the Element Fleet Options or for the Amended and Restated Element Option Plan to become effective.

If the Element Arrangement Resolution is approved, it is estimated that Element Fleet Options entitling the holders thereof to acquire up to 22,820,466 Element Fleet Common Shares will be outstanding following the Element Arrangement (representing approximately 5.9% of the Element Fleet Common Shares estimated to be outstanding immediately following completion of the Element Arrangement). For further discussion of the Element Options and the Element Option Plan, see “*Longer-Term Incentive Plan Descriptions – Element Option Plan*” in Appendix K.

The ECN Capital Arrangement Options to be received by Element Option Holders pursuant to the Element Arrangement will be granted pursuant to the ECN Capital Option Plan and will reduce the number of ECN Capital Common Shares available for issuance under the ECN Capital Option Plan. The ECN Capital Option Plan will have terms substantially the same as those contained in the Element Option Plan (as amended as described herein), including an equivalent accommodation for the granting of ECN Capital Arrangement Options to, and the holding and exercise of ECN Capital Arrangement Options by,

directors, officers, employees and consultants of Element or one of its successors or Affiliates who are to receive those ECN Capital Arrangement Options as part of the Element Arrangement. If any such option holder at any time is no longer a director, officer, employee or consultant of any of Element, ECN Capital or any of their respective successors or Affiliates, the rights under his or her ECN Capital Arrangement Options shall be affected accordingly. For a description of the ECN Capital Equity Plans (including the ECN Capital Option Plan), please refer to Appendix L under the heading “*Options to Purchase Securities*”. In addition, the proposed form of the ECN Capital Option Plan is attached as Appendix O. Reference should be made thereto for a complete statement of the terms and conditions of the ECN Capital Option Plan.

The ECN Capital Option Plan will take effect on the Element Effective Date as part of the Element Plan of Arrangement. By approving the Element Arrangement Resolution (and whether or not the ECN Capital Equity Plans Resolution is approved), Shareholders will be approving, among other things, the ECN Capital Option Plan and the grant of the ECN Capital Arrangement Options pursuant to the Element Plan of Arrangement and the subsequent exercise of any such ECN Capital Arrangement Options in accordance with their terms and the terms of the ECN Capital Option Plan. However, the TSX requires that the ECN Capital Option Plan be approved by ECN Capital Shareholders before the exercise of any other ECN Capital Options (i.e., other than the ECN Capital Arrangement Options) granted under the ECN Capital Option Plan. This TSX-required approval of the ECN Capital Shareholders for the ECN Capital Option Plan is being sought from the Shareholders through the ECN Capital Equity Plans Resolution. If the ECN Capital Equity Plans Resolution is approved by Shareholders at the Meeting, the TSX-required shareholder approval for the ECN Capital Option Plan will be deemed to have been received.

It is estimated that ECN Capital Arrangement Options entitling the holders thereof to acquire up to 22,820,466 ECN Capital Common Shares will be outstanding following the Element Arrangement. If the ECN Capital Equity Plans Resolution is approved, ECN Capital would be entitled to grant ECN Capital Options to acquire up to an additional 15,849,954 ECN Capital Common Shares following the Element Effective Date. If the ECN Capital Option Plan is not approved, ECN Capital will not be entitled to grant any additional ECN Capital Options following the Element Effective Date unless otherwise approved by ECN Capital's shareholders.

### **Treatment of Outstanding Element DSUs**

As of July 15, there are 1,562,107 Element DSUs outstanding. The redemption date of an Element DSU Holder's DSUs shall not occur until his or her resignation or retirement from the Corporation. In such case, the Element DSU Holder will provide the Corporation with a written redemption notice specifying a redemption date. On such redemption date, an Element DSU Holder will receive a lump sum cash payment in satisfaction of any DSUs credited to his or her account in an amount equal to: (i) the number of DSUs credited to the Element DSU Holder's account on the redemption date, multiplied by (ii) the volume-weighted average price of the Element Common Shares on the TSX for the 10 most recent preceding days on which they were traded (less any applicable withholding taxes). The Element DSU Plan provides that the Board may make appropriate adjustments to the Element DSUs in the event of certain changes in the capital of Element.

The Element DSUs will be adjusted in accordance with the terms of such Element DSUs and the Element DSU Plan. The Board, based on the recommendation of the Special Committee and the Chair of Element's C&CG Committee, determined that it would be in the best interests of Element (considering the interests of all affected stakeholders, including Shareholders and Element DSU Holders) for the Element DSUs held by each Element DSU Holder immediately prior to the Effective Time to be treated as follows, subject to the discretion of the Board:

- Each eligible Element DSU Holder's holding of Element DSUs will be adjusted such that, following completion of the Element Arrangement: (1) the underlying “share” applicable to each Element DSU shall refer to an Element Fleet Common Share in place of an Element Common Share; and (2) the aggregate number of Element DSUs held by such Element DSU Holder shall

be equal to (A) the number of Element DSUs held by such Element DSU Holder at the Element Effective Time, multiplied by (B) the fair market value of an Element Common Share immediately prior to the Element Effective Time, divided by the fair market value of an Element Fleet Common Share following completion of the Element Arrangement, in each case as determined by Board. This adjustment will provide these Element DSU Holders with an aggregate value immediately following the Element Arrangement equal to the aggregate value of the Element DSUs they held immediately before the Element Arrangement. The Element DSUs will remain obligations of Element.

- With respect to each Element DSU Holder whose termination date will occur in connection with the Element Arrangement, following the foregoing adjustment, each Element DSU held by such Element DSU Holder will be redeemed in accordance with the terms of such Element DSU and the Element DSU Plan or, in the case of an Element DSU Holder that is subject to U.S. taxes in respect of such redemption, each Element DSU will be dealt with in manner determined by the Board, acting reasonably.

In making its recommendation, the Special Committee and the Chair of the C&CG Committee considered, among other things, the terms of the Element DSU Plan, legal analysis provided by Element's legal counsel and information and recommendations provided by Element's management. The Special Committee and the Chair of Element's C&CG Committee concluded that the treatment of Element DSU Holders described above was appropriate primarily for the following reasons:

- The divergent treatment between departing and remaining directors or executives is required in order to ensure that the Element DSU Plan remains in compliance with the applicable tax rules.
- Given that Element DSUs are granted to Element DSU Holders for compensation that has already been earned by those Element DSU Holders and are not subject to any vesting conditions, the Element C&CG Committee determined that adjusting the Element DSUs in the manner described above does not involve the acceleration of any unearned compensation.

The Element DSU Plan will remain in place following the Element Arrangement.

For further discussion of the Element DSUs and Element DSU Plan, see "*Longer-Term Incentive Plan Descriptions – Element DSU Plan*" in Appendix K.

### **Treatment of Outstanding Element PSUs**

As of July 15, there were 1,423,081 Element PSUs outstanding and no Element RSUs outstanding. Element does not expect to issue any Element RSUs prior to the Element Arrangement. Element PSUs vest within 3 years and are paid at the end of the term based on the volume weighted average trading price of the Element Common Shares for the 10 trading days preceding the vesting date. Element PSUs are also subject to performance conditions that are approved by the Board, upon recommendation from the Special Committee and the Chair of Element's C&CG Committee, which performance conditions include, but are not limited to, originations, return on equity, earnings per share, and integration of accretive acquisitions, which align executives with our business strategy and reward executives only for the performance objectives that they are successful in achieving. Vested Element PSUs will be settled in cash. The Element Unit Plan provides that the Element C&CG Committee may make proportionate adjustments to the Element PSUs in the event of certain changes in the capital of Element.

Element PSUs will be adjusted in accordance with the terms of such Element PSUs and the Element Unit Plan. The Board, based on the recommendation of the Special Committee and the Chair of Element's C&CG Committee, determined that it would be in the best interests of Element for the Element PSUs held by each Element PSU Holder immediately prior to the Element Effective Time to be treated as follows: All Element PSU Holders will have their holdings of Element PSUs adjusted such that, following completion of the Element Arrangement: (1) the "share" applicable to each Element PSU shall refer to an Element

Fleet Common Share in place of an Element Common Share; and (2) the aggregate number of Element PSUs held by such Element PSU Holder shall be increased by crediting the Element PSU Holder with additional PSUs equal in number to the number of Element PSUs held by such Element PSU Holder at the Element Effective Time, with the “share” applicable to each Element PSU credited to such Element PSU Holder pursuant to this increase referring to an ECN Capital Common Share in place of an Element Common Share.

In making its recommendation, the Special Committee and the Chair of Element’s C&CG Committee considered, among other things, the terms of the Element Unit Plan, legal analysis provided by Element’s legal counsel and information and recommendations provided by Element’s management. The Special Committee and the Chair of Element’s C&CG Committee concluded that the treatment of Element PSU Holders described above was appropriate primarily for the following reasons:

- This treatment of the Element PSUs is required in order to ensure that the Element Unit Plan remains in compliance with applicable tax rules.
- This treatment will provide Element PSU Holders with an aggregate value immediately following the spin-off equal to the aggregate value of the Element PSUs they held immediately before the spin-off.

The Element Unit Plan will remain in place following the Element Arrangement.

For further discussion of the Element PSUs, Element RSUs and the Element Unit Plan, see “*Longer-Term Incentive Plan Descriptions – Element Unit Plan*” in Appendix K.

#### **Procedure for the Element Arrangement Becoming Effective and Anticipated Timing**

The Arrangement is proposed to be carried out pursuant to section 182 of the OBCA. The following procedural steps must be taken for the Element Arrangement to become effective:

- (a) the Element Arrangement Resolution must be approved by at least two-thirds of the votes cast by Shareholders voting, in person or by proxy, at a duly called meeting of Shareholders;
- (b) the Element Arrangement must be approved by the Court in the manner described below under “*The Element Arrangement – Approvals and Other Conditions Precedent to the Element Arrangement – Court Approval*”;
- (c) the other conditions precedent to the Element Arrangement set out in the Arrangement Agreement must be satisfied or waived by the appropriate parties to that agreement; and
- (d) the Articles of Arrangement and related documents, in the form prescribed by the OBCA, together with a copy of the Final Order and the Element Plan of Arrangement, must be sent to the OBCA Director in accordance with the OBCA and the Final Order, and the Certificate of Arrangement must be issued by the OBCA Director.

If the Meeting is held as scheduled and is not adjourned or postponed and the other necessary conditions at that point in time are satisfied or waived, Element expects to apply for the Final Order approving the Element Arrangement. If the Final Order has been obtained by September 21, 2016, in form and substance satisfactory to Element, and all other conditions set forth in the Arrangement Agreement are satisfied or waived, Element expects the Element Effective Date will be on or about October 3, 2016. It is not possible, however, to state with certainty when the Element Effective Date will occur, if at all. As noted earlier, the Board will have the authority to determine when to effect the Element Arrangement as well as the authority to decide not to proceed with the Element Arrangement at all.

The Arrangement will become effective when the OBCA Director issues the Certificate of Arrangement.

## **Approvals and Other Conditions Precedent to the Element Arrangement**

### ***Approval of Shareholders Required for the Element Arrangement***

The Interim Order provides that the percentage of votes required to pass the Element Arrangement Resolution will be at least two-thirds of the votes cast by Shareholders, voting in person or by proxy, at the Meeting. See “*Voting Information and General Proxy Matters – Procedure and Votes Required*”. The Interim Order is attached as Appendix H.

### ***Court Approval***

An arrangement under the OBCA requires court approval. Subject to the terms of the Arrangement Agreement, and if the Element Arrangement Resolution is approved by Shareholders at the Meeting in the manner required by the Interim Order, Element currently intends to apply promptly to the Court for the Final Order approving the Element Arrangement. The Notice of Application with respect to the application for the Final Order is attached as Appendix I.

Subject to the Element Arrangement Resolution being approved by Shareholders, the application for the Final Order approving the Element Arrangement is expected to be made on September 21, 2016, at 10:00 a.m. (Eastern Time), or as soon thereafter as counsel may be heard, at the Court located at 330 University Avenue, Toronto, Ontario, M5G 1R7. At the hearing, any Shareholder or any other interested party who wishes to participate or be represented or to present arguments or evidence may do so in accordance with the provisions of the Interim Order, provided that such a party shall serve on Element and file with the Court a notice of appearance as out in the Notice of Application with respect to the application for the Final Order and satisfy any other requirements of the Court.

The Element Common Shares and ECN Capital Common Shares to be issued pursuant to the Element Arrangement will not be registered under the 1933 Act in reliance upon the exemption from registration provided by Section 3(a)(10) thereof. The Court will be advised prior to the hearing of the application for the Final Order that if the terms and conditions of the Element Arrangement are approved by the Court, such approval will be relied upon in seeking an exemption from the registration requirements of the 1933 Act, pursuant to Section 3(a)(10) thereof, with respect to the offer and sale of the securities to be issued pursuant to the Element Arrangement.

Element has been advised by its counsel, Blake, Cassels & Graydon LLP, that the Court has broad discretion under the OBCA when making orders with respect to the Element Arrangement and that the Court will consider, among other things, the fairness and reasonableness of the Element Arrangement, both from a substantive and a procedural point of view. The Court may approve the Element Arrangement either as proposed or as amended in any manner the Court may direct, subject to compliance with such terms and conditions, if any, as the Court thinks fit. Depending upon the nature of any required amendments, the parties to the Arrangement Agreement may determine not to proceed with the Element Arrangement.

A copy of the Notice of Application and other documents in the Court proceedings for the Final Order will be furnished to any Shareholder or any other interested party requesting the same by mail from the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, or by fax at 1 (888) 772-8129.

### ***TSX Approval***

The TSX has conditionally approved: (i) the listing on the TSX of the ECN Capital Common Shares to be issued pursuant to the Element Arrangement, the ECN Capital Option Plan, the ECN Capital DSU Plan and the ECN Capital Unit Plan (including the ECN Capital Common Shares which, as a result of the



Element Arrangement, are issuable upon the exercise of ECN Capital Arrangement Options and settlement of ECN Capital DSUs, ECN Capital RSUs, and ECN Capital PSUs); (ii) the listing on the TSX of the Element Fleet Common Shares to be issued pursuant to the Element Arrangement and the Amended and Restated Element Option Plan (including the Element Fleet Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of Element Fleet Options) in substitution of the current listing of the Element Common Shares; and (iii) the listing on the TSX of the Element Butterfly Shares to be issued pursuant to the Element Arrangement, in each case subject only to compliance with the usual requirements of the TSX. TSX approval of the adjustment to the terms of the Element 2014 Debentures and the Element 2015 Debentures, as determined by the Element Board pursuant to the Element Debenture Indentures, is also required and will be sought prior to closing of the Element Arrangement.

These listings and approvals are each a pre-condition to closing the Element Arrangement and will be subject to Element or ECN Capital, as applicable, fulfilling all of the applicable requirements of the TSX. See “*The Element Arrangement – Stock Exchange Listings*” and see “*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities – Debentures*”.

### ***Other Conditions Precedent to the Element Arrangement***

In addition to receipt of the approvals, orders and rulings noted above, the obligations of Element to consummate the transactions contemplated under the Arrangement Agreement, and in particular the Element Arrangement, are subject to the satisfaction, on or before the Element Effective Date or such other time specified, of the following conditions, any of which may be waived by Element without prejudice to its right to rely on any other of such conditions:

- (a) the Element Final Order shall have been obtained in form and substance satisfactory to Element, in its sole discretion, and will not have been set aside or modified in a manner unacceptable to Element, on appeal or otherwise;
- (b) the Pre-Element Arrangement Transactions shall have been completed;
- (c) the Element Arrangement Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Meeting in accordance with the Interim Order and applicable laws;
- (d) the ECN Capital Equity Plans Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Meeting in accordance with applicable laws;
- (e) the Share Issuance Resolution shall have been approved by the requisite number of votes cast by Shareholders at the meeting in accordance with applicable laws;
- (f) all material consents, orders, rulings, approvals, opinions and assurances, including regulatory, judicial, Shareholder, third party and advisor opinions, approvals and orders, required or necessary, in the sole discretion of Element, for the completion of the Pre-Element Arrangement Transactions, the Element Arrangement, the transactions contemplated by the Arrangement Agreement in connection with the Element Arrangement and the Element Plan of Arrangement will have been obtained or received from the Persons having jurisdiction in the circumstances and all will be in full force and effect, and none of the consents, orders, rulings, approvals, opinions or assurances contemplated therein shall contain terms or conditions or require undertakings or security that are considered unsatisfactory or unacceptable by Element, in its sole discretion;
- (g) no action will have been instituted and be continuing on the Element Effective Date, and there will not be in force any order or decree, in each case restraining or enjoining the consummation of the Pre-Element Arrangement Transactions, the Element Arrangement

or the transactions contemplated by the Arrangement Agreement in connection with the Element Arrangement and the Element Plan of Arrangement, and no cease trading or similar order with respect to any securities of any of the Parties will have been issued and remain outstanding;

- (h) no law, regulation or policy will have been proposed, enacted, promulgated or applied that interferes or is inconsistent with the completion of the Pre-Element Arrangement Transactions, the Element Arrangement or any of the other transactions contemplated by the Arrangement Agreement in connection with the Element Arrangement and the Element Plan of Arrangement, including any material change to the income tax laws of Canada or the United States, or any province, state or territory thereof;
- (i) there shall not have occurred a Material Adverse Effect of Element, ECN Capital or Subco;
- (j) there shall not, as of the Element Effective Date, be Shareholders that hold, in the aggregate, in excess of 0.5% of all outstanding Element Common Shares that have validly exercised their Dissent Rights in respect of the Element Arrangement and not withdrawn such exercise;
- (k) the written Element Arrangement Fairness Opinion and the IAC Arrangement Fairness Opinion will have been received by the Board and will not have been withdrawn or modified;
- (l) the Element Articles of Arrangement, Final Order, Element Plan of Arrangement and all necessary related documents, in a form and substance satisfactory to Element, in its sole discretion, will have been filed and shall have been accepted for filing with the applicable governmental authorities;
- (m) each of the ECN Capital DSU Plan, the ECN Capital Option Plan and the ECN Capital Unit Plan shall have been approved and adopted by the board of directors of ECN Capital;
- (n) Element, ECN Capital and Subco shall have entered into the Separation Agreement and the Transition Services Agreement;
- (o) the Board shall not have revoked its approval of the Element Arrangement at any time prior to the Element Effective Date; and
- (p) the Arrangement Agreement shall not have been terminated in respect of the Element Arrangement by Element, ECN Capital or Subco.

The conditions described above may be waived, in whole or in part, by Element at any time.

### ***Final Board Authority***

The Arrangement Agreement and the Element Arrangement Resolution both provide that the Element Arrangement shall only be effected upon the authorization of the Board of Directors to file the Articles of Arrangement and that the timing for effecting the Element Arrangement is in the sole and absolute discretion of Element. In addition, the Element Arrangement Resolution proposed for consideration by the Shareholders authorizes the Board of Directors, without further notice to or approval of such Shareholders, to amend the Element Arrangement, to decide whether to proceed with the Element Arrangement and to revoke the Element Arrangement Resolution at any time prior to the Element Arrangement becoming effective pursuant to the provisions of the OBCA. See Appendix A for the text of the Element Arrangement Resolution.

## Dissenting Shareholders' Rights

*The following is a summary of Section 185 of the OBCA and the requirements of the Interim Order relating to the rights of Dissenting Shareholders and is qualified in its entirety by the provisions of Section 185 of the OBCA, as modified by the Interim Order and the Element Plan of Arrangement. These provisions are technical and complex. **Any Registered Shareholder who wishes to exercise his, her or its Dissent Rights should consult a legal advisor.** Failure to provide Element with a Dissent Notice (as defined below) at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the Meeting and to strictly comply with the requirements of Section 185 of the OBCA, as modified by the Interim Order and the Element Plan of Arrangement, may prejudice a Shareholder's ability to exercise Dissent Rights. **Anyone who is a Non-Registered Shareholder of Element Common Shares registered in the name of a broker, custodian, nominee or other Intermediary and who wishes to dissent should be aware that only Registered Shareholders are entitled to exercise Dissent Rights.** A Registered Shareholder who holds Element Common Shares as nominee for more than one Non-Registered Shareholder, some of whom wish to exercise Dissent Rights, must exercise such Dissent Rights on behalf of such holders. In such case, the Dissent Notice should specify the number of Element Common Shares in respect of which Dissent Rights are being exercised.*

Pursuant to the terms of the Interim Order, a Registered Shareholder is entitled to dissent from the Element Arrangement Resolution substantially in the manner provided in Section 185 of the OBCA, as modified by the Interim Order and the Element Plan of Arrangement. Section 185 of the OBCA, the Interim Order and the Element Plan of Arrangement are reproduced in their entirety in Appendix G, Appendix H and Appendix D of this Management Information Circular, respectively. The Court hearing the application for the Final Order has the discretion to alter the Dissent Rights as described herein, based on the evidence presented at such hearing.

Pursuant to the Interim Order, a Registered Shareholder is entitled to dissent and be paid by Element the fair value of the holder's Element Common Shares determined as at the close of business on the business day before the Meeting (or any adjournment(s) or postponement(s) thereof) provided that the Element Arrangement Resolution is passed, the Element Arrangement becomes effective and such Registered Shareholder provides Element with a Dissent Notice at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the Meeting, or any adjournment(s) or postponement(s) thereof. It is important that Registered Shareholders strictly comply with this requirement, which is different from the statutory dissent provisions of the OBCA which would permit a Dissent Notice to be provided at or prior to the Meeting.

A Registered Shareholder who wishes to exercise Dissent Rights must provide to Element (at the Corporation's registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, or by fax at 1 (888) 772-8129), Attention: Senior Vice President, General Counsel & Corporate Secretary), at or prior to 5:00 p.m. (Eastern Time) on the second business day immediately preceding the date of the Meeting (or any adjournment(s) or postponement(s) thereof), a written objection to the Element Arrangement Resolution (a "**Dissent Notice**"). The execution or exercise of a proxy does not constitute a written objection. The filing of a Dissent Notice does not deprive a Registered Shareholder of the right to vote; however, the OBCA provides, in effect, that a Shareholder who has submitted a Dissent Notice and who votes for the Element Arrangement Resolution will no longer be considered a Dissenting Shareholder. The OBCA does not provide for, and Element will not assume, that a proxy submitted instructing the proxyholder to vote against the Element Arrangement Resolution, an abstention or a vote against the Element Arrangement Resolution constitutes a Dissent Notice. In addition to any other restrictions under Section 185 of the OBCA and for greater certainty, none of the following shall be entitled to exercise Dissent Rights: (i) holders of Element Options; (ii) holders of Element DSUs; and (iii) holders of Element PSUs.

A Registered Shareholder may dissent only with respect to all (and not part) of the Element Common Shares held by such holder, or on behalf of any one Non-Registered Shareholder, and registered in such holder's name. The Dissent Notice must be executed by or for the Registered Shareholder, fully and correctly, as such Registered Shareholder's name appears on the Registered Shareholder's share

certificate(s). If the Element Common Shares are owned of record by an Intermediary, the Dissent Notice must be given by the Intermediary. If the Element Common Shares are owned of record by more than one Person, as in a joint tenancy or tenancy in common, the Dissent Notice should be given or delivered by or for all owners of record. An authorized agent, including one or more joint owners, may execute the Dissent Notice for a holder of record, however, such agent must expressly identify the record owner or owners, and expressly disclose in such Dissent Notice that the agent is acting as agent for the record owner or owners.

Within 10 days after the approval of the Element Arrangement Resolution by Shareholders, Element is required to send notice to each Dissenting Shareholder who properly delivered a Dissent Notice, has otherwise complied with the requirements of Section 185 of the OBCA, the Interim Order and the Element Plan of Arrangement, and has not withdrawn the Dissent Notice, that the Element Arrangement Resolution has been approved. A Dissenting Shareholder must, within 20 days after receiving such notification or, if such notification is not received, within 20 days after learning that the Element Arrangement Resolution has been approved, send to Element at the address set forth above a written notice (the “**Demand for Payment**”) containing the Dissenting Shareholder’s name and address, the number of Element Common Shares in respect of which that Dissenting Shareholder dissents, and a Demand for Payment of the fair value of such Element Common Shares. Within 30 days after sending the Demand for Payment, a Dissenting Shareholder must send the certificates representing the Element Common Shares in respect of which such Dissenting Shareholder dissents to Element to the address set forth above or Computershare Investor Services at 100 University Avenue, 8th Floor, North Tower, Toronto, Ontario, M5J 2Y1, fax number 1 (888) 453 0330. **A Dissenting Shareholder who fails to make a Demand for Payment or send such certificates within the aforementioned time limits, as the case may be, forfeits his, her or its right to make a claim under Section 185 of the OBCA, the Interim Order and the Element Plan of Arrangement.** Element or Computershare Investor Services will endorse on such certificates a notice that the holder thereof is a Dissenting Shareholder under Section 185 of the OBCA, the Interim Order and the Element Plan of Arrangement and will forthwith return such certificates to the Dissenting Shareholder.

On filing a Demand for Payment, a Dissenting Shareholder ceases to have any rights as a holder of Element Common Shares other than the right to be paid the fair value of such Element Common Shares as determined in accordance with Section 185 of the OBCA, except where (i) the Dissenting Shareholder withdraws its Demand for Payment before Element makes an Offer to Pay to the Dissenting Shareholder; (ii) an Offer to Pay is not made and the Dissenting Shareholder withdraws its Demand for Payment; or (iii) the Board of Directors revokes the Element Arrangement Resolution, the Arrangement Agreement is terminated or the application for the Final Order is refused by the Court and all appeal rights have been exhausted, in all of which cases the Dissenting Shareholder’s rights as a Shareholder will be reinstated. Pursuant to the Element Plan of Arrangement, in no case shall Element or any other person be required to recognize any Dissenting Shareholder as a Shareholder after the Element Effective Date, as the names of such Dissenting Shareholders shall be deleted from the register of Element Common Shares at the time provided for in the Element Plan of Arrangement.

Element is required, not later than seven days after the later of the Element Effective Date and the date on which Element receives a Demand for Payment of a Dissenting Shareholder, to send to each Dissenting Shareholder who has sent a Demand for Payment an offer to pay (“**Offer to Pay**”), on behalf of Element, relating to the Element Common Shares covered by the Demand for Payment. The amount offered in such Offer to Pay will be an amount determined by the Board of Directors to be the fair value of such Element Common Shares. In addition, the Offer to Pay will be accompanied by a statement showing how such fair value was determined. Every Offer to Pay for Element Common Shares must be on the same terms. The amount shown in any Offer to Pay which is accepted by a Dissenting Shareholder will be paid by Element within 10 days of such acceptance, but an Offer to Pay will lapse if Element has not received an acceptance from the Dissenting Shareholder within 30 days after the Offer to Pay has been made.

If an Offer to Pay is not made by Element or if a Dissenting Shareholder fails to accept an Offer to Pay, Element may, within 50 days after the Element Effective Date or within such further period as the Court

may allow, apply to the Court to fix the fair value of the Element Common Shares held by the Dissenting Shareholder. At the present time, Element does not intend to apply to the Court to fix a fair value for the Element Common Shares. If Element fails to apply to the Court, the Dissenting Shareholder may apply to the Court for the same purpose within a period of 20 further days or within such further period as the Court may allow. No Dissenting Shareholder will be required to post security for costs in any such court application.

Before making an application to the Court, or within seven days of receiving a notice that a Dissenting Shareholder has made an application to the Court, Element must give each Dissenting Shareholder who has sent a Demand for Payment and has not accepted an Offer to Pay notice of the date, place and consequences of the application and of his, her or its right to appear and be heard either in person or through counsel. All Dissenting Shareholders whose Element Common Shares have not been purchased by Element will be joined as parties to any such application and will be bound by the decision rendered by the Court. The Court may determine whether any other Person is a Dissenting Shareholder who should be joined as a party to such application.

The Court shall fix the fair value of the Element Common Shares held by all Dissenting Shareholders and may, in its discretion, allow a reasonable rate of interest on the amount payable to each Dissenting Shareholder from the Element Effective Date until the date of payment. There can be no assurance that a Dissenting Shareholder will receive consideration for his or her shares of equal value to the consideration that such Dissenting Shareholder would have received upon closing of the Element Arrangement.

Dissenting Shareholders who duly exercise Dissent Rights and who are ultimately entitled to be paid fair value for their Element Common Shares shall be deemed to have transferred their Element Common Shares to Element for cancellation, without any further authorization, act or formality and free and clear of all liens, charges, claims and encumbrances, at the Element Effective Time immediately prior to any other transactions that will occur under the Element Plan of Arrangement. Such transfer shall be deemed to have been in consideration for a payment equal to the fair value of such Dissenting Shareholder's Element Common Shares in the amount agreed to between Element and the Shareholder or in the amount of a judgment of the Court, as the case may be. Registered Shareholders who exercise, or purport to exercise, Dissent Rights, and who are ultimately determined not to be entitled, for any reason, to be paid fair value for their Element Common Shares, will be deemed to have participated in the Element Arrangement on the same basis as Participating Shareholders as at and from the Element Effective Date.

### **Stock Exchange Listings**

The TSX has conditionally approved: (i) the listing on the TSX of the ECN Capital Common Shares to be issued pursuant to the Element Arrangement, the ECN Capital Option Plan, the ECN Capital DSU Plan and the ECN Capital Unit Plan (including the ECN Capital Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of ECN Capital Arrangement Options and settlement of ECN Capital DSUs, ECN Capital RSUs, and ECN Capital PSUs); (ii) the listing on the TSX of the Element Fleet Common Shares to be issued pursuant to the Element Arrangement and the Amended and Restated Element Option Plan (including the Element Fleet Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of Element Fleet Options) in substitution of the current listing of the Element Common Shares; and (iii) the listing on the TSX of the Element Butterfly Shares to be issued pursuant to the Element Arrangement.

Upon completion of the Element Arrangement, Element Fleet Common Shares will trade on the TSX under the trading symbol "EFN" and ECN Capital Common Shares will trade on the TSX under the trading symbol "ECN".

TSX approval of the adjustment to the terms of the Element 2014 Debentures and the Element 2015 Debentures, as determined by the Element Board pursuant to the Element Debenture Indentures, is also required and will be sought prior to the closing of the Element Arrangement.

These listings and approvals are each a pre-condition to closing the Element Arrangement and will be subject to Element or ECN Capital, as applicable, fulfilling all of the applicable requirements of the TSX.

The prices at which the ECN Capital Common Shares and Element Common Shares will trade following the Element Arrangement will be determined by the market and cannot be predicted. For further details on these risks and uncertainties relating to the trading prices of the ECN Capital Common Shares and Element Common Shares, see discussion in "*Risk Factors — Risks Relating to the Arrangements*".

### **Trading of Shares on the TSX**

The following is a summary of the trading markets that are expected to develop in Element Common Shares and ECN Capital Common Shares prior to the Distribution Payment Date. Additional information on trading will be provided by press release once available. Shareholders are encouraged to consult their brokers and financial advisors regarding the specific consequences of trading Element Common Shares and ECN Capital Common Shares prior to the Distribution Payment Date.

#### ***Type of Trading and Markets***

Shares may trade on the TSX under a variety of methods and markets as follows:

- Regular Way: "*regular-way*" trading typically involves a trade of a listed share that settles on the third full trading day following the date of the acquisition or disposition of such share.

The Element Common Shares currently trade on a "*regular-way*" basis on the TSX and, on the first trading day following the Distribution Payment Date, the Element Fleet Common Shares and ECN Capital Common Shares will trade on a "*regular-way*" basis on the TSX;

- Ex-Distribution: as the settlement of a "*regular-way*" trade occurs on the third full trading day following the date of the acquisition or disposition of a listed share, in the event an issuer is making a distribution to holders of that share of record on a particular record date, at the opening of trading on the date that is two trading days prior to such record date (the "**Ex-Date**"), the share will trade "*ex-distribution*", meaning those who acquire or dispose of that share on or after the Ex-Date will have settlement occur on the third full trading day following the date of the acquisition or disposition, which settlement day will be after the record date and thus the buyer will not be entitled to receive, and the seller will retain the right to receive, the applicable distribution when made. As a result, the market value of the listed share will typically decline as of the Ex-Date to reflect the lack of the entitlement to the distribution.

Under the Element Arrangement, holders of Element Common Shares of record as at the close of business on the Distribution Record Date (other than a Dissenting Shareholder) will be entitled to receive one ECN Capital Common Share for every Element Common Share held. Accordingly, on and after the Ex-Date, the Element Common Shares will trade "*ex-distribution*", and a buyer who acquires an Element Common Share on or after the Ex-Date will not be entitled to receive the Distribution of an ECN Capital Common Share when made, and the seller who disposed of such Element Common Share will retain the right to receive the Distribution of such ECN Capital Common Share on the Distribution Payment Date;

- Due Bills: a "*due bill*" is an entitlement to receive (among other things) a security that can attach to a share. In circumstances where an issuer will be undergoing certain material corporate events that will involve a distribution, such as stock-splits, spin-offs or other distributions in circumstances where the effective date or payment date of the event cannot be determined with certainty in advance, "*due bills*" are often attached to the listed shares of that issuer on the Ex-Date, which "*due bills*" represent the entitlement to receive that distribution notwithstanding that the shares began trading "*ex-distribution*" on the Ex-Date. In this way, the buyer and seller of the share will be acquiring and disposing of both the share and the distribution "*due bill*" entitlement

on and after the Ex-Date, and therefore the listed share should continue to carry the appropriate market value until the "*due bill*" entitlement has been paid.

With respect to the Element Arrangement, since completion of the Element Arrangement is subject to the satisfaction of a number of conditions precedent, including Shareholder approval and Court approval, it is possible that the Element Arrangement will not be completed on the expected Element Effective Date or at all, in which case, the expected Distribution Record Date and Distribution Payment Date will change or be nullified, as the case may be. Therefore, the Ex-Date in respect of the Element Arrangement cannot be determined with certainty and market valuation issues could arise between the expected Ex-Date and the actual Element Effective Date and/or Distribution Payment Date. Accordingly, a "*due bill*" trading market will be used in connection with the Element Arrangement in order to address such uncertainties. In such market, any Element Common Share traded during the applicable period will have "*due bills*" attached carrying the right to receive an ECN Capital Common Share. By having such a "*due bill*" market for the Element Common Shares/ECN Capital Common Shares, the Ex-Date for the Element Common Shares in such market will be deferred and buyers and sellers of the Element Common Shares will be certain of the entitlements attaching thereto. Shareholders trading Element Common Shares in this market during the applicable period will not be required to take any special action. Any trades of Element Common Shares that are executed during the applicable period will be automatically flagged to ensure buyers receive the Distribution entitlement and sellers do not;

- When Issued/If, As and When Issued: "*when issued*" or "*if, as and when issued*" trading refers to a share transaction made conditionally on or before the distribution or issuance date because the share is not yet available (and if the conditions to the distribution or issuance are not met, such that the distribution or issuance is not made, all "*when issued*" or "*if, as and when issued*" trades do not settle and are null and void).

As the ECN Capital Common Shares will not be issued until the Distribution Payment Date, a "*when issued*" or "*if, as and when issued*" market for the ECN Capital Common Shares will be made available on the TSX on the second trading day prior to the Distribution Record Date. On the first trading day following the Distribution Payment Date, it is expected that the "*when issued*" or "*if, as and when issued*" market for the ECN Capital Common Shares will end and "*regular-way*" trading will begin. If the Element Arrangement is not approved and the Element Arrangement and the issuance of the ECN Capital Common Shares does not occur, all "*when issued*" or "*if, as and when issued*" trades in the ECN Capital Common Shares will not be settled and therefore will be null and void.

### **Trading on the TSX**

It is anticipated that, on the second trading day immediately prior to the Distribution Record Date and continuing through the Distribution Payment Date, there will be the following two markets in the Element Common Shares (which will be Element Fleet Common Shares after the Element Effective Date pursuant to the Element Arrangement) on both the TSX:

- (1) a "*due bill*" market – the Element Common Shares that trade on the "*due bill*" market will trade with an entitlement to receive ECN Capital Common Shares on the Distribution Payment Date under the Element Arrangement, and such shares will settle on a "*regular-way*" basis; and
- (2) a "*when issued ex-distribution*" market – Element Common Shares that trade on the "*when issued ex-distribution*" market will trade without an entitlement to receive ECN Capital Common Shares under the Element Arrangement, and such trades will be for special settlement on the date that is the third trading day following the trade date.

Therefore, if you sell Element Common Shares in the "*due bill*" market during the period commencing on the second trading day prior to the Distribution Record Date and ending on the Distribution Payment Date, you will be selling your right to receive ECN Capital Common Shares on the Distribution Payment Date under the Element Arrangement. However, if you own Element Common Shares on the Distribution Record Date and sell those shares in the "*when issued ex-distribution*" market during the period commencing on the second trading day prior to the Distribution Record Date and ending on the Distribution Payment Date, you will still be entitled to receive ECN Capital Common Shares on the Distribution Payment Date under the Element Arrangement. On the first trading day following the Distribution Payment Date, Element Common Shares (which will then be Element Fleet Common Shares) will begin trading on the TSX without any entitlement to receive ECN Capital Common Shares. If the Element Arrangement is not approved and the Element Arrangement and the issuance of the ECN Capital Common Shares does not occur, all "*when issued ex-distribution*" trades in Element Common Shares will not be settled and therefore will be null and void.

It is also anticipated that a "*when issued*" market in the ECN Capital Common Shares will develop on the TSX during the period commencing on the second trading day prior to the Distribution Record Date and ending on the Distribution Payment Date. Subject to the Element Arrangement becoming effective as anticipated on the Element Effective Date, all trades in the "*when issued*" market will be for special settlement on the date that is the third trading day following the trade date. If you own Element Common Shares on the Distribution Record Date, you will be entitled to receive ECN Capital Common Shares on the Distribution Payment Date under the Element Arrangement. You may trade this entitlement to receive ECN Capital Common Shares, without the Element Common Shares you own, on the "*when issued*" market during the period commencing on the second trading day prior to the Distribution Record Date and ending on the Distribution Payment Date. On the first trading day following the Distribution Payment Date, it is expected that "*when issued*" trading of the ECN Capital Common Shares on the TSX will end and "*regular-way*" trading in those shares will begin. If the Element Arrangement is not approved and the Element Arrangement and the issuance of the ECN Capital Common Shares does not occur, all "*when issued*" trades in the ECN Capital Common Shares will not be settled and therefore will be null and void.

## **Element Arrangement Securities Law Matters**

### ***Canadian Securities Laws***

The Element Fleet Common Shares and the ECN Capital Common Shares to be issued pursuant to the Element Arrangement will be issued in reliance on exemptions from prospectus requirements of applicable Canadian securities laws. In accordance with the applicable securities legislation, the Element Common Shares and the ECN Capital Common Shares may be resold without restriction, subject to the conditions that no unusual effort is made to prepare the market for the resale or create a demand for the shares and no extraordinary commission or consideration is paid in respect of the resale and to customary restrictions applicable to distributions of securities held by control persons and persons in "special relationships" to the relevant company.

The Arrangement is not subject to the requirements of MI 61-101 because it is not a "business combination" or a "related party transaction" within the meaning of MI 61-101.

### ***United States Securities Laws***

The Element Common Shares and the ECN Capital Common Shares to be issued to Shareholders pursuant to the Element Arrangement will not be registered under the 1933 Act in reliance upon the exemption from registration under the 1933 Act provided by Section 3(a)(10) thereof. Section 3(a)(10) of the 1933 Act provides an exemption from registration under the 1933 Act for offers and sales of securities issued in exchange for one or more outstanding securities where the terms and conditions of the issuance and exchange of such securities have been approved by a court authorized to grant such approval after a hearing upon the fairness of the terms and conditions of the issuance and exchange at which all persons to whom the securities will be issued have the right to appear. The Court is authorized to conduct a hearing at which the fairness of the terms and conditions of the Element Arrangement will be



considered. The Court issued the Interim Order on July 28, 2016 and, subject to the approval of the Element Arrangement by the Shareholders at the Meeting on September 20, 2016, it is expected that a hearing on the Element Arrangement will be held on September 21, 2016 at 10:00 a.m. (Eastern Time), or as soon thereafter as counsel may be heard, at 330 University Avenue, Toronto, Ontario, M5G 1R7. All Shareholders are entitled to appear and be heard at this hearing. The Final Order will constitute a basis for the exemption from the registration requirements of the 1933 Act provided by Section 3(a)(10) thereof with respect to the securities to be issued pursuant to the Element Arrangement. Prior to the hearing on the Final Order, the Court will be informed of this effect of the Final Order. See *“The Element Arrangement – Approvals and Other Conditions Precedent to the Element Arrangement – Court Approval”* in this Management Information Circular.

Shareholders who are not “Affiliates” of Element or ECN Capital immediately after the Arrangement and have not been “Affiliates” of Element or ECN Capital within 90 days of the resale in question, may resell Element Common Shares or ECN Capital Common Shares received by them in the Arrangement within or outside the United States without restriction under the 1933 Act. Shareholders who are “Affiliates” of Element or ECN Capital after the Arrangement or within 90 days of the resale in question may not resell their Element Common Shares or ECN Capital Common Shares in the absence of registration under the 1933 Act, unless an exemption from registration is available, such as the exemptions afforded by Regulation S or Rule 144 under the 1933 Act. For the purposes of the 1933 Act, an “affiliate” of Element or ECN Capital is a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Element or ECN Capital, as the case may be.

Subject to applicable Canadian requirements, holders of Element Common Shares and ECN Capital Common Shares who are Affiliates of Element or ECN Capital, respectively, solely by virtue of serving as an officer or director, may immediately resell such securities outside the United States without registration under the 1933 Act pursuant to Regulation S. Any such sales must be made in “offshore transactions” within the meaning of Regulation S and neither the seller, nor an Affiliate, nor any Person acting on their behalf may engage in “directed selling efforts” (as defined in Regulation S) in the United States. Additionally, no selling concession, fee or other remuneration may be paid in connection with any such offer or sale other than a usual and customary broker’s commission that would be received by a Person executing such transaction as agent. For the purposes of Regulation S, “directed selling efforts” means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the Element Common Shares and ECN Capital Common Shares.

For the purposes of Regulation S, an “offshore transaction” is a transaction that meets the following requirements: (i) the offer is not made to a Person in the United States, and (ii) either (A) at the time the buy order is originated, the buyer is outside the United States, or the seller and any Person acting on its behalf reasonably believe that the buyer is outside the United States, or (B) the transaction is executed in, on or through the facilities of a designated offshore securities market (which would currently include the TSX), and neither the seller nor any Person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States; and (iii) offers and sales are not specifically targeted at identifiable groups of U.S. citizens abroad.

Certain additional Regulation S restrictions are applicable to a holder of Element Common Shares or ECN Capital Common Shares who will be an Affiliate of Element or ECN Capital, respectively, other than by virtue of his status as an officer or director. Element and ECN Capital each currently qualifies as a “foreign issuer”.

In addition, under Rule 144A, Persons who are Affiliates of Element or ECN Capital after the Element Arrangement or within 90 days of the resale in question will be entitled to resell in the United States during any three-month period, that number of Element Common Shares or ECN Capital Common Shares, respectively, that does not exceed the greater of one percent of the then outstanding securities of such class or if such securities become listed on a United States national securities exchange, the average weekly trading volume of such securities during the four-week period preceding the date of sale, subject to certain restrictions on manner of sale, notice requirements, aggregation rules and the

availability of public information about Element and/or ECN Capital, as the case may be (as to which there can be no assurance). Affiliates of Element or ECN Capital prior to the Element Arrangement who are not Affiliates of Element or ECN Capital after the Element Arrangement must, for 90 days following the Element Arrangement, comply with the requirements set forth in the preceding sentence but thereafter may resell such securities without regard to any of these requirements, provided that such Persons have not been Affiliates of Element and/or ECN Capital, as the case may be, during the 90 days preceding the resale.

Shareholders are urged to consult their legal advisors prior to disposing of Element Common Shares or ECN Capital Common Shares received in the Element Arrangement to determine the extent of all applicable resale provisions.

## **THE IAC ARRANGEMENT**

*The following contains only a summary of the IAC Arrangement and the Arrangement Agreement and certain related matters. Shareholders are urged to read the more detailed information included elsewhere in, or incorporated by reference into, this Management Information Circular, including the Arrangement Agreement attached as Appendix D.*

Following completion of the Element Arrangement, ECN Capital will be a new commercial finance company with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which will transition into an asset management business. In pursuing its growth plan, ECN Capital expects to access a variety of sources of capital. As an initial step in this plan, Element and ECN Capital have agreed to the combination of ECN Capital with IAC pursuant to the IAC Arrangement.

The IAC Arrangement will result in, among other things, the acquisition by ECN Capital of all the outstanding IAC Shares (other than IAC Shares held by ECN Capital or any of its Affiliates) in exchange for ECN Capital Common Shares.

### **Share Issuance Resolution**

Subject to the approval of the Element Arrangement Resolution, Shareholders (other than the certain interested Shareholders as set out below) will be asked to consider and, if deemed advisable, to pass, with or without variation, the Share Issuance Resolution, the full text of which is set forth in Appendix C. The Share Issuance Resolution authorizes ECN Capital to issue such number of ECN Capital Common Shares as is necessary to acquire all of the outstanding IAC Shares (other than IAC Shares held by ECN Capital or any of its Affiliates), as specified in the IAC Plan of Arrangement included in the Arrangement Agreement attached as Appendix D. The Share Issuance Resolution must be approved at the Meeting by more than 50% of the votes cast by Shareholders (other than the certain interested Shareholders set out below) voting, in person or by proxy, at the Meeting.

Richard Venn is a director of both IAC and Element, and holds approximately 1% of the IAC Class A Shares outstanding and 4% of the IAC Class B Shares outstanding. Steven Hudson is a director of IAC and the Chief Executive Officer of Element. Given their relationship with IAC, Mr. Hudson and Mr. Venn are interested Shareholders in respect of the IAC Arrangement and the Share Issuance Resolution. In accordance with applicable corporate law requirements, Mr. Hudson and Mr. Venn did not participate in Element Board discussions and did not vote on any matters related to the IAC Arrangement. The votes in respect of Element Common Shares held by Mr. Hudson and Mr. Venn will not be counted towards the Share Issuance Resolution.

In connection with the IAC Arrangement, assuming no redemptions of IAC Class A Shares, ECN Capital expects to issue approximately 13% of its common shares to former IAC shareholders. Under the TSX Company Manual, shareholder approval is not required for a share issuance in connection with an acquisition where less than 25% of the issued and outstanding shares, on a non-diluted basis, will be issued or issuable in payment of the purchase price for the acquisition. However, since the number of

ECN Capital Common Shares to be issued by ECN Capital pursuant to the IAC Arrangement will be determined based on the fair market value of ECN Capital on the Element Effective Date, and such determination will not be based on the historic trading prices of ECN Capital Common Shares, the TSX has required Element to obtain separate Shareholder approval for the issuance of ECN Capital Common Shares in payment of the purchase price pursuant to the IAC Arrangement in order to approve the listing of such shares on the TSX. For more information on the exchange ratios under the IAC Arrangement, including the manner in which fair market value of ECN Capital will be determined, see “*The IAC Arrangement – Other Matters Relating to the IAC Arrangement - IAC Exchange Ratios*”.

### **Reasons for the IAC Arrangement**

An *ad hoc* independent committee of the Board of Directors comprising William Lovatt, Paul Stoyan and Pierre Lortie (each of whom will be directors of ECN Capital upon completion of the Element Arrangement) reviewed and evaluated the IAC Arrangement and the terms thereof as set out in the Arrangement Agreement. The Board of Directors, acting with the advice and assistance of its financial, legal, accounting, and tax advisors and management, and on the recommendation of the *ad hoc* Committee, carefully evaluated the IAC Arrangement and has unanimously determined (subject to declarations of conflicts of interest and recusals by two Board members) that the IAC Arrangement is in the best interests of Element, and that Element be authorized to enter into the Arrangement Agreement in respect of the IAC Arrangement. In reaching its determination, the Board of Directors considered, among other things, the factors and benefits summarized below. The potential factors and benefits described below are subject to a number of risks that could cause some or all of these factors benefits to not be realized, in whole or in part. See “*Risk Factors*”.

#### *Immediate, Timely and Cost-Effective Access to Capital*

It is expected that the IAC Arrangement will close shortly after the closing of the Element Arrangement, thereby providing ECN Capital with immediate, timely and cost-effective access to capital to fund and accelerate ECN Capital’s future growth plans and strengthen its balance sheet. Subject to the Arrangement Agreement and the number of redemptions of IAC Class A Shares, upon completion of the IAC Arrangement, ECN Capital will acquire up to \$220 million in cash. Following completion of the Element Arrangement, ECN Capital could face uncertainty in its ability to raise capital in the public markets. The IAC Arrangement provides ECN Capital with immediate, timely and cost-effective access to the capital held by IAC on acceptable terms, having regard to other possible equity and financing sources, including treasury offerings and other special purpose vehicles. The *ad hoc* Committee and the Board reviewed such other financing alternatives, and the costs and risks thereof, with its financial advisors. The *ad hoc* Committee and the Board determined that the immediate, timely and cost-effective access to capital on the terms set out in the IAC Arrangement was in the best interests of Element.

#### *Fairness of the Consideration*

PwC, on July 21, 2016, delivered a draft opinion to the Board, and rendered to the *ad hoc* Committee an oral opinion on July 22, 2016, subsequently confirmed by delivery of a final written opinion, dated July 25, 2016, to the effect that, as of such date, and based upon and subject to various factors including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders.

The IAC Arrangement Fairness Opinion was prepared for the sole benefit of the Board and was one factor considered by the Board in respect of the IAC Arrangement (and is not to be relied upon by any other party), and does not constitute a recommendation to any Shareholder as to how such Shareholder should vote with respect to the resolutions to be considered by Shareholders at the Meeting or any other matter.

The full text of the IAC Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the Element Arrangement Fairness Opinion and the review undertaken by PwC in connection with rendering its

opinion, is attached as Appendix F to this Management Information Circular. The summary of the IAC Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the IAC Arrangement Fairness Opinion carefully and in its entirety.

#### *Acceleration of ECN's Growth Plans*

ECN Capital's strategy is to transition into an asset management company. The IAC Arrangement provides immediate access to approximately \$220 million in proceeds (subject to redemptions of IAC Class A Shares), which will strongly position ECN Capital to act on acquisition opportunities and fund structuring opportunities in an expedited manner. Element believes that the opportunity to secure this capital concurrent with the separation process enables ECN Capital's management team to develop a capital plan which enables the implementation of key strategic initiatives. The IAC Arrangement provides the business with capital and access to global investment relationships, which Element believes will enhance ECN Capital shareholder value.

#### *Strong Additions to ECN Capital Board*

William Holland and Neil Selfe, current directors of IAC, will be appointed to the ECN Capital Board upon completion of the IAC Arrangement.

Mr. Holland will bring to the ECN Capital Board more than 25 years of experience in the Canadian financial services industry, having been instrumental in building CI Financial Corp. into a leading investment fund manager in Canada with over \$140 billion in assets under management and advisement. Mr. Holland is currently Executive Chairman of CI Financial Corp., and prior to September 2010, he was the Chief Executive Officer of CI Financial Corp., a position he held for more than 10 years.

Mr. Selfe will bring to the ECN Capital Board more than 20 years of capital markets and financial advisory expertise. Mr. Selfe has a deep understanding of ECN Capital's business, attributable to Mr. Selfe's prior advisory services to Element, both while at INFOR Financial Group Inc. (since 2015) and prior to that time while at GMP Securities L.P., where Mr. Selfe was a Managing Director and Head of Financial Institutions, Structured Products, Technology and Communications Investment Banking.

Each of Mr. Holland and Mr. Selfe will, as a result of the IAC Arrangement, also become shareholders of ECN Capital, so their interests will be aligned with that of ECN Capital shareholders following closing of the IAC Arrangement.

#### *Mr. Selfe will Join ECN Capital in a Senior Management Role*

In addition to joining the ECN Capital Board, Mr. Selfe will also be appointed Executive Vice-Chairman to provide senior management expertise to ECN Capital. A significant majority of the senior executive team at Element will be remaining with Element Fleet upon closing of the Element Arrangement. In addition to a new Chief Financial Officer to be hired by ECN Capital, Mr. Selfe will provide senior leadership and management skills and expertise to ECN Capital following the closing of the IAC Arrangement, which skills and expertise will complement those of the other ECN executives.

Mr. Selfe and Steve Hudson, the future Chief Executive Officer of ECN Capital, have worked closely together since 2011 to identify transformative acquisition opportunities for Element and to execute on optimal financing packages that have driven significant value for Element shareholders. Mr. Selfe advised Element on various equity offerings, preferred share offerings and convertible debenture offerings, including Element's \$2.8 billion public financing that was completed in May 2015. Furthermore, Mr. Selfe advised Element on a number of acquisitions, including the acquisition of TLS Fleet Management in July 2012, the acquisition of Nexcap Finance Corporation in January 2013, the acquisition of GE Capital's Canadian Fleet Operations in June 2013, the acquisition of PHH Corporation's Fleet Management

business in July 2014 and the acquisition of GE Capital's fleet management businesses in the U.S., Mexico, Australia and New Zealand in September 2015.

As such, Mr. Selfe has a unique knowledge and understanding of Element's business, and by extension, ECN's business, which he will be able to apply in this management role to the benefit of ECN Capital and its shareholders.

Mr. Selfe has access to global networks and funding relationships that Element expects will assist ECN Capital in identifying and executing acquisitions to significantly enhance the company's transition to an asset management business. His ability to source and structure acquisitions is expected to drive significant value for shareholders of ECN Capital.

#### *Determination of IAC Exchange Ratios*

Under the IAC Arrangement, the valuation of ECN Capital Common Shares will be determined by the Element Board of Directors. The determination is expected to be based, in part, on an independent valuation obtained by Element as part of the Pre-Arrangement Transactions. This will enable ECN Capital to ensure that the dilution of shareholders of ECN Capital is reasonable in the circumstances having regard to applicable market discounts, equity underwriting fees, and other costs and uncertainties associated with public equity offerings of a similar size and nature.

#### *Continued Participation by Shareholders*

Upon completion of the IAC Arrangement, Participating Shareholders are expected to continue to own approximately 87% of the outstanding shares of ECN Capital (assuming no redemptions of IAC Class A Shares).

#### *Additional Capital in the Future Pursuant to the IAC Warrants*

There are 11,937,500 IAC Warrants outstanding, entitling each holder thereof to purchase one IAC Class A Share for an \$11.50 exercise price for a period of five years after completion of IAC's qualifying acquisition. Under the terms of the warrant agreement governing the terms of the IAC Warrants, ECN will assume the IAC Warrants (and the obligations thereunder) pursuant to a supplemental indenture to be entered into in connection with, and subject to, the completion of the IAC Arrangement, and the number of ECN Capital Common Shares to be acquired upon exercise of the IAC Warrants will be adjusted in accordance with the Exchange Ratio. In reviewing the terms of the IAC Arrangement, the *ad hoc* Committee considered the cost of the warrants against the deal intangibles, and viewed the additional capital that will be received by ECN Capital upon exercise of the IAC Warrants as favourable to ECN Capital.

#### *Broadening of the ECN Capital Shareholder Base*

Upon completion of the IAC Arrangement, the ECN Capital shareholder base will be broadened as ECN Capital expects to issue approximately 13% of its common shares to former IAC shareholders in connection with the IAC Arrangement, assuming no redemptions of IAC Class A Shares.

#### *Preservation of Financing Alternatives*

The Arrangement Agreement provides that either ECN Capital or IAC may terminate the agreement in respect of the IAC Arrangement if such transaction is not completed by October 31, 2016. This termination right would enable ECN Capital to consider and pursue other financing alternatives if the IAC Arrangement conditions to closing are unable to be obtained or are otherwise unexpectedly delayed.

### *Terms of the Arrangement Agreement*

The financial and other terms and conditions of the Arrangement Agreement, as reviewed and approved by the Board of Directors and the *ad hoc* Committee, are reasonable. Such terms and conditions were the product of arm's-length negotiations between Element and IAC.

### **Background to the IAC Arrangement**

The provisions of the Arrangement Agreement, as it pertains to the IAC Arrangement, are the result of arm's length negotiations conducted among Element (including through the *ad hoc* Committee) and IAC (including through the special committee of the IAC Board of Directors) and their respective representatives and advisors, including Element's legal counsel, Blake, Cassels & Graydon LLP, and Osler, Hoskin & Harcourt LLP, counsel to the special committee of the board of directors of IAC. The following is a summary of the material events, negotiations, discussions and actions leading up to the execution and public announcement of the Arrangement Agreement as it pertains to the IAC Arrangement.

In mid-June, 2016, Mr. Selfe, IAC's Chief Executive Officer, discussed the possibility of ECN Capital acquiring IAC with Steve Hudson, Element's Chief Executive Officer, Bradley Nullmeyer, Element's President and David McKerroll, Element's President, Aviation and Rail. Discussions were predicated on providing ECN Capital with timely access to capital to fund its growth plans through the acquisition of IAC's cash assets raised in connection with IAC's initial public offering. Given the complexities of the Element Arrangement, Element and its advisors analyzed the structure and mechanics of effecting an acquisition of IAC along with the Element Arrangement.

From late June, 2016 through July 15, 2016, representatives of the parties and their advisors engaged in intensive negotiations regarding a proposed non-binding indicative letter of intent (the "**IAC Letter of Intent**") to be entered into by Element (on its own behalf and on behalf of ECN Capital) and IAC setting out the key terms and conditions of the potential transaction. Pursuant to the IAC Letter of Intent, it was proposed that ECN Capital would acquire, under a court-approved arrangement of IAC, all of the issued and outstanding IAC Class A Shares and IAC Class B Shares (other than IAC Shares held by ECN Capital or any of its Affiliates), in exchange for a number of ECN Capital Common Shares, based on the relative value of ECN Capital on closing of the Element Arrangement and the value of IAC's net assets on a specified date immediately prior to the closing of the IAC Arrangement. Element and IAC continued to negotiate the terms and conditions of a proposed transaction during this period, including exchanging drafts of the IAC Letter of Intent and definitive documentation in respect of implementing the proposed IAC Arrangement.

On July 15, 2016, William Lovatt (Chairman of the Board and a member of the Board's audit committee and credit committee) was briefed by Element management regarding the proposed IAC Arrangement including the IAC Letter of Intent and the proposed key terms and conditions of the IAC Arrangement. On July 17, 2016, Element formed the *ad hoc* Committee, comprised of Messrs. Lovatt, Lortie and Stoyan, to consider the IAC Arrangement and to review and consider the IAC Letter of Intent and the proposed key terms and conditions of the IAC Arrangement. Each of Messrs. Lovatt, Lortie and Stoyan are expected to join the board of directors of ECN Capital at closing of the Element Arrangement. The *ad hoc* Committee met on July 17, 2016 to review the terms of the IAC Letter of Intent and to understand the background of the transaction and the anticipated benefits for ECN Capital.

On July 18, 2016, members of the *ad hoc* Committee had numerous discussions regarding the proposed transaction, including consultations with Element's external legal and financial advisors.

On July 19, 2016, the *ad hoc* Committee met in person to review in detail the terms of the IAC Arrangement, including potential conflict issues, the share structure of IAC, the outstanding securities of IAC, the regulatory framework governing special purpose acquisition corporations and the process and timetable for completion of the IAC Arrangement. The *ad hoc* Committee received input on the transaction from Element's Chief Financial Officer and General Counsel, as well as from Blake, Cassels &

Graydon LLP, Element's legal counsel. The *ad hoc* Committee also reviewed in detail the proposed financial terms of the IAC Arrangement, including the consideration to be paid to holders of IAC Class A Shares and IAC Class B Shares.

On July 20, 2016, the *ad hoc* Committee members had a number of discussions to consider the key terms of the Arrangement Agreement, including the financial terms of the transaction set out in the IAC Letter of Intent. Following these discussions, the Chairman of the *ad hoc* Committee recommended to Element management certain revised terms of the transaction, which Element management communicated to Mr. Selfe on behalf of IAC. IAC accepted the revised terms as requested by the *ad hoc* Committee, with one modification to the revised terms that was acceptable to the *ad hoc* Committee.

During this period, Element (including through the *ad hoc* Committee) and IAC (including through the special committee of the IAC Board of Directors) and their respective financial and legal advisors (including Element's legal counsel, Blake, Cassels & Graydon LLP, and Osler, Hoskin & Harcourt LLP, counsel to the special committee of the Board of Directors of IAC) continued to negotiate and finalize certain of the terms of the Arrangement Agreement and other transaction documents, in particular, with respect to the terms of the Exchange Ratios as set out in the IAC Letter of Intent.

In the morning of July 21, 2016, the *ad hoc* Committee met to discuss the terms of the IAC Arrangement, including the finalized terms thereof. The *ad hoc* Committee was advised that PwC would provide a fairness opinion to the Board, and PwC delivered a draft of the IAC Arrangement Fairness Opinion to the *ad hoc* Committee. Following discussions and deliberations, the *ad hoc* Committee determined that, subject to receipt of PwC's IAC Arrangement Fairness Opinion, the IAC Arrangement was in the best interests of Element and that the Committee should recommend the IAC Arrangement to the Element Board.

At a Board meeting on July 21, 2016, the Board received the report of the *ad hoc* Committee regarding the IAC Arrangement (with Messrs. Hudson and Venn, as directors of IAC, declaring their interest in accordance with the OBCA and leaving the meeting). The Board reviewed with legal counsel the terms of the Arrangement Agreement, including the conditions related to the acquisition of IAC in favour of Element, and also reviewed the draft IAC Arrangement Fairness Opinion provided by PwC. The Board also carefully considered the benefits of the IAC Arrangement for ECN Capital, including the reasons for the transaction (see "*Reasons for the IAC Arrangement*") At the completion of the meeting, the Board unanimously resolved (subject to the receipt by the Board of the final IAC Arrangement Fairness Opinion from PwC in a form acceptable to the *ad hoc* Committee) to approve the Arrangement Agreement (including the IAC Arrangement), and to make the recommendations described below under the heading "*The Element Arrangement – Recommendation of the Board Regarding the IAC Arrangement*".

Following delivery of its draft opinion on July 21, 2016, on July 22, 2016, representatives of PwC met with and delivered to the *ad hoc* Committee an oral opinion, subsequently confirmed in writing by the IAC Arrangement Fairness Opinion, to the effect that, as of the date of such opinion and based on and subject to various factors including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders.

At the completion of the meeting, the Chairman of the *ad hoc* Committee confirmed that he would advise members of the Board that the IAC Arrangement Fairness Opinion had been reviewed and was in acceptable form, and that such opinion would be included in this Circular. The IAC Arrangement Fairness Opinion was sent to the Board on July 24, 2016. The finalized IAC Arrangement Fairness Opinion is dated July 25, 2016.

The Arrangement Agreement was signed by all parties on July 25, 2016 and the IAC Arrangement was announced as part of Element's announcement of the terms of the Arrangement Agreement, giving effect to both the Element Arrangement and the IAC Arrangement.

## Fairness Opinion of PwC

The Board retained PwC to provide a fairness opinion with respect to the IAC Arrangement. In connection with the engagement, PwC, on July 21, 2016, provided a draft opinion to the Board, and on July 22, 2016 rendered to the *ad hoc* Committee an oral opinion, subsequently confirmed by delivery of a written opinion, dated July 25, 2016, to the effect that, as of such date, and based upon and subject to various factors, including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders.

In providing the IAC Arrangement Fairness Opinion, PwC considered certain aspects of the IAC Arrangement and the Arrangement Agreement among other considerations. The full text of the IAC Arrangement Fairness Opinion, which sets forth, among other things, the assumptions made, matters considered, and qualifications and any limitations on the IAC Arrangement Fairness Opinion and the review undertaken by PwC in connection with rendering its opinion, is attached as Appendix F to this Management Information Circular. The summary of the IAC Arrangement Fairness Opinion set forth in this Management Information Circular is qualified in its entirety by reference to the full text of such opinion and Shareholders are urged to read the IAC Arrangement Fairness Opinion carefully and in its entirety.

The IAC Arrangement Fairness Opinion was provided to the Board for its exclusive use only in considering, among other factors, the IAC Arrangement and may not be used or relied upon by any person or for any other purpose without the prior written consent of PwC. Except for the inclusion of the IAC Arrangement Fairness Opinion in its entirety and a summary thereof (in a form acceptable to PwC) in this Management Information Circular, the IAC Arrangement Fairness Opinion is not to be reproduced, disseminated, quoted from or referred to (in whole or in part) without the prior written consent of PwC. The IAC Arrangement Fairness Opinion is not a formal valuation or appraisal of the securities or assets of IAC, Element, ECN Capital, Element Fleet or of any of their Affiliates, and the IAC Arrangement Fairness Opinion should not be construed as such. The IAC Arrangement Fairness Opinion is not, and should not be construed as, advice as to the price at which the securities of IAC, Element, ECN Capital or Element Fleet may trade at any time. The IAC Arrangement Fairness Opinion is not advice with respect to any legal, tax or regulatory aspects of the IAC Arrangement and the IAC Arrangement Fairness Opinion does not address any such. PwC relied upon, without independent verification, the assessment by IAC and Element and their legal, accounting and tax advisors with respect to such matters. In addition, the IAC Arrangement Fairness Opinion does not address the relative merits of the IAC Arrangement as compared to any strategic alternatives that may be available to ACN. The IAC Arrangement Fairness Opinion does not constitute a recommendation to any Shareholder as to how such Shareholder should vote with respect to the resolutions to be considered by Shareholders at the Meeting or any other matter.

PwC acted as financial advisor to Element with respect to the IAC Arrangement and will receive a fee from Element for such services regardless of whether the IAC Arrangement is consummated. In addition, Element has agreed to reimburse PwC for its reasonable out-of-pocket expenses and to indemnify PwC for certain liabilities arising out of PwC's engagement. PwC has provided valuation, tax and advisory services to Element in the past 24 months. PwC and its affiliates may, in the future, in the ordinary course of its business, perform tax and advisory services for IAC, Element, ECN Capital, Element Fleet or any of their respective associates, affiliates or insiders (collectively, the "**Interested Parties**").

The Board urges Shareholders to read the IAC Arrangement Fairness Opinion carefully and in its entirety. See Appendix F to this Management Information Circular for the full text of the IAC Arrangement Fairness Opinion.

## Recommendation of the Board Regarding the IAC Arrangement

The Board, having considered, among other things, the reasons for the IAC Arrangement, the recommendation of the *ad hoc* Committee of the directors of Element regarding the IAC Arrangement, and the IAC Arrangement Fairness Opinion of PwC with respect to the IAC Arrangement, has unanimously (subject to recusals) determined that the IAC Arrangement is in the best interests of Element. **The Board has unanimously (subject to recusals) approved the IAC Arrangement, the**



terms of the Arrangement Agreement (as it relates to the IAC Arrangement) and the transactions contemplated thereby, and unanimously (subject to recusals) recommends that Shareholders vote:

- **FOR** the Share Issuance Resolution, subject to the approval of the Element Arrangement Resolution by the Shareholders.

## **Arrangement Agreement and Details of the IAC Arrangement**

### ***Arrangement Agreement***

For a general discussion of the Arrangement Agreement, see “*The Element Arrangement - Arrangement Agreement and Related Agreements*”.

Among other things, the Arrangement Agreement provides the terms of the IAC Arrangement (including the IAC Plan of Arrangement), the conditions to its completion and actions to be taken prior to the IAC Effective Date.

The Exchange Ratio for the issuance of ECN Capital Common Shares in exchange for IAC Shares shall be based on the en bloc aggregate fair market value of ECN Capital, as at closing of the Element Arrangement, and IAC Net Assets as at a specified date immediately prior to the closing of the IAC Arrangement. The fair market value of ECN Capital shall be determined by the Board of Directors, based, in part, on an independent valuation to be obtained by Element. The IAC Net Assets will consist of all IAC assets (including all funds from the initial public offering of IAC held in escrow), less the sum of (a) all liabilities of IAC to and including the IAC Effective Date (including all escrowed underwriters’ commissions related to such initial public offering and all accrued or estimated fees and expenses in connection with the IAC Arrangement or otherwise) and (b) the aggregate amount of escrowed funds to be paid in respect of Class A IAC Shares for which IAC Shareholders have validly exercised rights of redemption in respect of the IAC Arrangement.

Existing warrants to purchase IAC Shares will be adjusted in accordance with their terms as a result of the completion of the IAC Arrangement. ECN Capital and IAC expect that such warrants will be assumed by ECN Capital pursuant to a supplemental agreement with the agent for such warrants, and that the existing warrants will become exercisable for ECN Capital Common Shares on the same basis as the Class A Exchange Ratio.

Pursuant to the Arrangement Agreement, Element, ECN Capital and IAC have agreed to use commercially reasonable efforts and to do all things reasonably required to complete the IAC Arrangement. Such parties have agreed, among other things, to take certain steps to implement the Element Arrangement, to file and obtain a final receipt for a prospectus by IAC and to obtain all other approvals required in connection with the IAC Arrangement.

Element and ECN Capital also agreed to operate the business to be acquired by ECN Capital in the ordinary course pending completion of the IAC Arrangement, as has IAC in respect of the business of IAC. The Arrangement Agreement provides that the obligation of each of ECN Capital and IAC to complete the IAC Arrangement is subject to receipt of a number of approvals and fulfillment of a number of conditions described under “*The IAC Arrangement - Approvals and Other Conditions Precedent to the IAC Arrangement*”.

### ***Steps of the IAC Arrangement***

Pursuant to the IAC Plan of Arrangement, at the IAC Effective Time, the following steps will occur and will be deemed to occur in the following order by operation of law without any further act, authorization or formality:

- (a) the IAC Shares held by IAC Shareholders, who duly exercise their dissent rights in accordance with section 185 of the OBCA and the IAC Plan of Arrangement, will be transferred to ECN Capital in exchange for the right to be paid the fair value of such shares from IAC;
- (b) the IAC Shares held by IAC Shareholders, who duly exercise their redemption rights in accordance with the constating documents of IAC, will be redeemed and cancelled by IAC in exchange for the right to be paid the redemption amount of such share from IAC;
- (c) each issued and outstanding IAC Class A Share and IAC Funding Class B Share held by a shareholder (other than IAC Class A Shares or IAC Funding Class B Shares, if any, held by ECN Capital or any of its Affiliates) will be transferred to ECN Capital in exchange for that portion of a fully paid and non-assessable ECN Capital Common Share equal to the Class A Exchange Ratio;
- (d) each issued and outstanding IAC Founder Class B Share held by a shareholder (other than IAC Founder Class B Shares held by ECN Capital or any of its Affiliates or beneficially owned by Richard Venn) shall be transferred to ECN Capital in exchange for that portion of a fully paid and non-assessable ECN Capital Common Share equal to the Class B Exchange Ratio;
- (e) all IAC Founder Class B Shares beneficially owned by Richard Venn shall be transferred to ECN Capital for aggregate consideration equal to that number of fully paid and non-assessable ECN Capital Common Shares equal to (i) \$1,908.08, divided by (ii) a fraction equal to (A) the aggregate fair market value of ECN Capital on the Element Effective Date, as determined by the Board, divided by (B) the aggregate number of ECN Capital Common Shares issued and outstanding immediately prior to the IAC Effective Time;
- (f) all IAC Shares acquired by ECN Capital pursuant to (a), (c),(d) and (e) will be transferred to a wholly owned Subsidiary of ECN Capital in exchange for 100 fully paid and non-assessable common shares of such Subsidiary;
- (g) the supplemental agreement to the warrant agreement between IAC and Equity Financial Trust Company, dated as of the IAC Effective Date among ECN Capital, IAC and Equity Trust Company, will become effective and pursuant to such supplemental agreement, among other things, the IAC Warrants shall be assumed by ECN Capital; and
- (h) the ECN Capital Subsidiary in step (f) will resolve to voluntarily dissolve IAC in accordance with Part XVI of the OBCA and subsection 88(1) of the Tax Act, and in connection therewith:
  - (i) all of the rights, title and interest of IAC in and to all of its property, assets and business of every kind and nature, real and personal, both tangible and intangible, and movable and immovable, wherever situate shall be transferred and assigned to such Subsidiary; and
  - (ii) such Subsidiary shall assume and become liable to pay, satisfy, discharge and observe, perform and fulfill all of the liabilities and obligations of IAC.

IAC Founder Class B Shares beneficially owned by ECN Capital will be taken into account in the determination of the Class B Exchange Ratio. However, ECN Capital will not acquire such IAC Founder Class B Shares pursuant to the IAC Plan of Arrangement, as it already has beneficial ownership of such shares.

The above steps and the other steps of the IAC Plan of Arrangement are set out in detail in the IAC Plan of Arrangement, included as Appendix B to the Arrangement Agreement.

## **Approvals and Other Conditions Precedent to the IAC Arrangement**

### ***Approvals for the IAC Arrangement***

The IAC Arrangement will be subject to the approval of, among others, the Court, IAC Shareholders, the TSX and applicable securities regulators. In addition, the issuance of ECN Capital Common Shares is subject to the approval of the Share Issuance Resolution at the Element Meeting.

Element, ECN Capital and IAC anticipate that an interim order of the Court will provide that the percentage of votes required to pass the resolution approving the IAC Arrangement will be at least two-thirds of the votes cast by IAC Shareholders, voting in person or by proxy, at a special meeting of IAC Shareholders.

An arrangement under the OBCA also requires court approval. Subject to the terms of the Arrangement Agreement, and if the resolution is approved by IAC Shareholders at the special meeting in the manner required by the applicable interim order, Element expects that IAC will apply promptly to the Court for a final order approving the IAC Arrangement.

The TSX will be required to approve the IAC Arrangement as the “qualifying acquisition” of IAC under the applicable TSX rules. The TSX has conditionally approved the listing of the ECN Capital Common Shares to be issued pursuant to the IAC Arrangement (including the ECN Capital Common Shares which, as a result of the IAC Arrangement, will be issuable upon the exercise of existing warrants to purchase IAC Shares), but the TSX’s approval will be subject to ECN Capital and IAC, as applicable, fulfilling all of the applicable requirements of the TSX. ECN Capital will be required to obtain the TSX’s final approval to list these ECN Capital Common Shares to be issued pursuant to the IAC Arrangement.

In addition, prior to convening the special meeting of its shareholders, IAC will be required, in accordance with applicable securities laws, to obtain a final receipt for a prospectus setting forth, among other things, the terms of the IAC Arrangement.

### ***Other Conditions Precedent to the IAC Arrangement***

#### ***Mutual Conditions***

In addition to receipt of the approvals, orders and rulings noted above, respective obligations of ECN Capital and IAC to consummate the IAC Arrangement are subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by the mutual consent of ECN Capital and IAC without prejudice to their right to rely on any other of such conditions:

- (a) the Pre-Element Arrangement Transactions and the Element Arrangement shall have been completed in accordance with their terms and the Element Effective Time shall have occurred;
- (b) the Share Issuance Resolution shall have been approved by the requisite number of votes cast by Shareholders at this Meeting in accordance with applicable laws;
- (c) the IAC Arrangement must be approved by the Court in the manner described above under “*The IAC Arrangement – Approvals and Other Conditions Precedent to the IAC Arrangement*”;

- (d) the resolution approving the IAC Arrangement shall have been passed by the IAC Shareholders at the special meeting of such shareholders in accordance with the interim order;
- (e) the articles of arrangement of IAC to be filed with the OBCA Director in accordance with the Arrangement Agreement shall be in form and substance satisfactory to each of ECN Capital and IAC, acting reasonably;
- (f) the written approval of the TSX of the IAC Arrangement under the TSX rules and policies and such other matters as may require TSX approval in order to give effect to the IAC Arrangement shall have been obtained;
- (g) the Forfeiture and Transfer Restrictions Agreement and Undertaking dated May 27, 2015 from INFOR Financial Group Inc. and Element Investment Corp. to IAC, CIBC World Markets Inc., BMO Nesbitt Burns Inc., Deutsche Bank Securities Inc. and the Toronto Stock Exchange, shall have been amended in form and substance acceptable to each of INFOR Financial Group Inc. and Element Investment Corp., in each case acting reasonably;
- (h) receipt of all regulatory and third party approvals, authorizations and consents as are required to be obtained by Element, ECN Capital or IAC in connection with the IAC Arrangement;
- (i) no prohibition at law against completion of the IAC Arrangement and the transactions contemplated by the Arrangement Agreement shall be in effect; and
- (j) no act, action, suit, proceeding, objection or opposition shall have been threatened or taken, entered or promulgated before or by any governmental authority or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, and no law, regulation, policy, judgment, decision, order, ruling or directive (whether or not having the force of law) shall have been enacted, promulgated, amended or applied, which would be reasonably expected to have a Material Adverse Effect on either ECN Capital or IAC (before or after completion of the IAC Arrangement).

*ECN Capital Conditions*

The obligation of ECN Capital to consummate the IAC Arrangement is subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by ECN Capital without prejudice to its right to rely on any other such conditions:

- (a) the representations and warranties made by IAC in the Arrangement Agreement shall be true and correct as of the date of the Arrangement Agreement and as of the IAC Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on IAC; and IAC shall have provided to ECN Capital a certificate of two senior officers of IAC certifying the foregoing on the IAC Effective Date;
- (b) IAC shall have complied in all material respects with its covenants in the Arrangement Agreement to be complied with by it on or prior to the IAC Effective Time; and IAC shall have provided to ECN Capital a certificate of two senior officers of IAC certifying compliance with such covenants on the IAC Effective Date;

- (c) no Material Adverse Effect on IAC shall have occurred after the date of the Arrangement Agreement and prior to the IAC Effective Date;
- (d) all funds deposited pursuant to the escrow agreement shall have been released in connection with the IAC Arrangement in accordance with the escrow agreement including all funds to be distributed to holders of IAC Class A Shares that validly exercised redemption rights in respect of the IAC Arrangement;
- (e) INFOR Financial Group Inc. shall have entered into an escrow agreement with, among others, ECN Capital providing for the escrow for a period of five years from the IAC Effective Date of 25% of the ECN Capital Common Shares received by it pursuant to the IAC Arrangement on terms disclosed to INFOR Financial Group Inc. by Element prior to the date hereof, in form and substance satisfactory to ECN Capital, acting reasonably;
- (f) the aggregate fair market value of ECN Capital on the Element Effective Date, as determined by the Board for the purposes of the Exchange Ratio, shall not be less than 95% of the estimated equity net book value of the Commercial Finance Business as of Element Effective Date, with estimated equity net book value to be determined by Element, in accordance with GAAP and subject to such adjustments as are reasonable and appropriate in the circumstances, including to account for the Pre-Element Arrangement Transactions and in respect of foreign exchange rates;
- (g) holders of less than 25% of the outstanding Class A IAC Shares shall have validly exercised rights of redemption in respect of the IAC Arrangement; and
- (h) holders of less than 5% of the outstanding IAC Shares shall have validly exercised rights of dissent in respect of the IAC Arrangement that have not been withdrawn as of the IAC Effective Date.

#### *IAC Conditions*

The obligation of IAC to consummate the IAC Arrangement is subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by IAC without prejudice to its right to rely on any other such conditions:

- (a) no the representations and warranties made by Element in the Arrangement Agreement shall be true and correct as of the date of the Arrangement Agreement and as of the Element Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on Element; and Element shall have provided to IAC a certificate of two senior officers of Element certifying the foregoing on the IAC Effective Date;
- (b) the representations and warranties made by ECN Capital in the Arrangement Agreement shall be true and correct as of the date of the Arrangement Agreement and as of the IAC Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on ECN Capital; and ECN Capital shall have provided to IAC a certificate of a director of ECN Capital certifying the foregoing on the IAC Effective Date;
- (c) Element shall have complied in all material respects with its covenants in the Arrangement Agreement to be complied with by it on or prior to the Element Effective

Time; and Element shall have provided to IAC a certificate of two senior officers of Element certifying compliance with such covenants on the IAC Effective Date;

- (d) ECN Capital shall have complied in all material respects with its covenants in the Arrangement Agreement to be complied with by it on or prior to the IAC Effective Time; and ECN Capital shall have provided to IAC a certificate of a director of ECN Capital certifying compliance with such covenants on the IAC Effective Date;
- (e) no Material Adverse Effect on ECN Capital shall have occurred after the date hereof and prior to the IAC Effective Date; and
- (f) the aggregate fair market value of ECN Capital on the Element Effective Date, as determined by the Board for the purposes of the Exchange Ratio, shall not be greater than 105% of the estimated equity net book value of the Commercial Finance Business as of Element Effective Date, with estimated equity net book value to be determined by Element, in accordance with GAAP and subject to such adjustments as are reasonable and appropriate in the circumstances, including to account for the Pre-Arrangement Transactions and in respect of foreign exchange rates.

Element expects the IAC Effective Date to occur following the Element Effective Date, but prior to October 31, 2016, which is the “outside date” under the Arrangement Agreement. It is not possible, however, to state with certainty when the IAC Arrangement will become effective, if at all. The IAC Arrangement will become effective when the OBCA Director issues the certificate of arrangement in respect of the transaction.

### ***Rights of IAC Shareholders***

Shareholders of IAC (other than those who exercise their rights of redemption, as discussed below) will have a right to dissent in respect of the IAC Arrangement and to be paid fair value by IAC in respect of their IAC Shares. Full details of the rights of IAC Shareholders will be set forth in the management information circular to be mailed by IAC in connection with the special meeting of its shareholders.

In accordance with IAC's governing documents, IAC Shareholders will also have a right to have their IAC Shares redeemed by IAC in connection with the qualifying acquisition, being the IAC Arrangement. Full details of the redemption rights of IAC Shareholders are available in IAC's public documents filed on SEDAR, and will be set forth in the management information circular to be mailed by IAC in connection with the special meeting of its shareholders.

### ***IAC Arrangement Legal Matters***

#### *Securities Law Matters*

As a reporting issuer in all provinces and territories of Canada, Element is, among other things, subject to the securities laws of Ontario and Québec, including MI 61-101. MI 61-101 regulates certain types of related party and other transactions to ensure equality of treatment among security holders and may require enhanced disclosure, approval by a majority of security holders (excluding interested or related parties), independent valuations and, in certain instances, approval and oversight of certain transactions by a special committee of independent directors. The protections afforded by MI 61-101 apply to, among other transactions, a “related party transaction” (as such terms are defined in MI 61-101).

Element has, and following the Element Arrangement, ECN Capital will have, beneficial ownership of approximately 7% of the outstanding voting securities of IAC. In addition, Mr. Steven Hudson and Mr. Richard Venn, directors of Element, also serve on the board of directors of IAC. IAC does not beneficially own any securities of Element or ECN Capital.

As Element and IAC are not “related parties” within the meaning of MI 61-101, the IAC Arrangement is not subject to the requirements of MI 61-101 because it is not a “related party transaction” within the meaning of MI 61-101.

The ECN Capital Common Shares to be issued to IAC Shareholders pursuant to the IAC Arrangement will be issued in reliance on exemptions from prospectus requirements of applicable Canadian securities laws. In accordance with the applicable securities legislation, such ECN Capital Common Shares may be resold without restriction, subject to the conditions that no unusual effort is made to prepare the market for the resale or create a demand for the shares and no extraordinary commission or consideration is paid in respect of the resale and to customary restrictions applicable to distributions of securities held by control persons and persons in “special relationships” to the relevant company.

#### *Corporate Law Matters*

Section 132 of the OBCA provides, among other things, that in the event that a director or officer has an interest in a contract or transaction or proposed contract or agreement, the director or officer shall disclose his or her interest to the corporation. Similar disclosure is required if the director or officer of the corporation is a director or officer of any person that is party to contract or transaction or proposed contract or agreement with the corporation. A director disclosing such interest shall not attend any part of the meeting of directors during which the contract or transaction is discussed and shall refrain from voting on any matter in respect of such contract or transaction, unless otherwise provided under the OBCA.

As directors of IAC, Messrs. Hudson and Venn have an interest in the IAC Arrangement within the meaning of section 132 of the OBCA. As a result, in the context of the proposed IAC Arrangement, Messrs. Hudson and Venn disclosed such interest to Element and the Board pursuant to section 132 of the OBCA. In addition, they did not attend meetings of the Board (or any portions thereof) at which the IAC Arrangement was discussed and did not vote on any matters related to the IAC Arrangement. However, as no conflict of interest existed, Messrs. Hudson and Venn attended Board meetings and voted on matters related to the Element Arrangement.

#### **Other Matters Relating to the IAC Arrangement**

##### *IAC Exchange Ratios*

The IAC Class A Shares and the IAC Funding Class B Shares (other than IAC Class A Shares or IAC Funding Class B Shares, if any, held by ECN Capital or any of its Affiliates) will be transferred to ECN Capital in exchange for that number or fraction of fully paid and non-assessable ECN Capital Common Shares equal to the Class A Exchange Ratio. The Class A Exchange Ratio is calculated based on (a) IAC Net Assets, determined on a per share basis, taking into account the aggregate number of IAC Class A Shares and IAC Funding Class B Shares issued and outstanding immediately prior to the IAC Effective Time (other than IAC Class A Shares for which IAC Shareholders have validly exercised rights of redemption in respect of the IAC Arrangement) and (b) the aggregate fair market value of ECN Capital, determined on a per share basis, taking into account the aggregate number of ECN Capital Common Shares issued and outstanding immediately prior to the IAC Effective Time.

The IAC Founder Class B Shares (other than IAC Founder Class B Shares held by ECN Capital or any of its Affiliates or beneficially owned by Richard Venn) shall be transferred to ECN Capital in exchange for that number or fraction of fully paid and non-assessable ECN Capital Common Shares equal to the Class B Exchange Ratio. The Class B Exchange Ratio is calculated based on (a) the sum of (i) \$4,500,000 and (ii) 6% of the IAC Net Assets, determined on a per share basis, taking into account the aggregate number of IAC Founder Class B Shares issued and outstanding immediately prior to the IAC Effective Time and (b) the aggregate fair market value of ECN Capital, determined on a per share basis, taking into account the aggregate number of ECN Capital Common Shares issued and outstanding immediately prior to the IAC Effective Time.

The IAC Founder Class B Shares held by Richard Venn will be acquired by ECN Capital at Mr. Venn's cost basis of \$0.008 per share for total proceeds of \$1,908.08, to be satisfied by delivery of ECN Capital Common Shares.

The IAC Net Assets will be determined as of the second business day prior to the IAC Effective Date in accordance with the Arrangement Agreement. The determination will be based on IAC assets, less liabilities of IAC and escrowed funds to be paid in respect of IAC Shareholders who have validly exercised rights of redemption in respect of the IAC Arrangement.

The fair market value of ECN Capital to be determined by the Board of Directors will be based, in part, on a valuation (the "**Independent Valuation**") obtained by Element from an independent third party valuator as part of the Pre-Element Arrangement Transactions, including the transfer of the Commercial Finance Business from Element to Subco.

The Board of Directors has sought the Independent Valuation in order to assist it in determining the fair market value of the Commercial Finance Business. The Independent Valuation supports the structuring of the proposed Pre-Element Arrangement Transactions and the Element Arrangement, which structuring is intended to benefit from the provisions of the Tax Act enabling such transactions to occur on a tax-deferred basis. Given the fullsome nature of the Independent Valuation, and the other factors to be considered by the Board, ECN Capital and IAC determined that such valuation is the preferred measure of the fair market value of ECN Capital for the purposes of both the Class A Exchange Ratio and Class B Exchange Ratio under the Arrangement Agreement.

Given the determination of the Class A Exchange Ratio and Class B Exchange Ratio, and the related determination of the aggregate fair market value of ECN Capital by the Board, which will utilise in part the Independent Valuation, it is possible that ECN Capital Common Shares issuable in exchange for the IAC Shares may be issued at a value that is different (and could be lower) than the eventual trading price of the ECN Capital Common Shares that will develop once there is an active trading market for such shares. Accordingly, investors should not expect that the ECN Capital Common Shares will begin trading at a premium to the value ascribed to the ECN Capital Common Shares by the Board.

#### *Independent Valuation*

The Independent Valuation, to be used by the Board of Directors as one factor amongst others in determining the fair market value of the Commercial Finance Business, will not be finalized until shortly prior to the closing of the Element Arrangement. While preliminary valuation work related to the Independent Valuation has been undertaken, this preliminary work (the "**Preliminary Valuation Work**") does not constitute the formal valuation of the Commercial Finance Business. In addition, the Preliminary Valuation Work has been, and the Independent Valuation will be, for the sole use of the Board and may not be relied upon by any other party, and will be subject to certain assumptions, restrictions and qualifications, and the underlying scope of review.

The Preliminary Valuation Work was based on financial information as of March 31, 2016, and is structured as an analysis of the equity value of the fleet management, rail finance, aviation finance and commercial & vendor finance business verticals of Element Financial Corporation. The Preliminary Valuation Work was prepared for strategic purposes to assist Element in structuring the Pre-Element Arrangement Transactions and the Element Arrangement, and focuses on price to earnings and price to book methods as the approaches to value the equity of each of the four verticals. In addition, the discounted cash flow method was considered to the extent appropriate, along with an analysis of comparable companies trading multiples, precedent transactions and analyst reports. Following discussions with Element management, the Preliminary Valuation Work also took into account certain adjustments to the value of Element Fleet and ECN Capital, to the extent determined appropriate by the independent third party valuator.

In preparing the Preliminary Valuation Work, the independent third party valuator relied on historical balance sheets and income statements for the past three fiscal years, including audited consolidated



financial statements, non-audited quarterly financial results for the first quarter ended March 31, 2016, financial forecasts by vertical through 2018, various Element management-prepared documents and presentations, various confidential information memorandum presentations prepared by financial advisors and investment banks, independent research into trading multiples and metrics, analyst reports, meetings, discussions and interviews with Element's management and Element's financial advisors, and certain other publicly available and non-public information on Element. The Preliminary Valuation Work is also subject to a number of key assumptions, restrictions and qualifications, and the underlying scope of review.

The Independent Valuation will be completed at a date as close as practicable to the Effective Time and will thereupon be submitted to the Board of Directors. Any information or conclusions set out in the Preliminary Valuation Work are subject to variation, modification or other adjustment during the preparation of the Independent Valuation to take into account relevant changes in the operations or business conditions of the Commercial Finance Business, and the actual fair market value of the Commercial Finance Business to be set forth in the Independent Valuation may differ materially from that set forth in the Preliminary Valuation Work, as provided to the Board of Directors.

As soon as practicable prior to the closing of the Element Arrangement, the Board of Directors will make its final determination of fair market value of the Commercial Finance Business. The Independent Valuation, which will be prepared on a basis consistent with the Preliminary Valuation Work as set forth above, will be one factor among others in the Board's determination of the fair market value of the Commercial Finance Business. Such determination will be used in the calculation of the exchange ratios for the IAC Shares pursuant to the IAC Arrangement.

#### *Interests of Element Management and Directors in the IAC Arrangement*

Richard Venn is a director of both IAC and Element, and holds approximately 1% of the IAC Shares outstanding. Steven Hudson is a director of IAC and the Chief Executive Officer of Element, and does not hold any IAC shares. None of Mr. Hudson, Mr. Venn, or any other insider, director or member of Element or ECN Capital management will receive a payment or benefit in connection with the IAC Arrangement that will not otherwise be available to all IAC Shareholders.

As noted above, under the IAC Arrangement, Mr. Venn's IAC Founder Class B Shares will be purchased at Mr. Venn's cost of \$0.008 per share, for total proceeds of \$1,908, to be satisfied by delivery of ECN Capital Common Shares. This purchase price is materially lower than the price expected to be paid to other holders of IAC Founder Class B Shares under the IAC Arrangement.

Other than Mr. Venn, no other directors or officers of Element hold IAC Shares and no other directors or officers of Element will receive ECN Capital Common Shares as a result of the IAC Arrangement.

### **ELEMENT PRIOR TO THE ELEMENT ARRANGEMENT**

Element currently operates through two distinct operating segments: the fleet management segment ("**Fleet Management**") and the commercial finance segment ("**Commercial Finance**"). Fleet Management provides vehicle fleet leasing and fleet management solutions and related service programs to international companies in a wide variety of industries. Commercial Finance is operated across North America in three verticals of the equipment finance market (commercial and vendor finance, rail finance and aviation finance).

#### **Documents Incorporated By Reference**

For further information in respect of Element prior to the Element Arrangement, see the following publicly filed documents of Element, each of which is incorporated by reference in, and form part of, this Management Information Circular:

1. Element's annual information form dated March 29, 2016;
2. Element's Annual Financial Statements, and Element's management's discussion and analysis in respect of those financial statements;
3. Element's material change report dated February 19, 2016 with respect to the approval of Element's Board of Directors of plans to proceed with a transaction that would result in the separation of Element into two publicly traded companies;
4. Element's management information circular dated May 11, 2016 with respect to the annual meeting of shareholders held on June 16, 2016; and
5. Element's Interim Financial Statements, and Element's management's discussion and analysis in respect of those financial statements.

Any document of the type referred to in the preceding paragraph, any material change reports (excluding confidential reports), any unaudited interim financial statements for interim periods following March 31, 2016 (together with any management's discussion and analysis filed in connection therewith) and any business acquisition report, in each case filed by Element with a provincial securities commission or any similar authority in Canada after the date of this Management Information Circular and prior to the Element Effective Date (or if Element announces that the Element Arrangement will not be completed, prior to the date of the Meeting), will be deemed to be incorporated by reference into this Management Information Circular. Copies of these documents may be obtained at [www.sedar.com](http://www.sedar.com) or upon request and without charge from the Corporation by contacting the Senior Vice-President, General Counsel & Corporate Secretary of the Corporation by email at [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com) or by mail at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Management Information Circular to the extent that a statement contained herein, or in any other subsequently filed document, which also is or is deemed to be incorporated by reference herein, modifies or supersedes that statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Management Information Circular.

## **ELEMENT FLEET FOLLOWING THE ELEMENT ARRANGEMENT**

*The following is a summary of certain material changes to the description of Element contained in Element's publicly filed documents incorporated by reference into this Management Information Circular resulting from the Element Arrangement or the related transactions described elsewhere herein.*

### **Business**

Following completion of the Element Arrangement, Element, together with certain subsidiaries, will be renamed "Element Fleet Management Corp.", and the Element Common Shares will continue to trade on the TSX under the trading symbol "EFN". Element Fleet Management Corp. will continue to own and operate the Fleet Management Business. The Fleet Management Business will include, among other things, Element's current approximately \$18.0 billion portfolio of fleet assets.

Element Fleet Management Corp. will be the world's largest publicly traded fleet management business and will be based on the continued service to Element's existing Fleet Management Business, with stable growth, strong credit quality and recurring high margin fee income that is expected to drive revenue and earnings.

For certain material risks associated with Element's operations and the industry in which it will operate following completion of the Element Arrangement, see "*Risk Factors*".

Additional information relating to Element has been incorporated by reference herein under “*Element Prior to the Element Arrangement – Documents Incorporated by Reference*”. Following completion of the Element Arrangement, Element will no longer own or operate the Commercial Finance Business.

### Summary Historical and Pro Forma Consolidated Financial Information

The following summary historical consolidated financial information for the three months ended and as at March 31, 2016 has been derived from the Element Interim Financial Statements. The summary *pro forma* information for the three months ended and as at March 31, 2016 is presented as if the Element Arrangement had been effected on January 1, 2016, for purposes of the *pro forma* operating results, and on March 31, 2016 for purposes of the *pro forma* balance sheet data. The summary *pro forma* information is derived from the Element Fleet Pro Forma Financial Statements.

This summary historical and *pro forma* financial information should be read in conjunction with the Element Interim Financial Statements and the related management’s discussion and analysis, which is incorporated by reference in this Management Information Circular, and the Element Fleet Pro Forma Financial Statements included in Appendix J.

The *pro forma* financial information has been prepared for illustrative purposes only and may not be indicative of the operating results or financial condition that would have been achieved if the Element Arrangement had been completed on the dates or for the periods noted above, nor do they purport to project the results of operations or financial position for any future period or as of any future date. In addition to the *pro forma* adjustments that comprise this *pro forma* financial information, various other factors will have an effect on the financial condition and results of operations of Element Fleet following the completion of the Element Arrangement.

	As at and for three-month period ended March 31, 2016	
	Pro Forma \$	Historical \$
<i>(in 000's for stated values)</i>		
<b>Operations</b>		
Net financial income	253,836	309,760
Adjusted operating income before taxes <sup>(1)</sup>	142,225	182,900
Net income	72,206	101,269
<b>Financial Position</b>		
Total finance assets	15,107,655	20,577,820
Total assets	18,149,317	23,933,519
Total debt	13,667,547	17,866,376
Shareholder's equity	3,879,578	5,401,579

(1) Adjusted operating income before tax is a financial measure that is not calculated in accordance with IFRS. For a reconciliation of this non-IFRS measure to the most directly comparable IFRS measure see reconciliation below :

## **Reconciliation of Net Income to Adjusted Operating Income**

<i>(in 000's for stated values)</i>	As at and for three-month period ended March 31, 2016	
	Pro Forma	Historical
	\$	\$
Net income	72,206	101,269
Amortization of convertible debenture synthetic discount	3,003	3,003
Share-based compensation	7,813	9,883
Amortization of intangible assets from acquisitions	16,126	16,776
Transaction and integration costs	31,369	31,369
Provision of income taxes	11,708	20,600
Adjusted operating income before taxes	142,225	182,900

## **Capital Structure and Market for Securities**

### **Authorized Share Capital**

As one of the final steps of the Element Arrangement, the articles of Element will be amended by removing the Element Butterfly Shares and the Element Common Shares (other than the Element Fleet Common Shares) from the share capital which Element is authorized to issue. As a result of these amendments, immediately following the Element Arrangement, Element's authorized share capital will be the same as it is currently and will consist of an unlimited number of Element Common Shares (which will be the sole class of common shares in the share capital of Element) and an unlimited number of preferred shares, issuable in series.

The articles of Element will be restated to reflect this and such restated articles will be filed with the OBCA Director.

### **TSX Listing**

It is a pre-condition to the Element Arrangement that the Element Common Shares continue to be listed on the TSX after the completion of the Element Arrangement. The TSX has conditionally approved the continued listing of the Element Common Shares on the TSX, subject to the satisfaction of customary conditions of the TSX, and the Element Common Shares will continue to trade on the TSX under the trading symbol "EFN".

### **Dividend Policy**

Dividends are payable on the Element Common Shares if and when declared by the Board of Directors. On March 2, 2016, Element declared a quarterly dividend of \$0.025 per outstanding Element Common Share for the first quarter of 2016, which was paid on April 15, 2016 to shareholders of record on March 31, 2016. A quarterly dividend of \$0.025 per Element Common Share was declared on May 11, 2016 and was paid on July 15, 2016 to shareholders of record on the close of business on June 30, 2016.

The dividend policy of Element Fleet following completion of the Element Arrangement will be determined by the newly constituted board of directors of Element Fleet. This policy will be reviewed from time to time by its board of directors in the context of Element's earnings, financial condition and other relevant factors, including the completion of this Arrangement. The declaration and payment of any quarterly or other dividends will be subject to, our financial results, capital requirements, available cash flow, corporate law requirements, contractual restrictions, including restrictive covenants contained in our new credit facility that restrict our ability to pay dividends, and any other factors that our board of directors may

consider relevant. The amount and timing of the payment of any dividends are not guaranteed and are subject to the discretion of our board of directors, including the factors referred to in the preceding sentence and as disclosed under the heading “*Risk Factors – Element Fleet May Not Pay Dividends*”.

### **Debentures**

Element currently has two outstanding series of convertible debentures: the Element 2014 Debentures and the Element 2015 Debentures (together the “**Debentures**”). The Debentures will remain outstanding obligations of Element Fleet following the Element Arrangement.

The Debentures are convertible into Element Common Shares at any time prior to maturity, at the option of the holder, at the applicable conversion price (the “**Conversion Price**”). The Element 2014 Debentures are convertible at any time prior to maturity, at the option of the holder, at an initial Conversion Price of \$17.85 per Element Common Share (subject to adjustment in accordance with their terms), representing a conversion ratio of approximately 56.0224 Element Common Shares per \$1,000 principal amount of Element 2014 Debentures. The 2015 Debentures are convertible at any time prior to maturity, at the option of the holder, at an initial Conversion Price of \$23.80 per Element Common Share (subject to adjustment in accordance with their terms), representing a conversion ratio of approximately 42.0168 Element Common Shares per \$1,000 principal amount of Element 2015 Debentures.

The indentures governing the Debentures provide that, in certain circumstances, the Conversion Price of the Debentures shall be adjusted by the Board in a manner equitable in the circumstances. The indentures governing the Debentures provide that an adjustment in such case is subject to the prior written consent of the TSX. The Board consulted with its legal and financial advisors regarding the indenture provisions and the adjustment of the Conversion Prices.

In accordance with the Element Debenture Indentures, the Board has determined, after consideration of the advice received from its legal and financial advisors, to adjust the Conversion Prices (the “**Adjusted Conversion Prices**”) of the Debentures after the Element Effective Date in a manner equitable in the circumstances so as to reflect the effect of the Element Arrangement. The Board expects the Adjusted Conversion Prices to be determined with reference to the relative trading prices of Element Fleet Common Shares and ECN Capital Common Shares over a specified period of time following the Element Effective Date. The determination of the Adjusted Conversion Prices will be subject to final approval of the Board of Directors and of the TSX. Element will advise holders of the Debentures of such Adjusted Conversion Prices in the manner required by the indentures governing the Debentures.

For more information on the Debentures, see “*Description of Share Capital – Debentures*” in Appendix K and “*Description of Share Capital – Debentures*” in Element’s Annual Information Form dated March 29, 2016, which is incorporated by reference herein.

### **Preferred Shares**

As at July 15, 2016, there were 4,600,000 Series A Shares issued and outstanding, 5,126,400 Series C Shares issued and outstanding, 5,321,900 Series E Shares issued and outstanding, and 6,900,000 Series G Shares issued and outstanding.

Each of Element’s outstanding series of preferred shares will remain outstanding obligations of Element Fleet following the Element Arrangement. For more information on the series of outstanding preferred shares, see “*Description of Share Capital – Preferred Shares*” in Appendix K.

### **Credit Facilities**

Element is currently party to a senior credit facility pursuant to a second amended and restated credit agreement dated August 24, 2015 (as amended, the “**Existing Credit Agreement**”). Borrowings under

the Existing Credit Agreement are available for general corporate purposes, including planned origination activity. The maturity date under the Existing Credit Agreement is August 31, 2018.

Underwriters' commitments have been received for the establishment of separate senior credit facilities in favour of Element Fleet and ECN Capital in conjunction with the Element Arrangement.

The Element Fleet underwriters' commitment contemplates that, in conjunction with the asset transfer from Element, the Existing Credit Agreement will be amended and restated so as to provide for an aggregate of US\$4.0 billion in three year revolving funding for Element Fleet Management Corp. and Element Fleet Management (US) Corp., as co-borrowers (the "**Senior Fleet Credit Facility**"). Such facility will provide for advances denominated in U.S., Canadian, Australian and New Zealand dollars.

The ECN Capital underwriters' commitment contemplates that, in conjunction with the asset transfer from Element, a separate and distinct US\$2.5 billion senior three-year revolving credit facility (the "**Senior ECN Capital Facility**") will be established in favour of ECN Capital and ECN Capital US Holdings Corp., ECN Capital's wholly-owned U.S. subsidiary, as co-borrowers. Such facility will provide for advances denominated in U.S. and Canadian dollars and will be available for general corporate purposes. A portion of the initial advance under the Senior ECN Capital Facility will be used to repay intercompany debt owed to Element, with the proceeds of such intercompany repayment being used by Element to repay a corresponding portion of outstanding indebtedness under the Existing Credit Agreement. (see "*Description of the Business – Funding Arrangements – Senior Credit Facility*" in Appendix L.

### **Other Funding Facilities**

Element currently obtains funding through a Canadian fleet lease securitization program and through two U.S. asset-backed securitization programs, including the Chesapeake funding programs. It is expected that Element's current Canadian fleet lease securitization program and two U.S. asset-backed securitization programs (including the Chesapeake funding programs) will remain in place following the Element Arrangement. For more information, see "*Description of the Business – Funding Arrangements – Securitization Arrangements*" in Appendix K.

### **Share Purchase Loans**

Loans to acquire Element Common Shares previously made to employees who transfer to ECN Capital, together with the rights in the security for those loans, will be assigned to ECN Capital as part of the asset transfer from Element. The loans will become payable upon the individual's cessation of employment with ECN Capital or a Subsidiary thereof, as the case may be. Loans previously made to employees who remain with Element Fleet will remain assets of Element Fleet under the same terms.

For more information on these loans, see "*Indebtedness of Directors, Officers and Employees*".

### **Directors and Officers**

With the exception of Steven Hudson, David McKerroll and Jim Nikopoulos, the management team of Element Fleet will substantially remain in place following the completion of the Element Arrangement. Element Fleet will be led by Bradley Nullmeyer, Element's current President, who will become Chief Executive Officer of Element Fleet following the Element Arrangement, Dan Jauernig, Element's current Chief Operating Officer, who will become President of Element Fleet following the Element Arrangement, and Michel Béland, Element's current Chief Financial Officer, who will continue as Chief Financial Officer of Element Fleet.

Element Fleet will also benefit from continuity at the Board level. William Lovatt, Richard Venn, Joan Lamm-Tennant, Brian Tobin and Steven Hudson will continue as directors of Element Fleet. Bradley Nullmeyer and Paul Damp will be appointed as directors of Element Fleet following completion of the Element Arrangement. Richard Venn will be appointed as the Chair of Element Fleet.

Paul Stoyan, Pierre Lortie and Gordon Giffin will resign from the Element Board of Directors immediately following completion of the Element Arrangement and become directors of ECN Capital. William Lovatt, Bradley Nullmeyer, Steven Hudson and David Morris will be appointed directors of ECN Capital following completion of the Element Arrangement. William Lovatt will be appointed as the Chair of ECN Capital. Following completion of the IAC Arrangement, Bill Holland and Neil Selfe are expected to become directors of ECN Capital.

For more information on the directors and officers of ECN Capital, see “*Directors and Executive Officers*” in Appendix L and for more information on the directors and officers of Element Fleet following the Element Arrangement, see “*Description of the Business – Directors and Officers*” in Appendix K.

## **ECN CAPITAL FOLLOWING THE ARRANGEMENTS**

Reference is made to Appendix L for a detailed description of ECN Capital following the Arrangements.

Reference is also made to Appendix M for the ECN Capital Annual Carve-Out Combined Financial Statements and the ECN Capital Interim Carve-Out Combined Financial Statements, and to Appendix N for the ECN Capital Pro Forma Financial Statements giving effect to the IAC Arrangement.

## **RISK FACTORS**

If the Element Arrangement Resolution is approved at the Meeting and the Element Arrangement is completed, immediately following the Element Effective Time, Shareholders will hold both Element Fleet Common Shares and ECN Capital Common Shares. Accordingly, a Shareholder will become a shareholder of ECN Capital and will remain a shareholder of Element (which will be renamed Element Fleet Management Corp. after the Element Effective Time) and will be subject to all of the risks associated with the operations of Element Fleet and ECN Capital and the industries in which such corporations operate. Those risks include the risk factors set forth in Element’s annual information form and management’s discussion and analysis for the year ended December 31, 2015, which is incorporated by reference into this Management Information Circular. This document has been filed on SEDAR at [www.sedar.com](http://www.sedar.com) and, upon request to the Corporation’s Senior Vice-President, General Counsel & Corporate Secretary by email at [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com) or by mail at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, a Shareholder will be provided with a copy of this document free of charge, and Shareholders are urged to read such risk factors carefully. Additional risk factors relating to the Element Arrangement and the business of Element Fleet following the completion of the Element Arrangement are set out below. For a complete discussion of the risk factors relating to the business of ECN Capital following the completion of the Element Arrangement, please see “*Risk Factors*” in Appendix L to this Management Information Circular.

### **Risks Relating to the Arrangements**

There are numerous risks associated with the proposed separation and with the acquisition of the IAC Shares, including, but not limited to, the risk that conditions precedent or approvals required for the Arrangements are not obtained; the risk that the proposed separation will not be consummated within the anticipated time period or at all, including as the result of regulatory, market or other factors; the risk that the separation will not be tax-free for income tax purposes; the risk that the combined value of the common shares of the two publicly-traded companies will not be equal to or greater than what the value of Element’s Common Shares would have been had the separation not occurred; there being no established market for the Element Fleet Common Shares or the ECN Capital Common Shares; the risk of significant additional costs being incurred if the separation is delayed or does not occur at all; indemnity obligations that Element and ECN Capital will owe to each other following the Element Arrangement; the risk that the separated businesses do not realize all of the expected benefits of the separation; the risk of disruption to Element’s business in connection with the proposed separation and that Element could lose customers and/or business partners as a result of such disruption; the risk that Element or ECN Capital may default in its obligations under the Separation Agreement and/or ancillary agreements; the risk that the proposed separation will require significantly more time and attention from Element’s senior

management and employees than currently anticipated; the risk that Element may find it more difficult to attract, retain and motivate employees during the pendency of the separation and following its completion; and the risk that the yet-to-be determined credit ratings for the two publicly-traded companies may result in higher funding costs for one or both of the companies.

***Completion of the Element Arrangement is subject to a number of conditions precedent and required approvals.***

Some of these conditions precedent are outside Element's control, including receipt of the Final Order. At the hearing for the Final Order, the Court will consider whether to approve the Element Arrangement based on the applicable legal requirements and the evidence before the Court. Other conditions precedent which are outside Element's control include, without limitation, the required Shareholder approval and the approvals of the TSX. There can be no certainty, nor can Element provide any assurance, that all conditions precedent to the Element Arrangement will be satisfied or waived, or, if satisfied or waived, when they will be satisfied or waived. If certain approvals and consents are not received prior to the anticipated Element Effective Date, Element may decide to proceed nonetheless, or it may either delay or amend the implementation of all or part of the Element Arrangement, including possibly delaying the completion of the Element Arrangement in order to allow sufficient time to complete such matters. If the Element Arrangement is delayed or not completed, the market price of the Element Common Shares may be materially adversely affected.

***Element Fleet and ECN Capital could be exposed to substantial tax liabilities if the tax-deferred spinoff requirements are not met.***

The tax treatment of the Element Arrangement is dependent on, among other things, the Element Arrangement complying with all of the requirements of the public company "butterfly reorganization" rules in section 55 of the Tax Act. Although the Element Arrangement is structured with the intent that it comply with these rules, there are certain requirements of these rules that depend on events occurring after the Element Arrangement is completed or that may not be within the control of Element or ECN Capital or that are subject to differing interpretations regarding legal and factual matters (including valuation). If these requirements are not met, Element Fleet and/or ECN Capital would recognize a taxable gain in respect of the Element Arrangement. If incurred, tax liabilities could be substantial and could have a Material Adverse Effect on the financial position of Element and/or ECN Capital, as applicable. No tax ruling has been requested or received from the authorities in Canada in respect of tax consequences of the Element Arrangement. In addition, if such requirements are not met due to an act of Element or ECN Capital, Element Fleet or ECN Capital, as applicable, may in certain circumstances be required to indemnify the other party under the Arrangement Agreement. See "*The Element Arrangement – Arrangement Agreement and Related Agreements*" and "*Material Income Tax Consequences*".

***Element, ECN Capital, or both Element and ECN Capital may be treated as passive foreign investment companies (PFICs) for U.S. federal income tax purposes, in which case U.S. Holders would be subject to a special, generally adverse tax regime, and the U.S. federal income tax consequences to U.S. Holders of the Arrangements may be affected.***

Element has not made a determination as to its status as a PFIC under Section 1297 of the Code for the current or any past taxable years. Further, Element has not made a determination as to whether Element Fleet or ECN Capital may be a PFIC for any taxable year.

The U.S. federal income tax consequences to U.S. Holders of the Arrangements may be affected if Element, ECN Capital, or both Element and ECN Capital were treated as PFICs.

The PFIC rules, including the rules governing any elections that may potentially be made by a U.S. Holder, are extremely complex. Each U.S. Holder should consult its own tax advisor regarding the potential PFIC status of Element and ECN Capital and how the PFIC rules (including elections that may be available thereunder) would affect the U.S. federal income tax consequences of the Arrangements and of the ownership and disposition of Element Common Shares and ECN Capital Common Shares.



For more information, see “*Material Income Tax Consequences - Material U.S. Federal Income Tax Consequences to Shareholders*”.

***The combined trading prices of the Element Fleet Common Shares and ECN Capital Common Shares after the Element Arrangement may be less than the trading price of the Element Common Shares immediately prior to the Element Arrangement.***

There can be no assurance as to the prices at which the Element Fleet Common Shares and the ECN Capital Common Shares will trade following the completion of the Element Arrangement. The combined trading prices of Element Fleet Common Shares and ECN Capital Common Shares received by a Shareholder pursuant to the Element Arrangement may be materially less than the trading price of the Element Common Shares immediately prior to the Element Arrangement.

***There is currently no established market for the Element Fleet Common Shares or the ECN Capital Common Shares, and even if markets do develop, current shareholders of Element may be unwilling or unable to hold Element Fleet Common Shares and/or ECN Capital Common Shares after the Element Arrangement, which could have a negative effect on trading prices.***

There is not currently a public market for the Element Fleet Common Shares or the ECN Capital Common Shares and there can be no assurance that public markets for these shares will develop after the Element Arrangement becomes effective or as to the prices at which trading in these shares will occur even if public markets do develop after the Element Arrangement. If public markets for the Element Fleet Common Shares and/or the ECN Capital Common Shares do develop, there may be a significant number of shareholders who wish to sell their ECN Capital Common Shares or their Element Fleet Common Shares. Some shareholders may determine that they do not wish to have an investment solely in the Fleet Management Business or the Commercial Finance Business, as applicable. In addition, following completion of the Element Arrangement, some shareholders may be subject to investment restrictions which preclude them from holding ECN Capital Common Shares or Element Fleet Common Shares, while other shareholders may elect to sell for different reasons. If there are a significant number of sellers of the ECN Capital Common Shares or the Element Fleet Common Shares without a corresponding number of buyers, the trading price of those shares could decline and such decline could be material.

***Element may delay or amend the implementation of all or part of the Element Arrangement or may proceed with the Element Arrangement even if certain consents and approvals are not obtained on a timely basis.***

Element continues to seek and obtain certain necessary consents and approvals in order to implement the Element Arrangement and related transactions as currently structured. Element may not obtain such consents and approvals on acceptable terms prior to the expected Element Effective Date. If certain approvals and consents are not received prior to the expected Element Effective Date, Element may decide to proceed nonetheless, or it may either delay or amend the implementation of all or part of the Element Arrangement in order to allow sufficient time to complete such matters. If Element amends or delays the implementation of the Element Arrangement or proceeds without certain consents, this may materially adversely affect Element’s or ECN Capital’s financial position.

***Element Fleet and ECN Capital will have indemnification obligations to each other following the Element Arrangement that could be significant.***

Element Fleet and ECN Capital have each agreed to indemnify the other for certain liabilities and obligations related to, among other things, in the case of ECN Capital, the Commercial Finance Business, and in the case of Element Fleet’s indemnity, the Fleet Management Business. These indemnification obligations could be significant. If Element Fleet or ECN Capital has to indemnify the other for any substantial obligations, it may not be able to satisfy those obligations, and this may materially adversely affect Element Fleet’s or ECN Capital’s financial position.

***As separate companies, the respective businesses of Element Fleet and ECN Capital will be less diversified.***

The Fleet Management Business and the Commercial Finance Business operate in different segments of the financing industry. Element may currently derive certain benefits from the diversification resulting from its ownership and operation of both of these businesses. The Arrangement will result in the separation of the ownership and operation of these businesses. Accordingly, this separation will result in reduced diversification which, in turn, will exacerbate the risks associated with the particular industry segment in which each company operates.

***There are certain costs related to the Element Arrangement that must be paid even if the Element Arrangement is not completed.***

There are certain costs related to the Element Arrangement, such as those for legal and accounting advisory services and producing this Circular that must be paid even if the Element Arrangement is not completed. There are also opportunity costs associated with the diversion of management attention away from the conduct of business in the ordinary course. These costs may have an adverse impact on Element's or ECN Capital's financial position.

***Element Fleet or ECN Capital may default in its obligations under the Separation Agreement, and/or ancillary agreements, including the Transition Services Agreement***

For a period of time following the completion of the Element Arrangement, ECN Capital will depend on Element Fleet, and Element Fleet will depend on ECN Capital, to undertake certain actions and provide certain services to facilitate the orderly transfer of the Commercial Finance Business to ECN Capital and the operation of ECN Capital as an independent public company. If Element Fleet or ECN Capital defaults in any of its obligations under the Separation Agreement and/or the ancillary agreements (including the Transition Services Agreement), ECN Capital's or Element Fleet's operations, as applicable, may be materially affected.

***Completion of the IAC Arrangement is subject to a number of conditions precedent and required approvals.***

Some of the conditions precedent to the IAC Arrangement are outside Element's and ECN Capital's control, including receipt of the final Court order with respect to the IAC Arrangement. At the hearing for the final order with respect to the IAC Arrangement, the Court will consider whether to approve the IAC Arrangement based on the applicable legal requirements and the evidence before the Court. Other conditions precedent which are outside Element's and ECN Capital's control include, without limitation, the required IAC Shareholder approval, the receipt for the final prospectus to be filed by IAC and the approval of the TSX. There can be no certainty, nor can Element provide any assurance, that all conditions precedent to the IAC Arrangement will be satisfied or waived, or, if satisfied or waived, when they will be satisfied or waived. If certain approvals and consents are not received prior to the anticipated IAC Effective Date, the IAC Arrangement may not proceed. If the IAC Arrangement is delayed or not completed, the market price of the ECN Capital Common Shares may be materially adversely affected.

***IAC Shareholders have a right of redemption with respect to the IAC Arrangement.***

In accordance with IAC's governing documents, IAC Shareholders have a right to have their IAC Shares redeemed by IAC in connection with its qualifying acquisition, being the IAC Arrangement. Although any redemption will reduce the number of ECN Capital Common Shares issuable by ECN Capital pursuant to the IAC Arrangement, any such redemption will also reduce the assets of IAC that will become available to ECN Capital post-closing. It is a condition precedent to the completion of the IAC Arrangement that holders of less than 25% of the outstanding Class A IAC Shares shall have validly exercised these rights of redemption in respect of the IAC Arrangement. A significant level of redemptions may prevent the completion of the IAC Arrangement or, if completed, would reduce the cash available to ECN Capital

post-closing and as a result may materially impact ECN Capital's funding opportunities related to the IAC Arrangement.

### **Risks Relating to Element Fleet Following the Element Arrangement**

***Element Fleet may be treated as a passive foreign investment company (PFIC) for U.S. federal income tax purposes, in which case U.S. Holders would be subject to a special, generally adverse tax regime.***

Element has not made a determination as to whether Element Fleet may be a PFIC for any taxable year.

The U.S. federal income tax consequences to U.S. Holders of owning and disposing of Element Fleet Common Shares may be affected if Element Fleet were treated as a PFIC.

The PFIC rules, including the rules governing any elections that may potentially be made by a U.S. Holder, are extremely complex. Each U.S. Holder should consult its own tax advisor regarding the potential PFIC status of Element Fleet and how the PFIC rules (including elections that may be available thereunder) would affect the U.S. federal income tax consequences of the ownership and disposition of Element Fleet Common Shares.

For more information, see "*Material Income Tax Consequences - Material U.S. Federal Income Tax Consequences to Shareholders*".

### ***Global Financial Markets and General Economic Conditions May Adversely Affect Element Fleet's Results***

Recent events in the financial markets have demonstrated that businesses and industries throughout the world are very tightly connected to each other. Thus, financial developments seemingly unrelated to Element or to its industry may materially adversely affect Element Fleet over the course of time. For example, general volatility in the equity markets could hurt Element Fleet's ability to raise capital for the financing of acquisitions or other reasons.

Moreover, a reduction in credit, combined with reduced economic activity, may materially adversely affect businesses and industries that collectively constitute a significant portion of Element Fleet's customer base and may make it more difficult for Element Fleet to maintain new business origination and the credit quality of new business at the levels currently forecast. As a result, these customers may need to reduce their purchases and reliance on Element Fleet's services or Element Fleet may experience greater difficulty in receiving payment for its services. Delinquencies, non-accruals and credit losses generally increase during economic slowdowns or recessions. Therefore, to the extent that economic and business conditions are unfavourable, Element Fleet's non-performing assets may become elevated and the value of Element Fleet's portfolio is likely to decrease.

Adverse economic conditions also may decrease the estimated value of the collateral securing some of Element Fleet's loans and leases. Further or prolonged economic slowdowns or recessions could lead to financial losses in Element's portfolio and a decrease in Element Fleet's net finance income, net income and book value. Any of these events, or any other events caused by turmoil in world financial markets, may have a Material Adverse Effect on Element Fleet's business, operating results, and financial condition.

Element Fleet has no control over changes in inflation and interest rates, foreign currency exchange rates and controls or other economic factors affecting its businesses or the possibility of political unrest, legal and regulatory changes in jurisdictions in which Element Fleet operates. These factors could negatively affect Element Fleet's future results of operations in those markets.

***Element Fleet will derive a significant portion of its revenue from program fees and charges paid by its customers. Any decrease in Element Fleet's receipt of such fees and charges, or limitations on our fees and charges, could adversely affect Element's business, results of operations and financial condition.***

Element Fleet's service programs include a variety of fees and charges associated with transactions, cards, reports, optional services and late payments. Element Fleet derived a significant amount of its consolidated revenues from these fees and charges. If the users of Element Fleet's cards or other services decrease their transaction activity, or the extent to which they use optional services, Element Fleet's revenue could be materially adversely affected. In addition, several market factors can affect the amount of our fees and charges, including the market for similar charges for competitive card products and the availability of alternative payment methods. Furthermore, regulators may scrutinize the electronic payments industry's pricing, charges and other practices related to our business. Any legislative or regulatory restrictions on Element Fleet's ability to price its products and services could materially and adversely affect Element Fleet's revenue. Any decrease in Element Fleet's revenue derived from these fees and charges could materially and adversely affect Element Fleet's business, operating results and financial condition.

***Decreased demand for fuel and other vehicle products and services could harm Element Fleet's business and results of operations.***

Demand for fuel and other vehicle products and services may be reduced by factors that are beyond Element Fleet's control, such as the implementation of fuel efficiency standards and the development by vehicle manufacturers and adoption by Element Fleet's customers of vehicles with greater fuel efficiency or alternative fuel sources. To the extent that Element Fleet's customers require less fuel, that decline in purchase volume could reduce our revenues, limiting Element Fleet's profitability and preventing Element Fleet from taking on other initiatives.

***Concentration of Leases and Loans within the Fleet Leasing Industry or within a Particular Region May Negatively Impact Element Fleet's Financial Condition***

Following the Element Arrangement, Element Fleet will specialize in vehicle fleet management. As a result, Element Fleet will have a significant concentration of risk exposure related to this industry segment. If this industry segment experiences adverse economic or business conditions, Element Fleet's delinquencies, default rate and charge-offs may increase, which may negatively impact its financial condition and results of operations.

***Lack of Funding May Limit Element Fleet's Ability to Originate Leases***

Element is dependent upon its ability to secure funding for its loans and leases to customers and to fund its existing obligations. While Element currently has sufficient funding, there can be no assurance that additional financing will be obtained. In the past, Element has obtained the cash required for its operations through the issuance of equity interests to institutional and accredited investors, by borrowing money through its credit or other term funding facilities, and the syndication and securitization of certain of Element Fleet's leases and loans. Element Fleet may not be able to continue to access these or other sources of funds.

***The Element Fleet Pro Forma Financial Statements May Not Reflect What Element Fleet's Financial Position, Results of Operations or Cash Flows Would Have Been Had Element Fleet Operated as a Stand-Alone Company or What Element Fleet's Financial Position, Results of Operations or Cash Flows Will be in the Future.***

The Element Fleet Pro Forma Financial Statements appearing elsewhere in this prospectus have been prepared on a "pro forma" basis derived from the consolidated financial statements of Element as if Element Fleet had been operating as a stand-alone company for all periods presented. Element believes

management has made reasonable assumptions underlying the Element Fleet Pro Forma Financial Statements, including reasonable allocations of corporate expenses from Element, such as expenses related to employee benefits, finance, human resources, legal, information technology and executive management. However, because the Element Fleet Pro Forma Financial Statements are based on certain assumptions and include allocations of corporate expenses from Element, the Element Fleet Pro Forma Consolidated Financial Statements may not reflect what Element Fleet's financial position, results of operations or cash flows would have been had Element Fleet operated as a stand-alone company during the historical periods presented or what Element Fleet's financial position, results of operations or cash flows will be in the future.

***Concentration of Debt Financing Sources May Increase Element Fleet's Funding Risks***

Element has obtained secured funding from a number of financial institutions. Element Fleet's reliance on such financial institutions for a significant amount of its funding will expose Element Fleet to funding risks. If these financial institutions decided to terminate, or not extend these secured borrowing arrangements, Element Fleet's operations could be materially adversely affected.

***Inability to Attract and Retain Employees May Limit Element Fleet's Ability to Grow Its Business***

If Element Fleet is not able to attract and retain top employees, its ability to compete may be harmed. Element Fleet's success is also highly dependent on its continuing ability to identify, hire, train, retain and motivate highly qualified management, technical, sales and marketing personnel. In order to grow Element Fleet's business, it must attract and retain qualified personnel, especially origination and credit personnel with relationships with referral sources and an understanding of the equipment financing businesses and the industries in which Element Fleet's borrowers operate. In addition, in Element Fleet's effort to attract and retain critical personnel, Element Fleet may experience increased compensation costs that are not offset by either improved productivity or higher prices for Element Fleet's services.

Many of the financial institutions that Element competes with for experienced personnel may be able to offer more attractive terms of employment. If any of Element Fleet's key origination personnel leave, Element Fleet's new equipment finance origination volume from their business contacts may decline or cease. In addition, Element invests significant time and expense in training its employees, which increases their value to competitors who may seek to recruit them and increases the costs of replacing them. These factors may have a Material Adverse Effect on Element Fleet's ability to grow its business.

***Loss of Key Personnel May Significantly Harm Element Fleet's Business***

Element Fleet's performance will be substantially dependent on the performance of its executive officers and key employees. Further, Element Fleet does not maintain "key person" life insurance policies on any of its employees. The loss of the services of any of Element Fleet's executive officers or other key employees could significantly harm Element Fleet's business. Element Fleet provides a competitive compensation package, which includes profit sharing and medical benefits as it continuously seeks to align the interest of employees and shareholders.

***A Competitive Business Environment May Limit the Growth of Element Fleet's Business***

Element's Fleet Management Business segment is highly competitive and characterized by competitive factors that vary based upon product and geographic region. Element Fleet competes with a wide variety of competitors that include independent lease finance companies, captive finance companies owned by manufacturers and distributors, banks, third-party brokers and other large and mid-sized fleet management companies.

### ***Facilities May Limit Element Fleet's Operation Flexibility***

Element's funding arrangements, including its various securitization facilities and its existing senior credit facility, contain financial and non-financial covenants, such as requirements that Element comply with one or more of tangible net worth, consolidated debt to shareholders equity ratio, loan loss ratios and change of control provisions. Complying with such covenants may at times necessitate that Element forego other favourable business opportunities, such as acquisitions. Moreover, Element's failure to comply with any of these covenants would likely constitute a default under such facilities and could give rise to an acceleration of some, if not all, of Element's then outstanding indebtedness, which would have a Material Adverse Effect on Element's business.

From time to time, Element Fleet may owe amounts under its existing senior credit facility and may otherwise increase its debt to fund the growth of Element Fleet's business. While Element match funds its borrowings under its secured funding facilities, if the matched income earning assets securing the leases or loans underperform Element may to some extent have to utilize cash flow or capital resources to fund its debt service payments. If Element Fleet's cash flow and capital resources are insufficient to service amounts owed under its secured funding facilities, the existing senior credit facility or any future indebtedness, as applicable, Element Fleet may be forced to reduce or delay capital expenditures, dispose of assets, issue equity or incur additional debt to obtain necessary funds, or restructure its debt, any or all of which could have a Material Adverse Effect on Element Fleet's business, financial condition and results of operations. In addition, Element Fleet cannot guarantee that it would be able to take any of these actions on terms acceptable to Element Fleet, or at all, that these actions would enable Element Fleet to continue to satisfy its capital requirements or that these actions would be permitted under the terms of Element Fleet's various debt agreements.

### ***Illiquidity Risk that Element Fleet Will not Generate Sufficient Cash***

Illiquidity risk is the risk that Element Fleet will not generate sufficient cash or cash equivalents in a timely and cost effective manner to satisfy its financial obligations as they come due. Growth in Element Fleet's lease portfolio will require ongoing availability of secured financing and funding lines sufficient to accommodate projected growth objectives.

### ***Inability to Realize Benefits from Growth and Through Acquisitions May Harm Element Fleet's Financial Condition***

Element Fleet's inability to realize the potential benefits from its growth strategy and from the integration of its acquisitions may adversely impact Element Fleet's operating results. Element Fleet's ability to realize such benefits will be based on its management of growth and its integration of acquisitions, and will require it to continue to build its operational, financial and management controls, human resource policies, and reporting systems and procedures. Element Fleet's ability to manage its growth and integrate acquisitions will depend in large part upon a number of factors, including the ability of Element Fleet to:

- maintain Element Fleet's internal operational and financial controls, so that it can maintain control over operations and provide support to other functional areas as the number of personnel and size of its business increases;
- attract and retain qualified personnel in order to continue to develop Element Fleet's origination platforms and provide services that respond to evolving customer needs;
- maintain support capacity for customers as sales increase, so that Element Fleet can provide post-sales support without diverting resources from origination efforts;
- secure additional sources of funding to undertake strategic acquisitions, while implementing a prudent capital structure for Element Fleet; and

- expand its network of vendor relationships to create an enhanced presence in the evolving marketplace for Element Fleet's services.

Element Fleet's inability to achieve any of these objectives could harm its business, financial condition and/or results of operations.

### ***Element has Grown Very Rapidly, Which May Cause Significant Challenges***

Element's growth since its inception has caused significant demands on Element's credit underwriting, accounting, legal and operational infrastructure, and increased expenses. Element Fleet's future growth will depend, among other things, on its ability to maintain an operating platform and management systems sufficient to address its growth and will require Element Fleet to incur additional expenses and to commit additional senior management and operational resources. As a result, Element Fleet may face challenges in: (i) maintaining adequate financial and business controls; (ii) managing the credit underwriting process and monitoring credit risks and losses or delinquencies in Element Fleet's asset portfolio; (iii) implementing new or updated information and financial systems and procedures; and (iv) training, managing and appropriately sizing its work force and other components of its business on a timely and cost-effective basis. There can be no assurance that Element Fleet will be able to manage its expanding operations effectively or that it will be able to continue to grow, and any failure to do so could adversely affect its ability to generate revenue and control its expenses.

### ***Complications in Managing Acquisitions May Negatively Affect Element Fleet's Operating Results***

Element Fleet does not currently have any agreement or commitments to acquire any businesses. However, Element Fleet continues to seek opportunities to acquire or invest in businesses that could expand, complement or otherwise relate to the Fleet Management Business. Element Fleet may also consider, from time to time, opportunities to engage in joint ventures or other business collaborations with third-parties to address particular market segments. These activities create risks such as: (i) the need to integrate and manage the businesses, operations, services, personnel and systems acquired with Element Fleet's own business, (ii) additional demands on Element Fleet's resources, systems, procedures and controls, (iii) disruption of Element Fleet's ongoing business, (iv) diversion of management's attention from other business concerns, and (v) potential for additional regulatory scrutiny. Moreover, these transactions could involve: (i) substantial investment of funds or financings by issuance of debt or equity securities; (ii) substantial investment with respect to technology transfers and operational integration; and (iii) the acquisition or disposition of businesses. Also, such activities could result in one-time charges and expenses and have the potential to either dilute the interests of shareholders of Element Fleet or result in the issuance of, or assumption of, debt. Such acquisitions, investments, joint ventures or other business collaborations may involve significant commitments of Element Fleet's financial and other resources. Any such activity may not be successful in generating revenue, income or other returns to Element Fleet, and the resources committed to such activities will not be available to Element for other purposes. Moreover, if Element Fleet is unable to access capital markets on acceptable terms or at all, Element Fleet may not be able to consummate acquisitions, or may have to do so on the basis of a less than optimal capital structure. Element Fleet's inability: to take advantage of growth opportunities for its business, or to address risks associated with acquisitions or investments in businesses, may negatively affect Element Fleet's operating results. Additionally, any impairment of goodwill or other intangible assets acquired in an acquisition or in an investment, or charges to earnings associated with any acquisition or investment activity, may materially reduce Element Fleet's earnings which, in turn, may have an adverse material effect on the price of Element Fleet's securities. If Element Fleet does complete such transactions, Element Fleet cannot be sure that they will ultimately strengthen its competitive position or that they will not be viewed negatively by customers, securities analysts or investors.

### ***Credit Risks May Lead to Unexpected Losses***

Element's net investment in finance assets for its own account and to be held for future term funding exposes Element Fleet to credit risk. Credit risk is the risk that Element Fleet will incur an unexpected loss because its customers and counterparties fail to discharge their contractual obligations. Credit risk arises principally through Element Fleet's finance receivables that are a result of transactions within the equipment finance industry and, as such, contain an element of credit risk in the event that obligors are unable to meet the terms of their agreements. Element Fleet is exposed to credit risk as it arises from events and circumstances outside of Element Fleet's control relating to adverse economic conditions, business failure or fraud. The types of fraud to which Element Fleet is exposed generally fall into one of three primary categories: (i) vendor/dealer fraud; (ii) customer fraud; and (iii) employee fraud. Excessive credit losses could adversely affect Element Fleet's ability to generate and fund new financings.

In order to manage credit risk, Element operates using a clearly identified set of policies and procedures throughout its business processes. This includes a detailed analysis of the value of collateral security, the applicant's financial condition and the ability to service the debt or lease obligations at inception and throughout the term of the lease or loan. Element also manages and controls credit risk by setting limits on the amount of risk it is willing to accept for individual counterparties on direct financing leases and loans.

### ***Credit Ratings and Credit Risk may Change***

While Element expects that the credit rating of Element Fleet following the Element Arrangement will improve in relation to Element's current credit rating, there can be no assurance that its credit rating will improve or be maintained. In any case, the credit ratings assigned to Element are not a recommendation to buy, hold or sell securities of Element. A rating is not a comment on the market price of a security nor is it an assessment of ownership given various investment objectives. There can be no assurance that the credit ratings assigned to Element will remain in effect for any given period of time and ratings may be upgraded, downgraded, placed under review, confirmed and discontinued by an applicable credit ratings agency at any time. Real or anticipated changes in credit ratings may affect the market value of securities of Element Fleet. In addition, real or anticipated changes in credit ratings may affect Element Fleet's ability to obtain short-term and long-term financing and the cost at which Element Fleet can access the capital markets.

### ***Element Fleet's Provision for Credit Losses May Prove Inadequate***

Element's business depends on the creditworthiness of its customers and their ability to fulfill their obligations to Element. Element maintains a provision for credit losses that reflects management's judgment of losses inherent in the portfolio. Element periodically reviews its provision for adequacy considering economic conditions and trends, collateral values, and credit quality indicators, including past charge-off experience and levels of past due loans, past due loan migration trends, and non-performing assets.

Element Fleet's provision for credit losses may prove inadequate and Element Fleet cannot assure that it will be adequate over time to cover credit losses in Element Fleet's portfolio because of adverse changes in the economy or events adversely affecting specific customers, industries or markets. Element Fleet's credit reserves may not keep pace with changes in the creditworthiness of Element Fleet's customers or in collateral values. If the credit quality of Element Fleet's customer base declines, if the risk profile of a market, industry, or group of customers changes significantly, or if the markets for equipment or other collateral deteriorates significantly, any or all of which would adversely affect the adequacy of Element Fleet's reserves for credit losses, it could have a Material Adverse Effect on Element Fleet's business, results of operations, and financial position.



While credit losses have been minimal to date, Element has and will continue to provide for credit losses based on industry specific historical losses considering the categories, segmentation and distribution of the assets being financed and its customer base.

***The Collateral Securing a Loan or a Lease May Not Be Sufficient***

While most of Element's loans and leases are secured by a lien on specified collateral of the customer, there is no assurance that Element has obtained or properly perfected its liens, or that the value of the collateral securing any particular loan will protect Element from suffering a partial or complete loss if the loan or lease becomes non-performing and Element moves to foreclose on the collateral. In such event, Element Fleet could suffer loan or lease losses which could have a Material Adverse Effect on its revenue, net income, financial condition and results of operations.

When underwriting collateral, Element makes an estimate of the value of the collateral under a distressed disposition. The estimated realization value of equipment during the life of the lease is an important element in the leasing business. A decrease in the market value of leased equipment at a rate greater than the rate Element Fleet projected, whether due to rapid technological or economic obsolescence, unusual wear and tear on the equipment, excessive use of the equipment, recession or other adverse economic conditions, or other factors, would adversely affect the current realization values of such equipment.

Further, certain equipment realization values are dependent on the manufacturers' or vendors' warranties, reputation, and other factors, including market liquidity. The degree of realization risk varies by transaction type.

***Change in Interest Rates May Adversely Affect Element Fleet's Financial Results***

Interest rate risk relates to the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

In order to mitigate interest rate risk, Element structures its secured funding arrangements to maintain a fixed interest rate spread between the interest paid on both the term funding facilities and the revolving facilities and the interest received on the underlying finance receivables. This fixed interest rate spread is achieved by match funding transactions on both a duration and interest rate basis. In some instances, matching the interest rate basis requires that Element enter into interest rate swaps in order to align the interest rate variability.

Element does experience short-term interest rate risk on these finance receivables during the period between fixing the contractual rate under the finance contracts with its customers and the locking of the interest rate under its funding facilities. During this time, an upward movement in Government of Canada or U.S. Bond rates can negatively impact the spread on the transaction. In order to mitigate this risk, Element carefully monitors its borrowing costs to ensure its rates reflect appropriate spreads to insulate against sudden unexpected interest rate movements. In order to further mitigate risk, Element undertakes regular securitizations to ensure its finance contracts are appropriately match-funded by its secured funding arrangements, which reduces the warehouse period and the likelihood that a significant movement in bond rates will negatively impact the spreads on such transactions. Element also maintains adequate balance sheet liquidity to allow it flexibility in developing a strategy of holding versus securitizing such finance assets.

After considering the fixed interest rate spread on the secured funding programs and high exposure to fixed rate finance receivables described above, Element's interest rate risk is limited to cash and restricted cash, floating rate finance receivables which are neither hedged nor part of a match-funded secured funding arrangement, and its senior credit facility. A change in interest rates may therefore adversely affect Element Fleet's financial results.

### ***Element Fleet's Results are Difficult to Forecast and May Fluctuate Substantially***

Element Fleet's quarterly and annual operating results are likely to fluctuate in the future, despite that the Fleet Management Business has traditionally been more stable than Element's other current market segments. These fluctuations could cause Element Fleet's stock price to decline. In some future quarters or years, Element Fleet's financial or operating results may not meet the expectations of securities analysts and investors which could result in a decline in the price of the Element Fleet Common Shares. Many other different factors could cause Element Fleet's results of operations to fluctuate from quarterly and annually, including:

- the success of Element Fleet's origination activities, the timing of launch and market acceptance of Element Fleet's products, and the increasing penetration of services by its Fleet Management Business customers;
- the costs of maintaining manufacturing facilities operating below capacity;
- credit losses and default rates;
- Element Fleet's ability to enter into financing arrangements;
- competition;
- seasonal fluctuations in Element Fleet's business, including the timing of transactions;
- costs of compliance with regulatory requirements;
- the timing and effect of any future acquisitions;
- personnel changes;
- changes in accounting rules;
- changes in prevailing interest rates and foreign exchange rates;
- general changes to the Canadian, U.S., Mexican, Australian, New Zealand and global economies; and
- political conditions or events.

Element bases its current and future operating expense levels and its investment plans on estimates of future net finance income, origination activity and rate of growth. Any shortfalls in Element Fleet's net finance income and management, origination activity or in its expected growth rates could result in decreases in its share price.

The decision whether or not to pay dividends and the amount of any such dividends will be subject to the discretion of the Board of Directors of Element Fleet, which regularly evaluates proposed dividend payments and the solvency test requirements of the OBCA. In addition, the level of dividends per Element Fleet Common Share will be affected by the number of outstanding Element Fleet Common Shares and other securities that may be entitled to receive cash dividends or other payments. Dividends may be increased, reduced or suspended depending on the Corporation's operational success. The market value of Element Fleet Common Shares may deteriorate if Element Fleet is unable to meet dividend expectations in the future, and that deterioration may be material.

### ***Element Fleet May Not Pay Dividends***

Although Element currently pays quarterly cash dividends on its Element Common Shares, the dividend policy of Element Fleet following completion of the Element Arrangement will be determined by the newly constituted board of directors of Element Fleet, and cash dividends may be reduced or suspended (see “*Element Fleet Following the Element Arrangement – Capital Structure and Market for Securities – Dividend Policy*”). Payment of any future dividends by Element Fleet depends on Element Fleet’s cash flows. The amount of cash available to Element Fleet to pay dividends, if any, can vary significantly from period to period for a number of reasons, including, among other things: Element Fleet’s operational and financial performance; fluctuations in market prices; the amount of cash required or retained for debt service or repayment; amounts required to fund capital expenditures and working capital requirements; access to capital markets; foreign currency exchange rates and interest rates; and the other risk factors set forth herein. A failure to pay dividends or a reduction or cessation of the payment of dividends could materially adversely affect the trading price of Element Fleet Common Shares.

### ***Information Technology Infrastructure Security Breaches May Negatively Impact Element Fleet***

Despite the implementation of security measures, Element’s information systems and those of its contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such events could cause interruption of our operations. Element Fleet’s business depends on the efficient and uninterrupted operation of computer and communications systems and networks, hardware and software systems and other information technology. If systems were to fail or Element Fleet was unable to successfully expand the capacity of these systems or was unable to integrate new technologies into its existing systems, its operations and financial results could suffer.

### ***Litigation May Negatively Impact Element Fleet’s Financial Condition***

From time to time in the ordinary course of its business, Element Fleet may become involved in various legal proceedings, including commercial, employment, class action and other litigation and claims, as well as governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management’s attention and resources and cause Element Fleet to incur significant expenses. Furthermore, because litigation is inherently unpredictable, the results of any such actions may have a Material Adverse Effect on Element Fleet’s business, operating results or financial condition.

### ***Inability to Achieve Expected Savings from Restructurings and Prior Acquisitions***

Element Fleet may, from time-to-time, seek to restructure its operations or integrate prior acquisitions, which may require it to incur restructuring charges. Element Fleet may not be able to achieve the level of benefits that it expects to realize from its restructuring or integration activities, or it may not be able to realize these benefits within the expected time frames. Furthermore, upon the closure of any facilities in connection with restructuring efforts, Element Fleet may not be able to divest such facilities at a fair price or in a timely manner. Changes in the amount, timing and character of charges related to restructurings and the failure to complete or a substantial delay in completing any restructuring or integration plan could have a Material Adverse Effect on Element’s business.

### ***Foreign Currency Risk Creates Exposure that May Negatively Impact Element Fleet***

Foreign currency risk is the risk of exposure to foreign currency movements on Element Fleet’s lending and/or net investment in foreign subsidiaries, whereby there is a risk the exchange rates (in particular the U.S. dollar/Canadian dollar rate) will be materially different when a loan or finance receivable is remeasured for accounting purposes, matures or when a foreign Subsidiary is divested. Element mitigates and manages this risk on Element’s lending portfolio by entering into foreign exchange forward contracts to reduce or hedge its exposure to foreign currency risk. Element currently partially hedges its net investment in foreign subsidiaries. Element is also exposed to foreign currency risk related to net

income generated from foreign currency denominated assets and operations. This risk represents the impact of fluctuations to the average Canadian and respective foreign currency exchange rate used to translate the Corporation's foreign currency denominated net income into Canadian dollar equivalent during each period. Element Fleet may mitigate and manage this type of foreign currency risk by entering into foreign currency forward contracts to reduce or hedge this exposure to foreign currency risk.

### **Taxes**

Element is a Canadian corporation which operates in multiple jurisdictions. As a result, it is subject to the tax laws and regulations of Canadian federal, provincial and local governments and of the governments of foreign jurisdictions in which Element operates, as well as to any income tax treaties between Canada and any such jurisdictions, and to the risk that those tax laws, regulations and treaties may change in the future. Any such changes could adversely affect the taxes payable, including withholding taxes, and the effective tax rate in the jurisdictions in which Element operates.

The determination of Element's provision for income taxes in Canada and elsewhere, including current and deferred tax assets and liabilities on Element's financial statements, require estimates, interpretation and significant judgment. Various internal and external factors may have favourable or unfavourable effects on future provisions for income taxes and Element's effective income tax rate. These factors include, but are not limited to, changes in tax laws, regulations and/or rates, results of audits by tax authorities, changing interpretations of existing tax laws or regulations, changes in estimates of prior years' items, and changes in overall levels of income before taxes. Furthermore, new accounting pronouncements or new interpretation of existing accounting pronouncements can have a material impact on Element's effective income tax rate.

Element Fleet could be impacted by certain tax treatments for various revenue streams in different tax jurisdictions. If a tax authority has a different interpretation from Element Fleet's, it could potentially impose additional taxes, penalties or fines. This would potentially reduce the amounts of revenue ultimately received by Element Fleet.

Element, from time to time, has executed or may execute reorganization transactions impacting its tax structure. If a tax authority has a different interpretation from Element's, it could potentially impose additional taxes, penalties or fines on Element Fleet.

### ***Volatility of Element Fleet Common Share Price***

Market prices for fleet management and other financing corporations, including those of Element, have at times been volatile and subject to substantial fluctuations. The stock market, from time-to-time, experiences significant price and volume fluctuations unrelated to the operating performance of particular companies. Future announcements concerning Element Fleet or its competitors, including those pertaining to financing arrangements, government regulations, developments concerning regulatory actions affecting Element Fleet, litigation, additions or departures of key personnel, cash flow, and economic conditions and political factors in the U.S., the E.U., Canada or other regions may have a significant impact on the market price of the Element Fleet Common Shares. In addition, there can be no assurance that the Element Fleet Common Shares will continue to be listed on the TSX.

The market price of the Element Fleet Common Shares could fluctuate significantly for many other reasons, including for reasons unrelated to our specific performance, such as reports by industry analysts, investor perceptions, or negative announcements by our customers, competitors or suppliers regarding their own performance, as well as general economic and industry conditions. For example, to the extent that other large companies within our industry experience declines in their stock price, the share price of the Element Fleet Common Shares may decline as well. In addition, when the market price of a company's shares drops significantly, shareholders often institute securities class action lawsuits against the company. A lawsuit against us could cause us to incur substantial costs and could divert the time and attention of our management and other resources.

***Sales of a substantial number of the Element Fleet Common Shares may cause the Price of the Element Fleet Common Shares to Decline.***

Any sales of substantial numbers of the Element Fleet Common Shares in the public market or the perception that such sales or exercise might occur may cause the market price of the Element Fleet Common Shares to decline.

The distribution of the Element Fleet Common Shares to Shareholders whose investment profile may not be consistent with Element Fleet's business following the Element Arrangement may lead to significant sales of the Element Fleet Common Shares or a perception that such sales may occur, either of which could have a Material Adverse Effect on the market for and market price of the Element Fleet Common Shares.

***Dilution from Further Equity Financing and Declining Share Price***

If Element Fleet raises additional financing through the issuance of equity securities (including securities convertible into or exchangeable for equity securities) or completes an acquisition or merger by issuing additional equity securities, such issuance may substantially dilute the interests of shareholders of Element Fleet and reduce the value of their investment. The market price of the Element Fleet Common Shares could decline as a result of issuances of new shares or sales by existing shareholders of common shares in the market or the perception that such sales could occur. Sales by shareholders might also make it more difficult for Element Fleet itself to sell equity securities at a time and price that it deems appropriate.

***Issue of Preferred Shares by Element Fleet***

Element's Board of Directors has the authority to issue undesignated preferred shares in one or more series and, before issue, to fix the designation of, and the rights and restrictions attached to, the preferred shares of each series, without consent from holders of Element Common Shares. Preferred shares could be issued with voting, dividend, liquidation, dissolution, winding-up and other rights superior to those of the holders of Element Fleet Common Shares. Element has previously issued four series of preferred shares (the Series A Shares, Series C Shares, Series E Shares and Series G Shares), which preferred shares will remain obligations of Element Fleet following the Element Arrangement.

***Securities Industry Analyst Research Reports***

The trading market for the Element Common Shares is influenced by the research and reports that industry or securities analysts publish about Element or any of its partners. If covered, a decision by an analyst to cease coverage of Element Fleet or fail to regularly publish reports on Element Fleet, could cause Element to lose visibility in the financial markets, which in turn could cause the stock price or trading volume to decline. Moreover, if an analyst who covers Element or any of its partners downgrades Element Fleet's stock, or if operating results do not meet analysts' expectations, the stock price could decline.

***Compliance with Laws and Regulations Affecting Public Companies***

Any future changes to the laws and regulations affecting public companies, compliance with existing provisions of NI 52-109 and the other applicable Canadian securities laws and regulation and related rules and policies, may cause Element Fleet to incur increased costs as it evaluates the implications of new rules and implements any new requirements. Delays or a failure to comply with the new laws, rules and regulations could result in enforcement actions, the assessment of other penalties and civil suits.

Any new laws and regulations may make it more expensive for Element Fleet to provide indemnities to Element Fleet's officers and directors and may make it more difficult to obtain certain types of insurance, including liability insurance for directors and officers. Accordingly, Element Fleet may be forced to accept

reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for Element Fleet to attract and retain qualified persons to serve on its Board of Directors or as executive officers. Element Fleet may be required to hire additional personnel and utilize additional outside legal, accounting and advisory services, all of which could cause general and administrative costs to increase beyond what Element currently has planned. Element is continuously evaluating and monitoring developments with respect to these laws, rules and regulations and it cannot predict or estimate the amount of the additional costs it may incur or the timing of such costs.

Element is required annually to review and report on the effectiveness of its internal control over financial reporting in accordance with NI 52-109. The results of this review are reported in Element's annual report and in its Management's Discussion and Analysis of Results of Operations and Financial Condition. Element's Chief Executive Officer and Chief Financial Officer are required to report on the effectiveness of Element's internal control over financial reporting.

Management's review is designed to provide reasonable assurance, not absolute assurance, that all material weaknesses existing within Element's internal controls are identified. Material weaknesses represent deficiencies existing in Element's internal controls that may not prevent or detect a misstatement occurring which could have a Material Adverse Effect on the quarterly or annual financial statements of Element. In addition, management cannot provide assurance that the remedial actions being taken by Element to address any material weaknesses identified will be successful, nor can management provide assurance that no further material weaknesses will be identified within its internal controls over financial reporting in future years.

If Element Fleet fails to maintain effective internal controls over its financial reporting, there is the possibility of errors or omissions occurring or misrepresentations in Element Fleet's disclosures which could have a Material Adverse Effect on Element Fleet's business, its financial statements and the value of the Element Fleet Common Shares.

### ***Public Company Requirements May Strain Resources***

As a public company, Element is subject to the reporting requirements of the *Securities Act* (Ontario), as amended, the regulations and rules thereto, including the national and multilateral instruments adopted as rules, decisions, rulings and orders promulgated under the Act and the published policy statements issued by the OSC and the listing requirements of the TSX. The ever increasing obligations of operating as a public company will require significant expenditures and will place additional demands on management as Element Fleet complies with the reporting requirements of a public company. Element Fleet may need to hire additional accounting, financial and legal staff with appropriate public company experience and technical accounting and regulatory knowledge.

In addition, actions that may be taken by any significant shareholders, if any, may divert the time and attention of Element Fleet's Board of Directors and management from its business operations. Campaigns by significant investors to effect changes at publicly traded companies have increased in recent years. If a proxy contest were to be pursued by any of Element Fleet's shareholders, it could result in substantial expense to Element Fleet and consume significant attention of management and the Board of Directors. In addition, there can be no assurance that any shareholder will not pursue actions to effect changes in the management and strategic direction of Element Fleet, including through the solicitation of proxies from Element Fleet's stockholders.

## MATERIAL INCOME TAX CONSEQUENCES

### Material Canadian Federal Income Tax Consequences to Shareholders

The following is a summary of the principal Canadian federal income tax considerations relating to the Element Arrangement generally applicable to certain Shareholders as specified herein.

This summary is not applicable to a Shareholder: (i) that is a “financial institution” for the purposes of the “mark-to-market” rules in the Tax Act; (ii) that is a “specified financial institution” for the purposes of the Tax Act; (iii) an interest in which is a “tax shelter investment” for the purposes of the Tax Act; (iv) that has elected to determine its “Canadian tax results” in a “functional currency” that is currency of a country other than Canada, each for purposes of the Tax Act; or (v) who, alone or together with persons with whom such Shareholder does not deal at arm’s length, controls ECN Capital, or beneficially owns ECN Capital Common Shares having a fair market value of more than 50% of the fair market value of all of outstanding ECN Capital Common Shares, immediately after the exchange. This summary also does not apply to a Shareholder who has entered or will enter into a “derivative forward agreement” or a “dividend rental arrangement” as those terms are defined in the Tax Act with respect to their Element Common Shares, Element Butterfly Shares or ECN Capital Common Shares, or that is a corporation resident in Canada and is, or becomes, as part of a transaction or event or series of transactions or events that includes any transaction contemplated by the Arrangement, controlled by a non-resident corporation for purposes of the foreign Affiliate dumping rules in section 212.3 of the Tax Act.

This summary does not address the Canadian federal income tax considerations applicable to holders of Element Options, Element DSUs, Element PSUs or Element RSUs.

This summary is based upon the current provisions of the Tax Act and the regulations thereunder as enacted to the date of this Management Information Circular, the Tax Proposals and an understanding of the current administrative policies and assessing practices of the CRA made publicly available prior to the date of this Management Information Circular. There can be no assurance that any of the Tax Proposals will be enacted in the form announced or at all. This summary is not exhaustive of all considerations under the Tax Act and, except for the Tax Proposals, does not take into account or anticipate any changes in the law or administrative policies or assessing practices of the CRA, whether by judicial, governmental or legislative action or decision or otherwise, nor does it take into account other federal tax legislation or the tax legislation of any province or territory of Canada, or of any foreign jurisdiction. Provincial and territorial income tax legislation varies in Canada and in some cases differs from federal income tax legislation.

This summary is of a general nature only and is not intended to be, and should not be construed to be, legal, business or tax advice to any particular Shareholder, and no representations with respect to the tax consequences to any particular Shareholder are made. Shareholders should consult their own tax advisors to determine the tax consequences to them of the Element Arrangement having regard to their particular circumstances, including the application and effect of the income and other tax laws of any country, province, territory, state or local tax authority.

#### ***Shareholders Resident in Canada***

The following portion of the summary is applicable generally to Shareholders who: (i) at all relevant times are resident in Canada for purposes of the Tax Act; (ii) deal at arm’s length with Element and ECN Capital, and are not “affiliated” with, Element or ECN Capital for purposes of the Tax Act; and (iii) hold their Element Common Shares, and will hold all other shares referred to herein, as “capital property” (“**Resident Shareholders**”).

Generally, the Element Common Shares, the Element Butterfly Shares and the ECN Capital Common Shares will be considered to be capital property to a Resident Shareholder, provided that such Resident Shareholder does not use or hold such shares in the course of carrying on a business and has not

acquired such shares in one or more transactions considered to be an adventure or concern in the nature of trade. Certain Resident Shareholders whose Element Common Shares, Element Butterfly Shares or ECN Capital Common Shares might not otherwise qualify as capital property may be entitled to make an irrevocable election in accordance with subsection 39(4) of the Tax Act to have such shares, and any other “Canadian security” (as defined in the Tax Act) owned in the taxation year in which the election is made and all subsequent taxation years, deemed to be capital property. Resident Shareholders contemplating making such an election should consult their own tax advisors.

#### *Exchange of Element Common Shares for Element Fleet Common Shares and Element Butterfly Shares*

Each Resident Shareholder that is a Participating Shareholder (a “**Resident Participating Shareholder**”) will dispose of each Element Common Share held by such holder in consideration for the issuance by Element of one Element Fleet Common Share and that number of Element Butterfly Shares as is equal to the Butterfly Multiple. A Resident Participating Shareholder will be deemed to have disposed of each such Element Common Share for proceeds of disposition equal to the adjusted cost base of such shares immediately before the disposition. Accordingly, a Resident Participating Shareholder will not realize a capital gain or a capital loss as a result of such disposition.

The aggregate adjusted cost base of the Element Fleet Common Shares and Element Butterfly Shares acquired by a Resident Participating Shareholder on this share exchange will be equal to the aggregate adjusted cost base immediately before the share exchange of the Element Common Shares disposed of by the holder on the share exchange. The adjusted cost base immediately before the share exchange of a Resident Participating Shareholder’s Element Common Shares will effectively be allocated between i) the Resident Participating Shareholder’s Element Fleet Common Shares and ii) the Resident Participating Shareholder’s Element Butterfly Shares, in proportion to the relative fair market value of such shares immediately after the share exchange. Element intends to inform Resident Shareholders on Element’s website following the Element Arrangement as to Element’s estimate of the proportionate allocation; however, Element’s allocation will not be binding on the CRA or on any particular Resident Shareholder.

#### *Exchange of Element Butterfly Shares for ECN Capital Common Shares*

The Element Butterfly Shares acquired by a Resident Participating Shareholder pursuant to the Element Arrangement will be transferred by the Resident Participating Shareholder to ECN Capital in consideration for the issuance to the particular Resident Participating Shareholder of such number of ECN Capital Common Shares equal to the number of Element Common Shares held by the Resident Participating Shareholder immediately prior to the Element Effective Time. On such transfer, a Resident Shareholder who does not choose to include in computing income for the year the resulting gain or loss, as otherwise determined, will be deemed to have disposed of such Element Butterfly Shares for proceeds of disposition equal to the adjusted cost base of such shares immediately prior to such transfer. Accordingly, such Resident Participating Shareholder will not realize a capital gain or a capital loss as a result of this share exchange. The cost of the ECN Capital Common Shares acquired by such Resident Participating Shareholder will be equal to the adjusted cost base immediately before the share exchange of the Element Butterfly Shares disposed of by the holder on the share exchange.

A Resident Participating Shareholder who chooses to include in computing income for the year all or any portion of the resulting gain or loss on such share exchange, as otherwise determined, will realize a capital gain (or capital loss) on the disposition of such holder’s Element Butterfly Shares to the extent that such holder’s proceeds of disposition (which will generally be considered to be the fair market value of the ECN Capital Common Shares received on the exchange), net of any reasonable costs of disposition, exceed (or are less than) the aggregate of the adjusted cost base of such Element Butterfly Shares to the Resident Participating Shareholder immediately before the transfer and any reasonable costs of disposition. Where a Resident Participating Shareholder has chosen to recognize a capital gain or a capital loss on the disposition of Element Butterfly Shares in exchange for ECN Capital Common Shares, the cost of ECN Capital Common Shares acquired by the Resident Shareholder on the transfer will be equal to the proceeds of disposition deemed to have been realized by the Resident Participating Shareholder. The tax treatment of capital gains and capital losses is discussed below under the heading



*“Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses”.*

*Dividends on Element Common Shares or ECN Capital Common Shares (Post-Element Arrangement)*

Dividends received or deemed to be received by a Resident Participating Shareholder on Element Common Shares or ECN Capital Common Shares after the Element Arrangement will be included in computing the holder’s income for purposes of the Tax Act. Such dividends received or deemed to be received by a Resident Participating Shareholder that is an individual (including a trust) will generally be subject to the gross-up and dividend tax credit rules in the Tax Act normally applicable to taxable dividends received from corporations resident in Canada, including the enhanced gross-up and dividend tax credit rules applicable to any dividends designated as “eligible dividends” for these purposes. Dividends received or deemed to be received on such shares by an individual and certain trusts may give rise to alternative minimum tax under the Tax Act.

Generally, dividends received or deemed to be received on Element Common Shares or ECN Capital Common Shares after the Element Arrangement by a Resident Shareholder that is a corporation will be included in computing the corporation’s income, and may be deductible in computing the corporation’s taxable income, subject to certain limitations in the Tax Act. In certain circumstances, subsection 55(2) of the Tax Act will treat a taxable dividend received by a Resident Participating Shareholder that is a corporation as proceeds of disposition or a capital gain. Resident Participating Shareholders that are corporations are urged to consult their own tax advisors for advice having regard to their particular circumstances.

A holder of Element Common Shares or ECN Capital Common Shares that is a “private corporation” or a “subject corporation” (as defined in the Tax Act) generally will be subject to a refundable tax on dividends received or deemed to be received on such shares to the extent such dividends are deductible in computing the holder’s taxable income. Under the Tax Proposals, the rate of such tax is generally 38 1/3%, subject to certain transitional rules contained in the Tax Proposals for tax years commencing before 2016. This refundable tax generally will be refunded to a corporate Resident Participating Shareholder based on the amount of taxable dividends paid while it is a private corporation, all in accordance with detailed rules contained in the Tax Act.

*Dispositions of Element Common Shares or ECN Capital Common Shares (Post-Arrangement)*

A disposition by a Resident Participating Shareholder of Element Common Shares or ECN Capital Common Shares after the Element Arrangement generally will result in a capital gain (or a capital loss) to such holder to the extent that the proceeds of disposition, net of any reasonable costs of disposition, exceed (or are less than) the adjusted cost base of such shares to such holder immediately before the disposition. The tax treatment of capital gains and capital losses is discussed below under the heading *“Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses”.*

*Taxation of Capital Gains and Capital Losses*

A Resident Shareholder will be required to include in income one-half of the amount of any capital gain (a “**taxable capital gain**”) and generally will be required to deduct one-half of the amount of any capital loss (an “**allowable capital loss**”) against taxable capital gains realized by such holder in the taxation year of the disposition. Allowable capital losses in excess of taxable capital gains in a particular taxation year may be carried back and deducted in any of the three preceding years or carried forward and deducted in any following year against taxable capital gains realized in such year to the extent and under the circumstances described in the Tax Act. In certain circumstances, a capital loss otherwise arising on the disposition of shares by a Resident Shareholder that is a corporation may be reduced by dividends previously received or deemed to have been received on such shares or shares for which the particular shares were issued in exchange. Analogous rules apply to a partnership or trust of which a corporation,

partnership or trust is a member or beneficiary. Resident Shareholders to whom these rules may be relevant should consult their own tax advisors.

A “Canadian-controlled private corporation” (as defined in the Tax Act) may be liable to pay, in addition to tax otherwise payable under the Tax Act, a refundable tax on its “aggregate investment income”. For this purpose, aggregate investment income will include taxable capital gains. Under the Tax Proposals, the rate of refundable tax will be 10 2/3% for taxation years ending after 2015, subject to transitional rules contained in the Tax Proposals applicable to taxation years commencing before 2016. Capital gains realized by individuals and certain trusts may give rise to alternative minimum tax under the Tax Act.

#### *Eligibility for Investment*

Provided the Element Common Shares, Element Butterfly Shares and ECN Capital Common Shares respectively are, and continue to be, listed on a designated stock exchange (which includes the TSX) or are shares of a “public corporation” (for purposes of the Tax Act), such shares will be qualified investments under the Tax Act for trusts governed by registered retirement savings plans (“**RRSPs**”), registered retirement income funds (“**RRIFs**”), registered education savings plans, deferred profit sharing plans, registered disability savings plans and tax-free savings accounts (“**TFSAs**”).

Notwithstanding that the Element Common Shares, the Element Butterfly Shares and the ECN Capital Common Shares may be qualified investments for RRSPs, RRIFs and TFSAs, the holder of a TFSA, or the annuitant of an RRSP or RRIF, as the case may be, will be subject to a penalty tax if such shares are a “prohibited investment” for the particular TFSA, RRSP or RRIF. Shares of a particular corporation will generally not be a “prohibited investment” unless the holder of the TFSA or the annuitant of the RRSP or RRIF, as the case may be, (a) does not deal at arm’s length with the particular corporation for purposes of the Tax Act, or (b) has a “significant interest” (within the meaning of the Tax Act) in the particular corporation. For the purposes of the Tax Act, a “significant interest” in a corporation includes, but is not limited to, the ownership (along with persons and/or partnerships not dealing at arm’s length for purposes of the Tax Act) of 10% or more of any class of issued shares of a corporation. In addition, shares of a corporation generally will not be a “prohibited investment” if such shares are “excluded property” (as defined in the Tax Act). Holders of a TFSA and annuitants of a RRSP or RRIF should consult their own tax advisors regarding the application of these rules in their particular circumstances.

#### *Dissenting Resident Shareholders*

A Resident Shareholder that exercises Dissent Rights (a “**Dissenting Resident Shareholder**”) will be deemed under the Element Arrangement to have transferred such holder’s Element Common Shares to Element for a payment equal to the fair value of such shares. A Dissenting Resident Shareholder generally will be deemed to have received a dividend equal to the amount by which such payment (excluding the amount of any interest) exceeds the paid-up capital of such shares, and such deemed dividend will generally not be included in computing the proceeds of disposition to such holder for purposes of computing any capital gain or capital loss on the disposition of such shares. However, if the Dissenting Resident Shareholder is a corporation, the full amount of the dissent payment (excluding the amount of any interest) may be treated as proceeds of disposition under subsection 55(2) of the Tax Act and not as a deemed dividend. The general tax treatment of the receipt of dividends is discussed above under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Dividends on Element Common Shares or ECN Capital Common Shares (Post-Element Arrangement)*”.

A Dissenting Resident Shareholder will also realize a capital gain (or a capital loss) to the extent that the proceeds of disposition of such shares, (which, as noted above, generally will not include the amount of any deemed dividend) and net of any reasonable costs of disposition, exceed (or are less than) the adjusted cost base of such shares immediately before the disposition. The general tax treatment of capital gains or capital losses is discussed above under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses*”.

Any interest awarded by a court to a Dissenting Resident Shareholder will be included in such holder's income for the purposes of the Tax Act.

### ***Shareholders Not Resident in Canada***

The following portion of the summary is generally applicable to Shareholders who: (i) at all relevant times, for purposes of the Tax Act and any applicable income tax treaty or convention, are not resident in Canada; (ii) deal at arm's length with Element and ECN Capital, and are not "affiliated" with Element or ECN Capital for the purposes of the Tax Act; and (iii) hold their Element Common Shares, and will hold all other shares discussed in this summary, as "capital property" and do not use or hold and are not deemed to use or hold, and will not use or hold or be deemed to use or hold, any such shares in carrying on a business in Canada ("**Non-Resident Shareholders**"). Special rules, which are not discussed in this summary, may apply to a Non-Resident Shareholder that is an insurer which carries on business in Canada and elsewhere.

Except as indicated otherwise, this portion of the summary assumes the Element Common Shares, the Element Butterfly Shares and the ECN Capital Common Shares are not "taxable Canadian property" for purposes of the Tax Act.

Generally, Element Common Shares, Element Butterfly Shares and ECN Capital Common Shares respectively will not be "taxable Canadian property" to a Non-Resident Shareholder at a particular time unless at any time during the 60-month period immediately preceding that time: (A) the Non-Resident Shareholder, persons with whom the Non-Resident Shareholder did not deal at arm's length, partnerships in which the Non-Resident Shareholder, or such persons holds a membership interest directly or indirectly through one or more partnerships or the Non-Resident Shareholder together with all such persons and partnerships, owned 25% or more of the issued shares of any class or series of shares of the capital stock of Element or ECN Capital, as applicable, where the particular shares are listed on a designated stock exchange (which currently includes the TSX) at that particular time; and (B) more than 50% of the fair market value of the particular shares was derived directly or indirectly from one or any combination of: (i) real or immovable properties situated in Canada, (ii) "Canadian resource properties" (as defined in the Tax Act), (iii) "timber resource properties" (as defined in the Tax Act), and (iv) options in respect of, or interests in, property described in (i) to (iii). In certain circumstances set out in the Tax Act, the Element Common Shares, Element Butterfly Shares or the ECN Capital Common Shares of a particular Non-Resident Shareholder could be deemed to be "taxable Canadian property".

### *Element Arrangement*

A Non-Resident Participating Shareholder will generally not be subject to tax in Canada on any capital gain (and will not be able to deduct any capital loss) realized or deemed to have been realized as a consequence of the disposition of Element Common Shares in exchange for Element Fleet Common Shares and Element Butterfly Shares or the disposition of Element Butterfly Shares for ECN Capital Common Shares under the Element Arrangement.

### *Dividends on Element Fleet Common Shares or ECN Capital Common Shares (Post-Element Arrangement)*

Dividends on Element Fleet Common Shares or ECN Capital Common Shares that are paid or credited or deemed to be paid or credited to a Non-Resident Shareholder will be subject to Canadian withholding tax at the rate of 25% of the gross amount of such dividends. This rate may be reduced under any applicable income tax treaty or convention. Under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed September 26, 1980, as amended (the "**Canada-U.S. Tax Convention**"), a Non-Resident Shareholder that is a resident of the United States for the purposes of, and entitled to all benefits of, the Canada-U.S. Tax Convention will generally be subject to Canadian withholding tax at a rate of 15% of the amount of such dividends.

### *Dispositions of Element Fleet Common Shares or ECN Capital Common Shares (Post-Arrangement)*

On a disposition of Element Fleet Common Shares or ECN Capital Common Shares, a Non- Resident Shareholder will not be subject to tax under the Tax Act unless, at the time of disposition, the particular shares are “taxable Canadian property” to the Non-Resident Shareholder at the time of disposition.

Generally, a Non-Resident Shareholder who realizes a capital gain on a disposition of Element Fleet Common Shares or ECN Capital Common Shares which constitute “taxable Canadian property” of the Non-Resident Shareholder and which is not exempt from tax under the Tax Act under an applicable income tax treaty or convention will be subject to the tax treatment described above under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Resident in Canada – Taxation of Capital Gains and Capital Losses*”. Under the Canada-U.S. Tax Convention, a capital gain realized on the disposition of Element Common Shares or ECN Capital Common Shares by a Non-Resident Shareholder that is a resident of the United States for the purposes of, and entitled to all benefits of, the Canada-U.S. Tax Convention generally will be exempt from tax under the Tax Act where at the time of disposition the Element Common Shares or ECN Capital Common Shares, as applicable, do not derive their value principally from real property situated in Canada. Non-Resident Shareholders whose Element Common Shares or ECN Capital Common Shares are “taxable Canadian property” should consult with their own tax advisors.

### *Dissenting Non-Resident Shareholders*

A Non-Resident Shareholder that exercises Dissent Rights (a “**Dissenting Non-Resident Shareholder**”) will be deemed under the Element Arrangement to have transferred such holder’s Element Common Shares to Element for consideration equal to the fair value of such shares. A Dissenting Non-Resident Shareholder generally will be deemed to have received a dividend on such Element Common Shares equal to the amount by which the amount of such consideration (excluding the amount of any interest) exceeds the paid-up capital of such shares for purposes of the Tax Act. A deemed dividend received by a Dissenting Non-Resident Shareholder will be subject to Canadian withholding tax as described under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Not Resident in Canada – Dividends on Element Common Shares or ECN Capital Common Shares (Post-Element Arrangement)*”.

A Dissenting Non-Resident Shareholder will also realize a capital gain to the extent that the proceeds of disposition for such shares, as reduced by the amount of any deemed dividend as discussed above and net of any reasonable costs of disposition, exceed the adjusted cost base of such shares immediately before the disposition. A Dissenting Non-Resident Shareholder generally will not be subject to income tax under the Tax Act in respect of any such capital gain provided such shares do not constitute “taxable Canadian property” to the Dissenting Non-Resident Shareholder. See above under the heading “*Material Income Tax Consequences – Material Canadian Federal Income Tax Consequences to Shareholders – Shareholders Not Resident in Canada – Dispositions of Element Fleet Common Shares or ECN Capital Common Shares (Post-Arrangement)*” for a general discussion of the tax treatment of capital gains realized on shares which constitute “taxable Canadian property” to the Dissenting Non-Resident Shareholder.

Any interest awarded by a court to a Dissenting Non-Resident Shareholder will generally not be subject to Canadian withholding tax.

### **Material U.S. Federal Income Tax Consequences to Shareholders**

The following is a summary of potential material U.S. federal income tax consequences to U.S. Holders (as defined below) arising from and relating to the Arrangements.

This summary is for general information purposes only and does not purport to be a complete description of all potential U.S. federal income tax consequences that may apply to a U.S. Holder as a

result of the Arrangements. In addition, this summary does not take into account the individual facts and circumstances of any particular U.S. Holder that may affect the U.S. federal income tax consequences of the Arrangements to such U.S. Holder. Accordingly, this summary is not intended to be, and should not be construed as, legal or U.S. federal income tax advice with respect to any U.S. Holder. Each U.S. Holder is urged to consult its own tax advisor regarding the U.S. federal, U.S. state and local, and non-U.S. tax consequences of the Arrangements (including the potential application and operation of the Canada-U.S. Tax Convention).

This summary does not address the U.S. federal income tax consequences of the Arrangements to holders other than U.S. Holders. Accordingly, such holders are urged to consult their own tax advisors regarding the U.S. federal, U.S. state and local, and non-U.S. tax consequences of the Arrangements (including the potential application and operation of any income tax treaties).

No legal opinion from U.S. legal counsel or ruling from the IRS will be obtained regarding the U.S. federal income tax consequences of the Arrangements (or any other aspect of the transactions described herein) to U.S. Holders. This summary is not binding on the IRS, and the IRS is not precluded from taking a position that is different from, and contrary to, the views expressed in this summary. In addition, because the authorities on which this summary is based are subject to various interpretations, the IRS and the U.S. courts could disagree with one or more of the views expressed in this summary. Accordingly, no assurance can be given that the IRS will agree with the views expressed in this summary or that a court will not sustain any challenge by the IRS in the event of litigation.

### ***Scope of this Disclosure***

#### *Authorities*

This summary is based on the Internal Revenue Code of 1986, as amended (the “**Code**”), the Treasury regulations promulgated thereunder (the “**Treasury Regulations**”), published rulings of the IRS, published administrative positions of the IRS, the Canada-U.S. Tax Convention and U.S. court decisions that are applicable and, in each case, as in effect and available as of the date of this Management Information Circular. Any of the authorities on which this summary is based could be changed in a material and adverse manner at any time, and any such change could be applied on a retroactive basis, which may result in U.S. federal income tax consequences different from those discussed below.

#### *Uncertainty as to Tax Treatment of the Element Arrangement for U.S. Federal Income Tax Purposes*

The Element Arrangement will be effected under applicable provisions of Canadian corporate law, which differ from analogous provisions of U.S. corporate law. Therefore, the U.S. federal income tax consequences of some aspects of the Element Arrangement are unclear. Accordingly, the discussion in the summary below notes potential material U.S. federal income tax consequences of the Element Arrangement to U.S. Holders under specified alternative characterizations of Element, ECN Capital, and the Element Arrangement.

See the discussion below under “*U.S. Federal Income Tax Consequences of the Arrangements*” for more information.

#### *U.S. Holders*

For purposes of this summary, a “**U.S. Holder**” is a beneficial owner of Element Common Shares (and, after the Element Arrangement, a beneficial owner of ECN Capital Common Shares) that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;

- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) that is created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust if (i) such trust has a valid election in effect to be treated as a U.S. person for U.S. federal income tax purposes or (ii) a court within the United States can exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of such trust.

This summary does not address all of the U.S. federal income tax consequences that may be relevant to particular U.S. Holders in light of their particular circumstances, or to certain types of U.S. Holders that may be subject to special tax treatment (such as banks and other financial institutions, employee stock ownership plans, qualified pension or profit-sharing or stock bonus plans, individual retirement accounts or other tax-deferred accounts, persons who acquire Element Common Shares or ECN Capital Common Shares pursuant to the exercise of employee stock options or otherwise as compensation, regulated investment companies or real estate investment trusts, S corporations or other pass-through entities and investors in such entities, certain former citizens or residents of the United States, controlled foreign corporations, corporations that accumulate earnings to avoid U.S. federal income tax, insurance companies, tax-exempt organizations, dealers or traders in securities and foreign currencies, persons that own (directly or indirectly) 10 percent or more of the voting stock of Element or ECN Capital, traders in securities that elect to use a mark-to-market method of accounting for their securities, brokers, persons who hold Element Common Shares or ECN Capital Common Shares as part of a hedge or other integrated transaction, persons whose functional currency is not U.S. dollars, persons subject to the alternative minimum tax, or persons who hold Element Common Shares or ECN Capital Common Shares other than as capital assets within the meaning of Section 1221 of the Code (i.e., generally, property held for investment)). In addition, this summary does not include any description of the tax laws of any state, local, or non-U.S. jurisdiction that may be applicable to a particular U.S. Holder and does not consider any aspects of U.S. federal tax law (such as estate and gift tax laws) other than income taxation. Except as specifically set forth below, this summary does not discuss applicable tax reporting requirements.

U.S. Holders that are subject to special provisions under the Code, including but not limited to U.S. Holders described immediately above, are urged to consult their own tax advisors regarding the U.S. federal income tax consequences of the Arrangements. In addition, each U.S. Holder is urged to consult its own tax advisor regarding the U.S. federal non-income, U.S. state and local, and non-U.S. tax consequences of the Arrangements.

Additionally, this summary does not consider the tax treatment of entities treated as partnerships or other pass-through entities for U.S. federal income tax purposes or of persons who hold Element Common Shares or ECN Capital Common Shares through such entities. The tax treatment of a partnership and each partner thereof will generally depend upon the status and activities of the partnership and such partner. Partners of entities that are treated as partnerships for U.S. federal income tax purposes are urged to consult their own tax advisors regarding the U.S. federal income tax consequences of the Arrangements.

#### *Transactions Not Addressed*

This summary does not address the U.S. federal income tax consequences to U.S. Holders of any transactions that may be entered into prior to, concurrently with or subsequent to the Arrangements (regardless of whether any such transaction is undertaken in connection with the Arrangements), including, but not limited to, the following transactions: (i) any exercise of any option to acquire Element Common Shares and (ii) any conversion of any stock option or other right with respect to Element Common Shares into a stock option or other right with respect to ECN Capital Common Shares. This summary does not address any U.S. federal income tax considerations applicable to holders of IAC

Shares, Debentures, Element DSUs, Element Options, Element PSUs, Element RSUs or any other type of right pursuant to which any person could acquire an interest in Element, Element Fleet or ECN Capital.

### ***U.S. Federal Income Tax Consequences of the Arrangements***

The Element Arrangement will be effected under applicable provisions of Canadian corporate law, which differ from analogous provisions of U.S. corporate law. Therefore, the U.S. federal income tax consequences of some aspects of the Element Arrangement are unclear. For example, it is not clear whether the Element Arrangement will be treated, for U.S. federal income tax purposes, as resulting in a distribution of ECN Capital Common Shares to holders of Element Common Shares with respect to their Element Common Shares.

For purposes of the discussion below, it is assumed that the Element Arrangement will be treated, for U.S. federal income tax purposes, as resulting in a deemed distribution of ECN Capital Common Shares to holders of Element Common Shares with respect to their Element Common Shares (for purposes of this summary, the “**deemed distribution**”).

#### *Deemed Distribution of ECN Capital Common Shares*

The U.S. federal income tax consequences of the deemed distribution depend on whether Section 355 of the Code applies to the deemed distribution. These requirements are highly complex and include both objective and subjective requirements, including that: (i) there is a bona fide corporate business purpose for the Element Arrangement; (ii) the Element Arrangement is not principally a device for the distribution of earnings and profits of Element, ECN Capital, or both Element and ECN Capital; and (iii) each of Element Fleet and ECN Capital will continue to be engaged after the Element Arrangement in one or more trades or businesses actively conducted by Element and certain of its subsidiaries throughout the 5-year period ending on the date of the Element Arrangement (in each case, within the meaning of applicable authorities).

Element intends to take the position that, and Element believes that it would be reasonable for U.S. Holders to take the position that, Section 355 of the Code applies to the deemed distribution. As indicated above, however, the characterization of the Element Arrangement for U.S. federal income tax purposes is unclear. The alternative consequences discussed below describe the consequences if Section 355 of the Code were to apply to the deemed distribution and those if Section 355 of the Code were not to apply to the deemed distribution. Each U.S. Holder is urged to consult its own tax advisor regarding the proper treatment of the Element Arrangement for U.S. federal income tax purposes.

Except as otherwise expressly indicated, the consequences described below are based on the assumption that neither Element nor ECN Capital will at any relevant time be treated as a PFIC.

- Treatment if Section 355 of the Code Applies

Subject to the discussion below under “*Passive Foreign Investment Company Rules Applicable to the Arrangements*”, if Section 355 of the Code applies to the deemed distribution, then, in general:

- no gain or loss will be recognized by, and no amount will be included in the income of, U.S. Holders upon the receipt of ECN Capital Common Shares in the deemed distribution;
- immediately after the deemed distribution, each U.S. Holder will have an aggregate tax basis in its Element Common Shares and the ECN Capital Common Shares received in the deemed distribution equal to such U.S. Holder's aggregate tax basis in the Element Common Shares immediately before the deemed distribution, allocated between such Element Common Shares and ECN Capital Common Shares in proportion to their respective fair market values at the time of the deemed distribution; and

- the holding period of the ECN Capital Common Shares received in the deemed distribution by each U.S. Holder will include the holding period of such U.S. Holder for the Element Common Shares with respect to which such ECN Capital Common Shares are received.

U.S. Holders who have acquired different blocks of Element Common Shares at different times or at different prices should consult their tax advisors regarding the allocation of their aggregate tax basis among, and the holding period of, the ECN Capital Common Shares received with respect to such blocks of Element Common Shares.

If Section 355 of the Code applies to the deemed distribution, certain U.S. Holders of Element Common Shares will be subject to specific reporting and recordkeeping requirements imposed by Treasury Regulations with respect to transactions within the scope of Section 355 of the Code. Element intends to provide such U.S. Holders with certain information required to satisfy such requirements. U.S. Holders are urged to consult their tax advisors regarding tax reporting and recordkeeping requirements.

- Treatment if Section 355 of the Code Does Not Apply

Subject to the discussion below under “*Passive Foreign Investment Company Rules Applicable to the Arrangements*”, if Section 355 of the Code does not apply to the deemed distribution, the deemed distribution will be taxable to U.S. Holders under the rules of Section 301 of the Code generally applicable to the distribution of property by a corporation to its shareholders.

In that event, a U.S. Holder will be required to include the fair market value of the ECN Capital Common Shares received in the deemed distribution in gross income as dividend income to the extent that such fair market value is less than or equal to such U.S. Holder’s pro rata share of Element’s current or accumulated earnings and profits as determined under U.S. federal income tax principles. Such dividend income generally should constitute “foreign source” income and generally should be categorized as “passive income” for foreign tax credit limitation purposes. To the extent, if any, that such fair market value exceeds a U.S. Holder’s pro rata share of Element’s current and accumulated earnings and profits, such excess will first reduce such U.S. Holder’s tax basis in its Element Common Shares to the extent thereof and then, to the extent in excess of such U.S. Holder’s tax basis in such shares, will be treated as gain from the sale or exchange of property. For a more detailed discussion, see “*Consequences of Holding and Disposing of Element Common Shares or ECN Capital Common Shares After the Element Arrangement—Disposition of Element Common Shares and ECN Capital Common Shares*” below.

Element will not calculate its earnings and profits for U.S. federal income tax purposes. U.S. Holders should therefore assume that the deemed distribution will result in ordinary dividend income if Section 355 of the Code does not apply to the deemed distribution.

Subject to certain limitations and requirements (including holding period requirements), any distributions by Element (including the deemed distribution) that are treated as dividends and are paid to a non-corporate U.S. Holder, including an individual, should be eligible for treatment as qualified dividend income and should be taxable at long-term capital gains rates, provided that (i) Element qualifies for benefits of the Canada-U.S. Tax Convention (which Element believes to be the case) and (ii) Element (a) is not a PFIC for either the taxable year of Element during which the dividend is considered to have been paid or for the preceding taxable year and (b) is not treated as a PFIC with respect to the U.S. Holder receiving such dividend under the “once a PFIC, always a PFIC” rule discussed below. As discussed below, Element has not made a determination as to its status as a PFIC for the current or any past taxable years. If the requirements for qualified dividend income treatment are not satisfied, any dividend arising from the deemed distribution to a non-corporate U.S. Holder generally would be taxed at ordinary income tax rates (and not at the preferential tax rates applicable to long-term capital gains).

A corporate U.S. Holder generally will not be entitled to a dividends received deduction generally available upon receipt of dividends distributed by U.S. corporations.



The dividend rules (including, in particular, the rules regarding qualified dividend income treatment) are complex. U.S. Holders should consult their own tax advisors with respect to the appropriate U.S. federal income tax treatment of any distribution received from Element (including the deemed distribution) to which Section 355 of the Code does not apply.

Subject to the discussion below under “*Passive Foreign Investment Company Rules Applicable to the Arrangements*”, if Section 355 of the Code does not apply to the deemed distribution, in general, (i) a U.S. Holder’s initial tax basis in the ECN Capital Common Shares received in the deemed distribution will be equal to the fair market value of such ECN Capital Common Shares on the date of the deemed distribution, and (ii) a U.S. Holder’s holding period for the ECN Capital Common Shares received in the deemed distribution will begin on the day after the date of the deemed distribution.

#### *Passive Foreign Investment Company Rules Applicable to the Arrangements*

In general, a non-U.S. corporation is classified as a “passive foreign investment company” (“**PFIC**”) under Section 1297 of the Code for each taxable year in which (i) 75% or more of its income is passive income (as defined for U.S. federal income tax purposes) or (ii) on average for such taxable year, 50% or more (by value) of its assets either produce or are held for the production of passive income. For purposes of the PFIC provisions, “gross income” generally means sales revenues less cost of goods sold, and “passive income” generally includes dividends, interest, royalties, rents, and gains from commodities or securities transactions, including certain transactions involving oil and gas. In determining whether or not it is classified as a PFIC, a non-U.S. corporation is required to take into account its pro rata portion of the income and assets of each corporation in which it owns, directly or indirectly, at least a 25% interest, measured by value.

If a non-U.S. corporation is classified as a PFIC, or is treated as a PFIC with respect to a U.S. Holder under the “once a PFIC, always a PFIC” rule described below, and the U.S. Holder has not made a timely and effective QEF election or mark-to-market election (as defined below), the following consequences will generally apply to the U.S. Holder under Section 1291 of the Code:

- “Excess distributions” on such stock received by such a U.S. Holder (i.e., the portion of any distributions received by the U.S. Holder on such stock in a taxable year in excess of 125% of the average annual distributions received by such U.S. holder in the three preceding taxable years, or, if shorter, such U.S. Holder’s holding period for such stock) and gain on a disposition or deemed disposition by the U.S. Holder of such stock would be taxable and allocated ratably to all days in the U.S. Holder’s holding period. The portion of such excess distribution or gain that is allocated to the current taxable year (or, potentially, certain prior taxable years) would be treated as ordinary income in the current taxable year. Any portion allocated to a prior taxable year (and not treated as ordinary income in the current taxable year) would be taxable at the highest marginal rates applicable to ordinary income for the “prior-year PFIC period”, i.e., days in the U.S. Holder’s prior taxable years during which the non-U.S. corporation was a PFIC, and would be subject to an interest charge levied as an additional tax.
- Any preferential rate for which such gain or excess distribution might otherwise qualify (e.g., under the rules applicable to long-term capital gains or qualified dividend income) would not be available.
- Numerous additional rules may also apply, including extremely broad rules applicable to indirect dispositions and indirect excess distributions.

The determination of whether any non-U.S. corporation is a PFIC for a taxable year depends, in part, on the application of complex U.S. federal income tax rules, which are subject to differing interpretations, including uncertainty as to whether the exception for income derived in the active conduct of a banking, financing or similar business under Section 954(h) of the Code is available for purposes of the PFIC rules.

Element has not made a determination as to its status as a PFIC under Section 1297 of the Code for the current or any past taxable years. Further, Element has not made a determination as to whether Element Fleet or ECN Capital may be a PFIC for any taxable year. The discussion set forth above assumes that Element, Element Fleet and ECN Capital are not treated as PFICs.

Element is (and Element Fleet or ECN Capital may be) a specialty finance company, and U.S. Holders should consider whether the income from such finance activities is considered to be “passive”. Whether such income is considered to be “passive” may depend in part on the ability of a non-U.S. corporation to meet certain requirements under the PFIC rules, the analysis of which Element has not performed. In addition, PFIC classification is factual in nature, generally cannot be determined until the close of the taxable year in question, and is determined annually. Thus, there can be no assurance that Element is not a PFIC for the current taxable year, has not been for any past taxable years or will not be a PFIC for any future taxable years. Further, there can be no assurance that Element Fleet or ECN Capital will not be a PFIC for the current taxable year or will not be a PFIC for any future taxable years.

U.S. Holders of stock of a PFIC are subject to a special, generally adverse tax regime (different in significant respects from that described above under “*Deemed Distribution of ECN Capital Common Shares*”). Although a non-U.S. corporation’s status as a PFIC or non-PFIC is generally determined on a year-by-year basis, a non-U.S. corporation that is not a PFIC in a given taxable year under the rules of Section 1297 of the Code described above generally will be treated as a PFIC with respect to a U.S. Holder if (i) such non-U.S. corporation was a PFIC in any prior taxable year, (ii) such U.S. Holder’s holding period for its shares includes any portion of such prior taxable year and (iii) such U.S. Holder has not made a timely and effective QEF election or mark-to-market election. This rule is referred to herein as the “once a PFIC, always a PFIC” rule.

With respect to the Element Arrangement, including the deemed distribution, the U.S. federal income tax consequences to a U.S. Holder may be different from those described above under “*Deemed Distribution of ECN Capital Common Shares*” if Element, ECN Capital, or both Element and ECN Capital were treated as PFICs. If Element is treated as a PFIC, and if the deemed distribution constitutes an “excess distribution” or a disposition with respect to such U.S. Holder, such U.S. Holder may be taxable under the rules of Section 1291 discussed above on the deemed distribution. In addition, if both Element and ECN Capital are treated as PFICs (or if only ECN Capital is treated as a PFIC and such U.S. Holder owns at least 50% of Element’s stock by value), the deemed distribution may be treated, under proposed Treasury Regulations, as the “indirect disposition” by any such U.S. Holder of such U.S. Holder’s indirect interest in ECN Capital; such indirect disposition may be taxable under the rules of Section 1291 of the Code discussed above.

In general, the IAC Arrangement will not result in U.S. federal income tax consequences to U.S. Holders, except that (i) the IAC Arrangement may affect whether ECN Capital is classified as a PFIC or non-PFIC and (ii) if ECN Capital is treated as a PFIC (or if a U.S. Holder owns at least 50% of ECN Capital’s stock by value) and ECN Capital owns a subsidiary PFIC, the issuance of ECN Capital Common Shares in connection with the IAC Arrangement may be treated, under proposed Treasury Regulations, as the “indirect disposition” by any such U.S. Holder of such U.S. Holder’s indirect interest in such subsidiary PFIC, and such indirect disposition generally would be taxable under the rules of Section 1291 of the Code discussed above.

A U.S. Holder may be able to mitigate the generally unfavorable U.S. federal income tax rules that apply to the ownership and disposition of stock in a PFIC (including those potentially arising from the Arrangements) by making a timely and effective mark-to-market election under Section 1296 of the Code (a “mark-to-market election”) or by making a timely and effective election under Section 1295 of the Code to treat such non-U.S. corporation as a qualified electing fund (a “QEF election”), if such elections are available to the U.S. Holder in its particular circumstances.

U.S. Holders should be aware that, in the event that Element or ECN Capital becomes a PFIC, there can be no assurance that Element or ECN Capital will supply U.S. Holders with the information and statements that such U.S. Holders require to make QEF elections.

A description of these elections (and other elections that may potentially be made by a U.S. Holder) is beyond the scope of this discussion, which solely describes the default rules under Section 1291 of the Code.

If Element or ECN Capital is treated as a PFIC with respect to a U.S. Holder, such U.S. Holder will be required to make an annual return on IRS Form 8621, reporting distributions received and gains realized with respect to each PFIC in which it holds a direct or indirect interest. If a U.S. Holder fails to file a required IRS Form 8621, such failure may prevent the closing of the statute of limitations.

The PFIC rules, including the rules governing any elections that may potentially be made by a U.S. Holder, are extremely complex. Each U.S. Holder should consult its own tax advisor regarding the potential PFIC status of Element and ECN Capital and how the PFIC rules (including elections that may be available thereunder) would affect the U.S. federal income tax consequences of the Arrangements and of the ownership and disposition of Element Common Shares and ECN Capital Common Shares.

#### *Dissenting U.S. Holders*

Subject to the discussion above under “*Passive Foreign Investment Company Rules Applicable to the Arrangements*”, a U.S. Holder that exercises the right to dissent from the Element Arrangement and is paid cash for all of such U.S. Holder’s Element Common Shares generally will recognize gain or loss in an amount equal to the difference, if any, between (i) the amount of cash received by such U.S. Holder in exchange for the Element Common Shares (other than amounts, if any, that are or are deemed to be interest for U.S. federal income tax purposes, which amounts will be taxable as ordinary income) and (ii) the U.S. Holder’s tax basis in the Element Common Shares immediately before surrender. Such gain or loss generally will be capital gain or loss (provided such U.S. Holder does not actually or constructively own any Element Common Shares after the Element Arrangement), which will be long-term capital gain or loss if the U.S. Holder has held the Element Common Shares for more than one year. Preferential tax rates apply to long-term capital gains of a non-corporate U.S. Holder. There are currently no preferential tax rates for long-term capital gains of a U.S. Holder that is a corporation. The deductibility of capital losses is subject to limitations. Such gain or loss generally will be treated as U.S. source income or loss for foreign tax credit limitation purposes.

For potential U.S. federal income tax consequences of receiving, owning, and disposing of foreign currency, see the discussion below under “*Consequences of Holding and Disposing of Element Common Shares or ECN Capital Common Shares After the Element Arrangement—Payments in Foreign Currency*” on distributions paid in Canadian dollars.

#### ***Consequences of Holding and Disposing of Element Common Shares or ECN Capital Common Shares After the Element Arrangement***

Except as otherwise expressly indicated, the consequences described below are based on the assumption that neither Element nor ECN Capital will at any relevant time be treated as a PFIC.

#### *Treatment of Distributions Generally*

Any distributions with respect to the Element Common Shares or ECN Capital Common Shares after the Element Arrangement (which for these purposes will include the amount of any Canadian taxes withheld therefrom) will generally be includible in the gross income of a U.S. Holder as dividend income to the extent that such distributions are paid out of the distributing corporation’s current or accumulated earnings and profits as determined under U.S. federal income tax principles. Such dividend income generally should constitute “foreign source” income and generally should be categorized as “passive income” for foreign tax credit limitation purposes. To the extent, if any, that the amount of any such distribution exceeds a U.S. Holder’s pro rata share of the distributing corporation’s current and accumulated earnings and profits, such excess will first reduce such U.S. Holder’s tax basis in its Element Common Shares or ECN Capital Common Shares, as applicable, to the extent thereof and

then, to the extent in excess of such U.S. Holder's tax basis in such shares, will be treated as gain from the sale or exchange of property. For a more detailed discussion, see "*Disposition of Element Common Shares and ECN Capital Common Shares*" below.

Neither Element nor ECN Capital will calculate its earnings and profits for U.S. federal income tax purposes. U.S. Holders should therefore assume that any distributions by Element or ECN Capital with respect to its shares will constitute ordinary dividend income.

If distributions treated as dividends paid by Element or ECN Capital constitute qualified dividend income under the rules discussed above (see "*U.S. Federal Income Tax Consequences of the Arrangements—Deemed Distribution of ECN Capital Common Shares*" above), then, subject to the PFIC discussion below, such dividends paid to non-corporate U.S. Holders generally will be eligible for taxation at the preferential tax rates applicable to long-term capital gains.

If distributions treated as dividends paid by Element or ECN Capital do not constitute qualified dividend income, such dividends paid to non-corporate U.S. Holders generally will be taxed at ordinary income tax rates.

A corporate U.S. Holder generally will not be entitled to a dividends received deduction generally available upon receipt of dividends distributed by U.S. corporations.

The dividend rules (including, in particular, the rules regarding qualified dividend income treatment) are complex. U.S. Holders should consult their own tax advisors with respect to the appropriate U.S. federal income tax treatment of any distribution received from Element or ECN Capital.

#### *Disposition of Element Common Shares and ECN Capital Common Shares*

In general, the sale or exchange of Element Common Shares or ECN Capital Common Shares will result in capital gain or loss equal to the difference between the amount realized in such disposition and the U.S. Holder's adjusted tax basis in such shares immediately before such disposition. Capital gain from the sale, exchange or other disposition of Element Common Shares or ECN Capital Common Shares by non-corporate U.S. Holders is generally eligible for a preferential rate of taxation, under current law, where the holding period for such shares exceeds one year (i.e., such gain is long-term capital gain). There are currently no preferential tax rates for long-term capital gains of a U.S. Holder that is a corporation. The deductibility of capital losses is subject to limitations. Such gain or loss generally will be treated as U.S. source income or loss for foreign tax credit limitation purposes.

#### *Payments in Foreign Currency*

The amount of any distribution paid in Canadian dollars generally will equal the U.S. dollar value of the Canadian dollars received calculated by reference to the exchange rate in effect on the date the distribution is received by a U.S. Holder regardless of whether the Canadian dollars are converted into U.S. dollars on such date. If such distribution is converted into U.S. dollars on the date of receipt, a U.S. Holder generally should not be required to recognize foreign currency gain or loss in respect of the distribution. If the Canadian dollars received in the distribution are not converted into U.S. dollars on the date of receipt, a U.S. Holder will have a tax basis in the Canadian dollars equal to their U.S. dollar value on the date of receipt.

The amount realized on a sale or disposition of Element Common Shares or ECN Capital Common Shares for an amount in currency other than U.S. dollars will be the U.S. dollar value of this amount on the date of sale or disposition. On the settlement date, the U.S. Holder may recognize foreign currency gain or loss equal to the difference (if any) between the U.S. dollar value of the amount received based on the exchange rates in effect on the date of sale or other disposition and the settlement date. However, in the case of Element Common Shares or ECN Capital Common Shares traded on an established securities market that are sold by a cash basis U.S. Holder (or an accrual basis U.S. Holder that so

elects), the amount realized will be based on the exchange rate in effect on the settlement date for the sale, and no exchange gain or loss will be recognized at that time.

Any gain or loss recognized upon a conversion into U.S. dollars or other disposition of Canadian dollars will be ordinary income or loss and generally will be treated as U.S. source income or loss for foreign tax credit limitation purposes.

Each U.S. Holder should consult its own tax advisor regarding the U.S. federal income tax consequences of receiving, owning, and disposing of foreign currency.

#### *Passive Foreign Investment Company Rules Applicable to the Ownership and Disposition of Element Common Shares and ECN Capital Common Shares*

If Element or ECN Capital is classified as a PFIC, or is treated as a PFIC with respect to a U.S. Holder under the “once a PFIC, always a PFIC” rule, under the rules described above under “*U.S. Federal Income Tax Consequences of the Arrangements—Passive Foreign Investment Company Rules Applicable to the Arrangements*”, and the U.S. Holder has not made a timely and effective QEF election or mark-to-market election, the following consequences will generally apply to the U.S. Holder under Section 1291 of the Code:

- “Excess distributions” on such stock received by such a U.S. Holder (i.e., the portion of any distributions received by the U.S. Holder on such stock in a taxable year in excess of 125% of the average annual distributions received by such U.S. holder in the three preceding taxable years, or, if shorter, such U.S. Holder’s holding period for such stock) and gain on a disposition or deemed disposition by the U.S. Holder of such stock would be taxable and allocated ratably to all days in the U.S. Holder’s holding period. The portion of such excess distribution or gain that is allocated to the current taxable year (or, potentially, certain prior taxable years) would be treated as ordinary income in the current taxable year. Any portion allocated to a prior taxable year (and not treated as ordinary income in the current taxable year) would be taxable at the highest marginal rates applicable to ordinary income for the “prior-year PFIC period”, i.e., days in the U.S. Holder’s prior taxable years during which the non-U.S. corporation was a PFIC, and would be subject to an interest charge levied as an additional tax.
- Any preferential rate for which such gain or excess distribution might otherwise qualify (e.g., under the rules applicable to long-term capital gains or qualified dividend income) would not be available.
- Numerous additional rules may also apply, including extremely broad rules applicable to indirect dispositions and indirect excess distributions. For example, under certain attribution rules, a U.S. Holder may be deemed to own its proportionate share of any subsidiaries of Element or ECN Capital, as applicable, that are treated as PFICs.

The determination of whether any non-U.S. corporation is a PFIC for a taxable year depends, in part, on the application of complex U.S. federal income tax rules, which are subject to differing interpretations, including uncertainty as to whether the exception for income derived in the active conduct of a banking, financing or similar business under Section 954(h) of the Code is available for purposes of the PFIC rules.

Element has not made a determination as to its status as a PFIC under Section 1297 of the Code for the current or any past taxable years. Further, Element has not made a determination as to whether Element Fleet or ECN Capital may be a PFIC for any taxable year. The discussion set forth above assumes that Element, Element Fleet and ECN Capital are not treated as PFICs.

Element is (and Element Fleet or ECN Capital may be) a specialty finance company, and U.S. Holders should consider whether the income from such finance activities is considered to be “passive”. Whether such income is considered to be “passive” may depend in part on the ability of a non-U.S. corporation to

meet certain requirements under the PFIC rules, the analysis of which Element has not performed. In addition, PFIC classification is factual in nature, generally cannot be determined until the close of the taxable year in question, and is determined annually. Thus, there can be no assurance that Element is not a PFIC for the current taxable year, has not been for any past taxable years or will not be a PFIC for any future taxable years. Further, there can be no assurance that Element Fleet or ECN Capital will not be a PFIC for the current taxable year or will not be a PFIC for any future taxable years.

U.S. Holders of stock of a PFIC are subject to a special, generally adverse tax regime (different in significant respects from that described above under “*Treatment of Distributions Generally*” and “*Disposition of Element Common Shares and ECN Capital Common Shares*”). Although a non-U.S. corporation’s status as a PFIC or non-PFIC is generally determined on a year-by-year basis, a non-U.S. corporation that is not a PFIC in a given taxable year under the rules of Section 1297 of the Code described above may be treated as a PFIC with respect to a U.S. Holder under the “once a PFIC, always a PFIC” rule described above.

A U.S. Holder may be able to mitigate the generally unfavorable U.S. federal income tax rules that apply to the ownership and disposition of stock in a PFIC by making a timely and effective mark-to-market election under Section 1296 of the Code or by making a timely and effective QEF election under Section 1295 of the Code to treat such non-U.S. corporation as a qualified electing fund, if such elections are available to the U.S. Holder in its particular circumstances.

U.S. Holders should be aware that, in the event that Element or ECN Capital becomes a PFIC, there can be no assurance that Element or ECN Capital will supply U.S. Holders with the information and statements that such U.S. Holders require to make QEF elections.

A description of these elections (and other elections that may potentially be made by a U.S. Holder) is beyond the scope of this discussion, which solely describes the default rules under Section 1291 of the Code.

If Element or ECN Capital is treated as a PFIC with respect to a U.S. Holder, such U.S. Holder will be required to make an annual return on IRS Form 8621, reporting distributions received and gains realized with respect to each PFIC in which it holds a direct or indirect interest. If a U.S. Holder fails to file a required IRS Form 8621, such failure may prevent the closing of the statute of limitations.

The PFIC rules, including the rules governing any elections that may potentially be made by a U.S. Holder, are extremely complex. Each U.S. Holder should consult its own tax advisor regarding the potential PFIC status of Element and ECN Capital and how the PFIC rules (including elections that may be available thereunder) would affect the U.S. federal income tax consequences of the ownership and disposition of Element Common Shares and ECN Capital Common Shares.

#### *Foreign Tax Credit*

A U.S. Holder that pays (whether directly or through withholding) Canadian income tax with respect to dividends paid on either Element Common Shares or ECN Capital Common Shares generally will be entitled, at the election of such U.S. Holder, to receive either a deduction or a credit for such Canadian income tax paid. Generally, a credit will reduce a U.S. Holder’s U.S. federal income tax liability on a dollar-for-dollar basis, whereas a deduction will reduce a U.S. Holder’s income subject to U.S. federal income tax. This election is made on a year-by-year basis and applies to all foreign taxes paid (whether directly or through withholding) or accrued by a U.S. Holder during a year.

Complex limitations apply to the foreign tax credit, including the general limitation that the credit cannot exceed the proportionate share of a U.S. Holder’s U.S. federal income tax liability that such U.S. Holder’s “foreign source” taxable income bears to such U.S. Holder’s worldwide taxable income. In applying this limitation, a U.S. Holder’s various items of income and deduction must be classified, under complex rules, as either “foreign source” or “U.S. source”. In addition, this limitation is calculated

separately with respect to specific categories of income. Dividends paid by both Element and ECN Capital generally should constitute “foreign source” income and generally should be categorized as “passive income”.

The foreign tax credit rules are complex, and each U.S. Holder is urged to consult its own tax advisor regarding the application of the foreign tax credit rules to its particular situation.

Special rules also apply to the amount of foreign tax credit that a U.S. Holder may claim on a distribution from a PFIC. Subject to such specific rules, foreign taxes paid with respect to any distribution in respect of stock in a PFIC are generally eligible for the foreign tax credit. The rules relating to distributions by a PFIC and their eligibility for the foreign tax credit are complicated, and each U.S. Holder is urged to consult its own tax advisor regarding the availability of the foreign tax credit with respect to distributions by a PFIC.

#### *Medicare Tax*

Certain U.S. Holders who are individuals, estates, or trusts will be subject to a 3.8% tax (the “Medicare tax”) on all or a portion of their “net investment income,” which includes all or a portion of their dividends (or deemed dividends) on the Element Common Shares and ECN Capital Common Shares and net gains from the disposition of such shares. Whether a U.S. Holder makes various PFIC elections with respect to its shares as described above and/or makes an income inclusion election may impact the timing of the income inclusion for purposes of the Medicare tax. U.S. Holders that are individuals, estates, or trusts should consult their tax advisors regarding the applicability of the Medicare tax to any of their income or gains in respect of the Element Common Shares and ECN Capital Common Shares.

#### ***Information Reporting; Backup Withholding Tax***

Information reporting may apply with respect to payments of dividends on Element Common Shares or ECN Capital Common Shares, and to certain payments of proceeds on the sale or other disposition of Element Common Shares or ECN Capital Common Shares, including the deemed distribution if the deemed distribution does not qualify for non-recognition of gain or loss under Section 355 of the Code. Certain non-corporate U.S. Holders may be subject to U.S. backup withholding (currently at a rate of 28%) on payments of dividends on Element Common Shares or ECN Capital Common Shares, and certain payments of proceeds on the sale or other disposition of Element Common Shares or ECN Capital Common Shares unless the beneficial owner of such shares furnishes the payor or its agent with a taxpayer identification number, certified under penalties of perjury, and certain other information, or otherwise establishes, in the manner prescribed by law, an exemption from backup withholding.

U.S. backup withholding tax is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a U.S. Holder’s U.S. federal income tax liability, which may entitle the U.S. Holder to a refund, provided the U.S. Holder timely furnishes the required information to the IRS.

### **ADDITIONAL MATTERS TO BE ACTED UPON AT THE MEETING**

Management of Element is not aware of any matters to come before the Meeting other than those set forth in the Notice of Meeting. If other matters properly come before the Meeting, it is the intention of the person named in the accompanying form of proxy to vote the Element Common Shares represented thereby in accordance with his or her best judgment on such matters.

### **VOTING INFORMATION AND GENERAL PROXY MATTERS**

#### **Solicitation of Proxies**

**This Management Information Circular is furnished in connection with the solicitation, by or on behalf of the management of the Corporation, of proxies to be used at the Corporation’s Meeting**

**or at any adjournment thereof.** It is expected that the solicitation will be primarily by mail, but proxies may also be solicited personally, by advertisement or by telephone, by directors, officers or employees of the Corporation without special compensation, or by Computershare Investor Services at nominal cost. The cost of solicitation will be borne by the Corporation. The Corporation intends to pay for Intermediaries to deliver proxy-related materials and the Form 54-101F7 (the request for voting instructions) to “objecting beneficial owners”, in accordance with NI 54-101.

In addition, the Corporation has engaged Kingsdale Shareholder Services as proxy solicitation and information agent and will pay fees of approximately \$150,000 to Kingsdale Shareholder Services for the proxy solicitation service in addition to certain out-of-pocket expenses. The Corporation may also reimburse brokers and other persons holding shares in their name or in the name of nominees for their costs incurred in sending proxy material to their principals in order to obtain their proxies.

### **Registered Shareholders**

A Registered Shareholder is a shareholder who holds Element Common Shares in his, her or its own name (that is, not in the name of, or through, an Intermediary).

A Registered Shareholder may attend the Meeting and cast one vote for each Element Common Share registered in the name of such Registered Shareholder on any and all resolutions put before the Meeting. **A Registered Shareholder who is unable to attend the Meeting, or does not wish to personally cast his, her or its vote(s), may authorize another person at the Meeting (who need not be a Shareholder) to vote on his, her or its behalf. This is known as voting by proxy.** The form of proxy enclosed with this Management Information Circular may be used by Registered Shareholders to authorize another person to vote on their behalf at the Meeting.

### **Appointment of Proxyholder**

The persons designated by management of the Corporation in the enclosed form of proxy are directors or officers of the Corporation. **Each shareholder has the right to appoint a proxyholder a person or company (who need not be a shareholder of the Corporation) other than the persons designated by management of the Corporation in the enclosed form of proxy to attend and act on the shareholder’s behalf at the Meeting or at any adjournment thereof.** Such right may be exercised by inserting the name of the person or company in the blank space provided in the enclosed form of proxy or by completing another form of proxy.

In the case of *Registered Shareholders*, the completed, dated and signed form of proxy should be sent in the enclosed envelope or otherwise to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation c/o Computershare Investor Services Inc., 100 University Avenue, 8th Floor, North Tower, Toronto, Ontario, M5J 2Y1, fax number 1 (866) 249-7775 or to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation at the Corporation’s registered office, which is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1, fax number 1 (888) 772-8129. In the case of Non-Registered Shareholders who receive these materials through their broker or other Intermediary, the shareholder should complete and send the form of proxy in accordance with the instructions provided by their broker or other Intermediary. To be effective, a proxy must be received by Computershare Investor Services Inc. or the Senior Vice President, General Counsel & Corporate Secretary of the Corporation not later than September 16, 2016 at 5:00 p.m. (Eastern time) (unless such proxy submission deadline is waived by the Board), if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern time) on the day which is two business days preceding the date of the adjourned or postponed Meeting. Element may waive generally, in its discretion, the time limits set out herein for the deposit or revocation of proxies by Shareholders, if Element deems it advisable to do so.



### ***Revocation of Proxy***

A Registered Shareholder who has given a proxy may revoke it by depositing an instrument in writing signed by the Registered Shareholder or by the Registered Shareholder's attorney, who is authorized in writing, or by transmitting, by telephonic or electronic means, a revocation signed by electronic signature by the Registered Shareholder or by the Registered Shareholder's attorney, who is authorized in writing, to or at the registered office of the Corporation not later than 5:00 p.m. (Eastern Time) on September 16, 2016 or, if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern Time) on the day which is two business days preceding the date of the adjourned or postponed Meeting, or any further adjournment or postponement thereof, or with the Chair of the Meeting on the day of, and prior to the start of, the Meeting or any adjournment thereof. A Registered Shareholder may also revoke a proxy in any other manner permitted by law. Participation by a Registered Shareholder in a vote by ballot at the Meeting would automatically revoke any proxy that has been previously granted by the Registered Shareholder in respect of business covered by that vote.

### ***Voting of Proxies***

On any ballot that may be called for, the Element Common Shares represented by a properly executed proxy given in favour of the persons designated by management of the Corporation in the enclosed form of proxy will be voted or withheld from voting in accordance with the instructions given on the form of proxy, and if the shareholder specifies a choice with respect to any matter to be acted upon, the Element Common Shares will be voted accordingly.

The enclosed form of proxy confers discretionary authority upon the persons named therein with respect to amendments or variations to matters identified in the accompanying Notice of Meeting and with respect to other matters which may properly come before the Meeting or any adjournment thereof. **In the absence of such instructions, such Element Common Shares will be voted FOR: (a) the approval of the Element Arrangement Resolution; (b) the approval of the ECN Capital Equity Plans Resolution; and (c) the approval of the Share Issuance Resolution.** As of the date of this Circular, management of the Corporation is not aware of any such amendment, variation or other matter to come before the Meeting. However, if any amendments or variations to matters identified in the accompanying Notice of Meeting or any other matters which are not now known to management should properly come before the Meeting or any adjournment thereof, the Element Common Shares represented by properly executed proxies given in favour of the persons designated by management of the Corporation in the enclosed form of proxy will be voted on such matters pursuant to such discretionary authority.

### ***Non-Registered Shareholders***

**Only registered holders of Element Common Shares or duly appointed proxyholders are permitted to vote at the Meeting. Most shareholders of the Corporation are "non-registered" shareholders because the Element Common Shares they own are not registered in their names but are instead registered in the name of the brokerage firm, bank or trust company through which they purchased the Element Common Shares.**

A holder of Element Common Shares is a "**Non-Registered Shareholder**" if the shareholder's Element Common Shares are registered either: (a) in the name of an Intermediary that the Non-Registered Shareholder deals with in respect of the Element Common Shares, such as, among others, banks, trust companies, securities dealers or brokers and trustees or administrators of self-administered RRSPs, RRIFFs, RESPs, RDSPs, TFSAs and similar plans; or (b) in the name of a clearing agency (such as CDS & Co.) of which the Intermediary is a participant.

### ***Appointment of Proxy***

Non-Registered Shareholders who have not objected to their Intermediary disclosing certain ownership information about them to the Corporation are referred to as non-objecting beneficial owners

("NOBOs"). Those Non-Registered Shareholders who have objected to their Intermediary disclosing ownership information about them to the Corporation are referred to as objecting beneficial owners ("OBOs"). In accordance with the requirements of NI 54-101, the Corporation has elected to send copies of the proxy-related materials, including a form of proxy or voting instruction form (collectively, the "meeting materials") directly to the NOBOs and indirectly through Intermediaries for onward distribution to the OBOs. Element will also pay the fees and costs of Intermediaries for their services in delivering the meeting materials to OBOs in accordance with NI 54-101. Intermediaries must forward the meeting materials to each Non-Registered Shareholder (unless the Non-Registered Shareholder has waived the right to receive such materials), and often use a service company (such as Broadridge Investor Communication Solutions, Canada), to permit the Non-Registered Shareholder to direct the voting of the Element Common Shares held by the Intermediary on behalf of the Non-Registered Shareholder.

Generally, Non-Registered Shareholders who have not waived the right to receive meeting materials will either:

- (a) be given a proxy which has already been signed by the Intermediary (typically by a facsimile, stamped signature) which is restricted as to the number of Element Common Shares beneficially owned by the Non-Registered Shareholder but which is otherwise uncompleted. This form of proxy need not be signed by the Non-Registered Shareholder. In this case, the Non-Registered Shareholder who wishes to submit a proxy should otherwise properly complete the form of proxy and deposit it with Computershare, as described above; or
- (b) more typically, be given a voting instruction form (a "VIF") which must be completed and signed by the Non-Registered Shareholder in accordance with the directions on the VIF. Non-Registered Shareholders should submit VIFs to Intermediaries in sufficient time to ensure that their votes are received from the Intermediaries by the Corporation.

The purpose of these procedures is to permit Non-Registered Shareholders to direct the voting of the Element Common Shares they beneficially own. Should a Non-Registered Shareholder who receives either a proxy or a VIF wish to attend and vote at the Meeting in person (or have another person attend and vote on behalf of the Non-Registered Shareholder), the Non-Registered Shareholder should strike out the names of the persons named in the form of proxy and insert their own (or such other person's) name in the blank space provided in the form of proxy or, in the case of a VIF, follow the corresponding instructions on the VIF, to appoint themselves as proxyholders, and deposit the form of proxy or submit the VIF in the appropriate manner noted above. Non-Registered Shareholders should carefully follow the instructions on the form of proxy or VIF that they receive from their Intermediary in order to vote the Element Common Shares that are held through that Intermediary. **Therefore, Non-Registered Shareholders should ensure that instructions respecting the voting of their Element Common Shares are communicated to the appropriate persons, as required.**

These securityholder materials are being sent to both registered and non-registered owners of the Element Common Shares. If you are a non-registered owner, and the Corporation or its agent has sent these materials directly to you, your name and address and information about your holdings of securities, have been obtained in accordance with applicable securities regulatory requirements from the Intermediary holding on your behalf. By choosing to send these materials to you directly, the Corporation (and not the Intermediary holding on your behalf) has assumed responsibility for (i) delivering these materials to you, and (ii) executing your proper voting instructions. Please return your voting instructions as specified in the request for voting instructions.

### **Voting Of Element Common Shares**

As of July 15, 2016 a total of 386,704,197 Element Common Shares were issued and outstanding. Each Element Common Share entitles the registered holder thereof to one vote on all matters to be acted upon at the Meeting. The Record Date for the determination of Shareholders entitled to receive notice of the Meeting has been fixed at July 29, 2016. In accordance with the provisions of the OBCA, Element will prepare a list of Registered Shareholders as of such Record Date. Each Registered Shareholder named

in the list will be entitled to vote the shares shown opposite his, her or its name on the list at the Meeting. All such Registered Shareholders of record as of the Record Date are entitled either to attend and vote thereat in person the respective Element Common Shares held by them or, provided a completed and executed proxy shall have been delivered to Computershare Investor Services Inc. within the time specified above, to attend and vote thereat by proxy the respective Element Common Shares held by them.

### ***Voting Securities and Principal Holders***

To the knowledge of the directors and executive officers of Element based on the most recent publicly available information, as of the date hereof, there is no person or company that beneficially owns, directly or indirectly, or controls or directs voting securities of Element carrying more than 10% of the voting rights attached to the voting securities of Element.

### **Notice and Access**

The Corporation is utilizing the notice-and-access mechanism (the "**Notice-and-Access Provisions**") under National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* and National Instrument 51-102 – *Continuous Disclosure Obligations* for distribution of this Circular to both registered and non-registered (or beneficial) shareholders.

The Notice-and-Access Provisions allow reporting issuers to post electronic versions of proxy-related materials, such as this Circular (the "**Proxy-Related Materials**") on-line, via SEDAR and one other website, rather than mailing paper copies of such materials to shareholders. Electronic copies of the proxy related materials may be found on the Corporation's SEDAR profile at [www.sedar.com](http://www.sedar.com) and also on the Corporation's website at [www.elementcorp.com/company-separation](http://www.elementcorp.com/company-separation). The Corporation will not use procedures known as "stratification" in relation to the use of Notice-and-Access Provisions. Stratification occurs when a reporting issuer using the Notice-and-Access Provisions provides a paper copy of the Information Circular to some shareholders with this notice package. In relation to the Meeting, all of the shareholders of the Corporation will receive the required documentation under the Notice-and-Access Provisions, which will not include a paper copy of the Circular. Shareholders are reminded to review the Circular before voting.

Although the Proxy-Related Materials are posted electronically, as noted above, shareholders will receive a "notice package", by prepaid mail, which includes the notice from prescribed by the Notice-and-Access Provisions and a form of proxy or voting instruction form. Shareholders should follow the instructions for completion and delivery contained in the form of proxy or voting instruction form.

The Corporation anticipates that using the Notice-and-Access Provisions for delivery to all of the Corporation's shareholders will directly benefit the Corporation through a substantial reduction in both postage and material costs, and also promote environmental responsibility by decreasing the large volume of paper documents generated by printing Proxy-Related Materials.

Shareholders with questions about notice-and-access can call the Corporation's transfer agent, Computershare Investor Services Inc. ("Computershare"), 100 University Avenue, 8th Floor, North Tower, Toronto, Ontario, M5J 2Y1 at 1-866-964-0492. Shareholders may also obtain paper copies of the proxy related materials free of charge by contacting Computershare or upon request to the Senior Vice President, General Counsel & Corporate Secretary of the Corporation by email at [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com).

### ***Registered shareholders can request the printed Meeting Materials in any of the following ways:***

**BY TELEPHONE:** Call Toll Free, within North America – 1-866-962-0498 or direct, from Outside of North America – (514) 982-8716 and enter your control number located in the shaded bar on the reverse side.

**Canadian NOBO/OBO and US NOBO/OBO Beneficial shareholders (Non-Registered shareholders) can request the printed Meeting Materials in any of the following ways:**

**BY TELEPHONE:** Call Toll Free 1-866-962-0498 (for holders with a 15 digit control number) or 1-877-907-7643 (for holders with a 16 digit control number).

**BY EMAIL:** Please send a blank email to [sendmaterial@proxyvote.com](mailto:sendmaterial@proxyvote.com) with the information that is printed in the box marked by the arrow located on the second page of the notice that you received with the meeting materials. Please insert this number in the subject line of your email.

### **Interests of Certain Persons in the Element Arrangement and Related Matters**

Directors and executive officers of Element as of July 25, 2016, as a group beneficially owned, directly or indirectly, or exercised control or direction over approximately 6,396,215 Element Common Shares, representing approximately 1.7% of the issued and outstanding Element Common Shares. In addition, as of July 25, 2016, the directors and executive officers of Element own, in the aggregate: (i) Element Options exercisable for 11,800,014 Element Common Shares; (ii) 1,298,579 Element DSUs; and (iii) 604,733 Element PSUs.

Management of Element understands that each of these directors and executive officers currently intends to vote all of the Element Common Shares beneficially owned, whether directly or indirectly, by him or her in favour of (i) the Element Arrangement Resolution; (ii) the ECN Capital Equity Plans Resolution and (iii) the Share Issuance Resolution.

### **Procedure and Votes Required**

#### ***Arrangement Resolution***

The Interim Order provides that each Shareholder at the close of business on the Record Date will be entitled to receive notice of, to attend and to vote at the Meeting, or any adjournment(s) or postponement(s) thereof. Each such Shareholder will be entitled to vote in accordance with the provisions set out below.

Pursuant to the Interim Order:

- (a) each Shareholder will be entitled to one vote for each Element Common Share held as of the Record Date;
- (b) the Element Arrangement Resolution must be passed by an affirmative vote of at least two-thirds of the votes cast in respect of the Element Arrangement Resolution by Shareholders voting in person or by proxy at the Meeting;
- (c) the quorum at the Meeting will be not less than two persons present in person at the opening of the Meeting who are entitled to vote thereat either as Shareholders or proxyholders; and
- (d) if a quorum is not present at the time appointed for the Meeting or within a reasonable time thereafter as the Shareholders may determine, the Shareholders present or represented may adjourn the Meeting to a fixed time and place but may not transact any other business.

At the Meeting, Shareholders will be asked to consider and, if deemed advisable, to pass, with or without variation, the Element Arrangement Resolution, which is attached as Appendix A subject to such amendments, variations or additions as may be approved at the Meeting, approving the Element Arrangement, including the Element Plan of Arrangement attached in Appendix D.

On any ballot that may be called relating to the Element Arrangement Resolution, the Persons named as proxies in the enclosed form of proxy intend to vote the Element Common Shares represented by proxies in favour of the Element Arrangement Resolution, unless a Shareholder signing such proxy has specified otherwise. The Element Arrangement Resolution must be approved at the Meeting by at least two-thirds of the votes cast by Shareholders voting, in person or by proxy, at the Meeting.

**The Board of Directors unanimously recommends that Shareholders vote FOR the Element Arrangement Resolution.** See “*The Element Arrangement – Recommendation of the Board Regarding the Element Arrangement*”.

### ***ECN Capital Equity Plans Resolution***

At the Meeting, subject to the approval of the Element Arrangement Resolution, Shareholders will be asked to consider and, if deemed advisable, to pass, with or without variation, the ECN Capital Equity Plans Resolution, subject to such amendments, variations or additions as may be approved at the Meeting, to authorize and approve the ECN Capital Equity Plans.

On any ballot that may be called relating to the ECN Capital Equity Plans Resolution, the Persons named as proxies in the enclosed form of proxy intend to vote the Element Common Shares represented by proxies in favour of the ECN Capital Equity Plans Resolution, unless a Shareholder signing such proxy has specified otherwise. The ECN Capital Equity Plans Resolution must be approved at the Meeting by more than 50% of the votes cast by Shareholders voting, in person or by proxy, at the Meeting.

For a description of the ECN Capital Equity Plans, please refer to the section in Appendix L entitled “*Options to Purchase Securities*”. In addition, the proposed form of the ECN Capital Option Plan is attached as Appendix O, the proposed form of the ECN Capital DSU Plan is attached as Appendix P and the proposed form of the ECN Capital Unit Plan is attached as Appendix Q. Reference should be made thereto for a complete statement of the terms and conditions of the ECN Capital Equity Plans.

**The Board of Directors unanimously recommends that Shareholders vote FOR the ECN Capital Equity Plans Resolution.** See “*The Element Arrangement – Recommendation of the Board*”.

### ***Share Issuance Resolution***

At the Meeting, subject to the approval of the Element Arrangement Resolution, Shareholders (other than certain interested Shareholders) will be asked to consider and, if deemed advisable, to pass, with or without variation, the Share Issuance Resolution, subject to such amendments, variations or additions as may be approved at the Meeting, to authorize ECN Capital to issue such number of ECN Capital Common Shares as is necessary to acquire all of the outstanding IAC Shares.

On any ballot that may be called relating to the Share Issuance Resolution, the Persons named as proxies in the enclosed form of proxy intend to vote the Element Common Shares represented by proxies in favour of the Share Issuance Resolution, unless a Shareholder signing such proxy has specified otherwise. The Share Issuance Resolution must be approved at the Meeting by more than 50% of the votes cast by Shareholders (other than certain interested Shareholders) voting, in person or by proxy, at the Meeting.

For a description of the IAC Arrangement, please refer to the section in this Management Information Circular titled “*The IAC Arrangement*”.

**The Board of Directors unanimously recommends that Shareholders vote FOR the Share Issuance Resolution.** See “*The Arrangement – Recommendation of the Board Regarding the IAC Arrangement*”.

## INDEBTEDNESS OF DIRECTORS, OFFICERS AND EMPLOYEES

### *Indebtedness of Directors and Executive Officers under Securities Purchase Program*

The following table sets out the indebtedness of directors and executive officers of the Corporation and any associates of any of the foregoing persons since the beginning of the year-ended December 31, 2015 to the Corporation or its subsidiaries, or to other entities if the indebtedness to such other entities is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the Corporation or any of its subsidiaries.

<b>Name (Municipality) and Principal Position</b>	<b>Involvement of Issuer</b>	<b>Largest Amount Outstanding since December 31, 2015</b>
Steven Hudson (Ontario), <i>Chief Executive Officer</i>	Lender	\$16,598,148
Bradley Nullmeyer (Ontario), <i>President</i>	Lender	\$11,120,163
David McKerroll (Ontario), <i>President, Rail &amp; Aviation</i>	Lender	\$1,202,737
Michel Béland (Ontario), <i>Chief Financial &amp; Administrative Officer</i>	Lender	\$4,125,504
Daniel Jauernig (Ontario), <i>Chief Operating Officer</i>	Lender	\$1,083,459
Jim Nikopoulos (Ontario), <i>Senior Vice-President, General Counsel &amp; Corporate Secretary</i>	Lender	\$1,342,064

The indebtedness reflected in the above table reflects loans provided to executive officers of the Corporation to finance the acquisition of securities in Element. These loans were approved by the Board on the basis that it was important that management's interest be aligned with that of the Corporation's shareholders. Purchase of securities through the loan program will occur through the secondary market in compliance with the Corporation's insider trading policy and applicable TSX and securities laws. In accordance with the executive share accumulation program, loans will reflect arm's length terms, including a market rate of interest (currently a rate of 3% per annum), principal repayment no later than 7 years from advance, and the Corporation being granted a first-priority security interest in certain Element securities held by the executive and having full recourse to the executive as security for payment of the full amount of their indebtedness. No portion of any outstanding loan amounts has ever been forgiven by the Corporation.

### INTEREST OF CERTAIN PERSONS IN MATERIAL TRANSACTIONS

No director or executive officer of Element and no associate or Affiliate of the foregoing persons has or has had any material interest, direct or indirect, in any matter to be acted up at the Meeting or in any transaction since the commencement of Element's last completed financial year or in any proposed transaction, which, in either case, has materially affected or will materially affect Element, except as described herein.

### AUDITORS

The auditor of Element is Ernst & Young LLP, Chartered Professional Accountants, Licensed Public Accountants. Ernst & Young LLP were first appointed as auditors of the Corporation on August 11, 2010. Such firm is independent of Element within the meaning of the Rules of Professional Conduct of the

Chartered Professional Accountants of Ontario (registered name of The Institute of Chartered Accountants of Ontario).

#### **ADDITIONAL INFORMATION**

Additional information relating to Element is available at [www.sedar.com](http://www.sedar.com). Shareholders may obtain additional copies of the Element Annual Financial Statements and related management's discussion and analysis, and the Element Interim Financial Statements and related management's discussion and analysis, by written request addressed to: the Senior Vice-President, General Counsel & Corporate Secretary of the Corporation by email at [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com) or by mail at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1. Financial information regarding Element is provided in the Element Annual Financial Statements and management's discussion and analysis for years ended December 31, 2015 and 2014 and for the periods ending March 31, 2016 and 2015.

Additional copies of this document and the continuous disclosure documents filed by Element with the Canadian securities regulatory authorities may be obtained by contacting Element at the address noted above. A copy of this Circular has been sent to each director, each Shareholder entitled to notice of the Meeting, and the auditor of the Corporation.

#### **DIRECTORS' APPROVAL**

The contents and the sending of this Circular have been approved by the Board of Directors of the Corporation.

Dated as of July 28, 2016.

*"Jim Nikopoulos"*

**Jim Nikopoulos**  
**Senior Vice President, General Counsel &**  
**Corporate Secretary**

## CONSENT

### **Consent of BMO Nesbitt Burns Inc.**

To: The Directors of Element Financial Corporation

We consent to the inclusion in the management information circular of Element Financial Corporation (“**Element**”) dated July 28, 2016 (the “**Circular**”) of our fairness opinion dated July 21, 2016, a summary of our fairness opinion and references to our firm name and our fairness opinion in the Circular.

In providing such consent, we do not intend that any person other than the Board of Directors of Element be entitled to rely on our fairness opinion dated July 21, 2016.

*“BMO Nesbitt Burns Inc.”*

Toronto, Ontario  
July 28, 2016

### **Consent of PricewaterhouseCoopers LLP**

To: The Directors of Element Financial Corporation

We consent to the inclusion in the management information circular of Element Financial Corporation (“**Element**”) dated July 28, 2016 (the “**Circular**”) of our fairness opinion dated July 25, 2016, a summary of our fairness opinion and references to our firm name and our fairness opinion in the Circular.

In providing such consent, we do not intend that any person other than the Board of Directors of Element be entitled to rely on our fairness opinion dated July 25, 2016.

*“PricewaterhouseCoopers LLP”*

Toronto, Ontario  
July 28, 2016



## APPENDIX A

### ELEMENT ARRANGEMENT RESOLUTION

#### **Arrangement under Section 182 of the *Business Corporations Act (Ontario)***

#### **BE IT RESOLVED THAT:**

1. The arrangement (the “**Element Arrangement**”) under section 182 of the *Business Corporations Act* (Ontario) pursuant to the Arrangement Agreement (as defined in the Management Information Circular) involving Element Financial Corporation (“**Element**”), its shareholders, ECN Capital (“ECN Capital”), 2510204 Ontario Inc. (“**Subco**”) and INFOR Acquisition Corp., as more particularly described and set forth in the management information circular of Element dated July 28, 2016 (the “**Management Information Circular**”), as may be modified, amended or supplemented, is hereby authorized, approved and adopted.
2. The options to purchase common shares in the capital of Element Fleet Management Corp. (as Element will be renamed after the Arrangement Agreement) and the options to purchase common shares in the capital of ECN Capital to be granted to holders of options to purchase common shares in the capital of Element (the “**Element Options**”) in exchange for such Element Options, as provided in the Element plan of arrangement (the “**Element Plan of Arrangement**”) included as Appendix A in the Arrangement Agreement (as defined in the Management Information Circular) attached as Appendix D to the Management Information Circular, are hereby approved.
3. The Arrangement Agreement (as defined in the Management Information Circular) is hereby confirmed, ratified and approved.
4. Notwithstanding that this resolution has been duly passed by the shareholders of Element (and the Element Arrangement adopted) or that the Element Arrangement has been approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), the Board of Directors of Element is hereby authorized and empowered without further notice to or approval of the shareholders of Element to (i) amend the Arrangement Agreement (including the Element Plan of Arrangement) to the extent permitted therein in any manner not inconsistent with an applicable order of the Court, (ii) determine when to file the articles of arrangement in respect of the Element Arrangement, and (iii) decide not to proceed with the Element Arrangement or revoke this resolution at any time prior to the issue of a certificate giving effect to the Element Arrangement.
5. Any one director or officer of Element is hereby authorized and directed for and on behalf of Element to execute, under the seal of Element or otherwise, and to deliver articles of arrangement and all other documents and do all such other acts or things as such person determines to be necessary or desirable to give effect to this resolution, the execution of any such document or the doing of any such other act or thing being conclusive evidence of such determination.

## APPENDIX B

### ECN CAPITAL EQUITY PLANS RESOLUTION

#### BE IT RESOLVED THAT:

1. The option plan (the “**ECN Capital Option Plan**”) substantially in the form attached as Appendix O to the management information circular (“**Management Information Circular**”) of Element Financial Corporation (“**Element**”) accompanying the notice of this meeting is hereby authorized, approved and ratified, on behalf of ECN Capital (“**ECN Capital**”) and ECN Capital’s shareholders, as the option plan for ECN Capital pursuant to the plan of arrangement (the “**Element Plan of Arrangement**”) under section 182 of the *Business Corporations Act* (Ontario) included as Appendix A to the arrangement agreement (the “**Arrangement Agreement**”) involving Element, its shareholders, ECN Capital, 2510204 Ontario Inc. (“**Subco**”) and INFOR Acquisition Corp, which Arrangement Agreement is attached as Appendix D to this Management Information Circular , all unallocated options under the ECN Capital Option Plan be and are hereby approved, and ECN Capital has the ability to continue granting options under the ECN Capital Option Plan until September 20, 2019, which is the date that is three (3) years from the date of the shareholder meeting at which shareholder approval of the ECN Capital Option Plan is being sought.
2. The deferred share unit plan (the “**ECN Capital DSU Plan**”) substantially in the form attached as Appendix P to the Management Information Circular accompanying the notice of this meeting is hereby authorized, approved and ratified, on behalf of ECN Capital and ECN Capital’s shareholders, as the deferred share unit plan for ECN Capital pursuant to the Element Plan of Arrangement, all unallocated deferred share units under the ECN Capital DSU Plan be and are hereby approved, and ECN Capital has the ability to grant deferred share units under the ECN Capital DSU Plan until September 20, 2019, which is the date that is three (3) years from the date of the shareholder meeting at which shareholder approval of the ECN Capital DSU Plan is being sought.
3. The unit plan (the “**ECN Capital Unit Plan**”) substantially in the form attached as Appendix Q to the Management Information Circular of Element accompanying the notice of this meeting is hereby authorized, approved and ratified, on behalf of ECN Capital and ECN Capital’s shareholders, as the restricted share unit and performance share unit plan for ECN Capital pursuant to the Element Plan of Arrangement, all unallocated restricted share units and performance share units under the ECN Capital Unit Plan be and are hereby approved, and ECN Capital has the ability to grant performance share units and restricted share units under the ECN Capital Unit Plan until September 20, 2019, which is the date that is three (3) years from the date of the shareholder meeting at which shareholder approval of the ECN Capital Unit Plan is being sought.
4. Any one director or officer of ECN Capital or Subco is hereby authorized and directed for and on behalf of ECN Capital or Subco to execute, under the seal of ECN Capital or Subco or otherwise, and to deliver all documents and do all such other acts or things as such person determines to be necessary or desirable to give effect to this resolution, the ECN Capital Option Plan, ECN Capital DSU Plan and the ECN Capital Unit Plan, the execution of any such document or the doing of any such other act or thing being conclusive evidence of such determination.

## APPENDIX C

### SHARE ISSUANCE RESOLUTION

#### Arrangement under Section 182 of the *Business Corporations Act (Ontario)*

#### BE IT RESOLVED THAT:

1. **ECN Capital Corp.** (“**ECN Capital**”) is hereby authorized to issue such number of common shares in the capital of ECN Capital (the “ECN Capital Common Shares”) as is necessary to allow ECN Capital to acquire all of the outstanding securities of Infor Acquisition Corp. (“**IAC**”) in accordance with the terms of the arrangement (the “**IAC Arrangement**”) under section 182 of the *Business Corporations Act* (Ontario) pursuant to the Arrangement Agreement (as defined in the Management Information Circular) involving Element Financial Corporation (“**Element**”), its shareholders, ECN Capital (“ECN Capital”), 2510204 Ontario Inc. (“**Subco**”) and INFOR Acquisition Corp., as more particularly described and set forth in the management information circular of Element dated July 28, 2016 (the “**Management Information Circular**”) (as the IAC Arrangement may be modified, amended or supplemented, is hereby authorized, approved and adopted).
2. ECN Capital is hereby further authorized to issue such number of ECN Capital Common Shares as is necessary to meet its obligations to IAC as contemplated in the IAC Arrangement.
3. Notwithstanding that this resolution has been duly passed by the shareholders of Element (and the IAC Arrangement adopted) or that the IAC Arrangement has been approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), the Board of Directors of Element is hereby authorized and empowered without further notice to or approval of the shareholders of Element to (i) amend the Arrangement Agreement (including the IAC Plan of Arrangement) to the extent permitted therein in any manner not inconsistent with an applicable order of the Court, (ii) determine when to file the articles of arrangement in respect of the IAC Arrangement, and (iii) decide not to proceed with the IAC Arrangement or revoke this resolution at any time prior to the issue of a certificate giving effect to the IAC Arrangement.
4. Any one director or officer of Element is hereby authorized and directed for and on behalf of Element to execute, under the seal of Element or otherwise, and to deliver articles of arrangement and all other documents and do all such other acts or things as such person determines to be necessary or desirable to give effect to this resolution, the execution of any such document or the doing of any such other act or thing being conclusive evidence of such determination.

**APPENDIX D**

**ARRANGEMENT AGREEMENT (INCLUDING PLANS OF ARRANGEMENT)**

**ARRANGEMENT AGREEMENT**

This Arrangement Agreement made as of July 25, 2016,

**A M O N G:**

**Element Financial Corporation**, a corporation existing under the laws of the Province of Ontario,

(hereinafter referred to as “**Element**”)

- and -

**ECN Capital Corp.**, a corporation existing under the laws of the Province of Ontario,

(hereinafter referred to as “**Spinco**”)

- and -

**2510204 Ontario Inc.**, a corporation existing under the laws of the Province of Ontario,

(hereinafter referred to as “**Subco**”)

- and -

**INFOR Acquisition Corp.**, a corporation existing under the laws of the Province of Ontario,

(hereinafter referred to as “**IAC**”)

**WHEREAS** Element, Spinco and Subco propose to carry out an arrangement under section 182 of the *Business Corporations Act* (Ontario) substantially on terms and conditions set forth in the Element Plan of Arrangement (as defined herein) annexed hereto as Appendix A;

**AND WHEREAS** Spinco has been incorporated in order to facilitate and participate in the Element Arrangement (as defined herein);

**AND WHEREAS** Subco, a Subsidiary (as defined herein) of Element, has agreed to participate in the Element Arrangement;

**AND WHEREAS** Element, Spinco and Subco will participate in a series of transactions for the separation and reorganization of the assets and liabilities of Element, such that Subco will, directly or indirectly, hold the business known as the Commercial Finance Business (as defined herein) and Element will transfer the Subco Shares (as defined herein) to Spinco;

**AND WHEREAS** the board of directors of each of Element, Spinco and IAC has determined that it would be in the best interests of its corporation to combine the businesses conducted by Spinco and IAC as soon as practicable following completion of the Element Arrangement;

**AND WHEREAS** Spinco and IAC propose to carry out an arrangement under section 182 of the *Business Corporations Act* (Ontario) substantially on terms and conditions set forth in the IAC Plan of Arrangement (as defined herein) annexed hereto as Appendix B;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party (as defined herein), the Parties hereby covenant and agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions.**

In this Agreement, except as otherwise expressly provided in Appendix A or Appendix B, or unless there is something in the subject matter or context inconsistent therewith, the following terms will have the respective meanings set out below and grammatical variations of such terms will have the corresponding meanings:

“**Affiliate**” means, when describing a relationship between two Persons, that either one of them is under the direct or indirect control of the other, or each of them is directly or indirectly controlled by the same Person.

“**Agreement**” means this arrangement agreement, including the appendices attached hereto, as may be amended, supplemented or otherwise modified from time to time.

“**Amended and Restated Element Option Plan**” means the Element Financial Corporation Share Option Plan enacted June 1, 2010, and amended and restated May 17, 2011 and May 13, 2014, as amended and restated by the Board prior to or pursuant to the Element Arrangement.

“**Applicable Law**” means, with respect to any Person, any domestic or foreign federal, national, state, provincial or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“**Applicable Securities Laws**” means the securities legislation, securities regulation and securities rules, as amended, and the policies, notices, instruments and blanket orders having the force of law, in force from time to time in each of the provinces and territories of Canada.

“**Assessment**” has the meaning given to it in Section 5.5(m).

“**Assets and Properties**” with respect to any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, tangible or intangible, choate or inchoate, absolute, accrued, contingent, fixed or otherwise, and, in each case, wherever situated), including the goodwill related thereto, operated, owned or leased by or in the possession of such Person.

“**Bank**” means the Bank of Montreal or any successor thereto.

“**Board**” or “**Board of Directors**” means the Board of Directors of Element.

“**Business Day**” means any day other than a Saturday, Sunday or statutory or civic holiday in Ontario, when banks are generally open for the transaction of business in Toronto, Ontario.

“**Commercial Finance Business**” means the businesses currently carried on by Element and its Affiliates consisting of the commercial and vendor finance, aviation finance and rail finance verticals, and the investments held by Element Investment Corp., and includes all the assets and liabilities pertaining thereto held by any of Element or its Affiliates immediately prior to the Element Effective Time.

“**Confidential Information**” means, in relation to a Party (the “**Discloser**”):

- (a) all information, in whatever form communicated or maintained, that the Discloser discloses to, or that is gathered by inspection by a Party (the “**Recipient**”) or any of the Recipient’s representatives in the course of the Recipient’s review of the transactions contemplated by this Agreement, whether provided before or after the date of this Agreement, that contains or otherwise reflects information concerning the Discloser or its businesses, affairs, financial condition, assets, liabilities, operations, prospects or activities;
- (b) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the Person preparing the same (“**Notes**”); and
- (c) any matter relating to this Agreement or its terms;

but does not include any information that:

- (d) is at the time of disclosure to the Recipient or thereafter becomes generally available to the public, other than as a result of a disclosure by the Recipient or any of the Recipient’s representatives in breach of this Agreement;
- (e) is or was received by the Recipient on a non-confidential basis from a source other than the Discloser or its Representatives if such source is not known to the Recipient to be prohibited from disclosing the information to the Recipient by a contractual, fiduciary or other legal confidentiality obligation to, the Discloser; or
- (f) was known by the Recipient prior to disclosure in connection with the transactions contemplated by this Agreement and was not subject to any contractual, fiduciary or other legal confidentiality obligation on the part of the Recipient.

“**Contract**” means all agreements, contracts or commitments of any nature, written or oral, including, for greater certainty and without limitation, leases, loan documents and security documents.

“**control**” means, when applied to a relationship between two Persons, that a Person (the “**first Person**”) is considered to control another Person (the “**second Person**”) if: (a) the first Person, directly or indirectly, beneficially owns or exercises control or direction over securities, interests or contractual rights of the second Person carrying votes which, if exercised, would entitle the first Person to elect a majority of the directors of the second Person, or a majority of any other Persons who have the right to manage or supervise the management of the business and affairs of the second Person, unless that first Person holds the voting securities only to secure a debt or similar obligation; (b) the second Person is a partnership, other than a limited partnership, and the first Person, together with any Person controlled by the first Person, holds more than 50% of the interests (measured by votes or by value) of the partnership;

or (c) the second Person is a limited partnership and the general partner of the limited partnership is the first Person or any Person controlled by the first Person, and the term “controlled” has a corresponding meaning.

“**Court**” means the Ontario Superior Court of Justice.

“**Depository**” means such Person as the Parties, each acting reasonably, may appoint to act as depository for the IAC Shares in relation to the IAC Arrangement.

“**Direct Claim**” means any claim by an Indemnified Person against an Indemnifying Party.

“**Disclosure Documents**” has the meaning given to it in Section 4.4(i).

“**Dispute Notice**” has the meaning given to it in Section 8.3(a).

“**Dissent Rights**” means the rights of Shareholders or IAC Shareholders, as applicable, to dissent in respect of the Element Arrangement or IAC Arrangement, as applicable, pursuant to Section 3.1 of the Element Plan of Arrangement or Section 3.1 of the IAC Plan of Arrangement, as applicable.

“**Dissenting Shareholder**” has the meaning given to it in the applicable Plan of Arrangement.

“**Element**” means Element Financial Corporation, an OBCA corporation, which is expected to be renamed “Element Fleet Management Corp.” as of the Element Effective Time.

“**Element Arrangement**” means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the Element Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with this Agreement, the Element Plan of Arrangement or at the direction of the Court.

“**Element Arrangement Resolution**” means the special resolution of the Shareholders approving the Element Plan of Arrangement as required by the OBCA and the Element Interim Order.

“**Element Articles of Arrangement**” means the articles of arrangement of Element in respect of the Element Arrangement in the form required by the OBCA to be sent to the OBCA Director following the issuance of the Element Final Order and the satisfaction (or waiver, if applicable) of the other conditions herein contained in favour of each of Element, Spinco and Subco.

“**Element Butterfly Shares**” has the meaning given to it in the Element Plan of Arrangement.

“**Element Certificate of Arrangement**” means the Certificate of Arrangement to be issued by the OBCA Director under the OBCA giving effect to the Element Arrangement.

“**Element Circular**” means the management information circular of Element to be prepared and made available to the Shareholders in connection with the Element Meeting.

“**Element Common Shares**” means, prior to the Element Arrangement, the existing common shares in the capital of Element that are to be re-designated as “Class A Common Shares” pursuant to Section 2.3(b) of the Element Plan of Arrangement, and, after the Element Arrangement, the Post-Arrangement Element Common Shares.

“**Element Effective Date**” means the effective date of the Element Arrangement, being the date shown on the Element Certificate of Arrangement.



**“Element Effective Time”** means 9:00 a.m. (Eastern Time) on the Element Effective Date.

**“Element Final Order”** means the final order of the Court to be made in connection with approval of the Element Arrangement, as such order may be varied or amended by the Court at any time prior to the Element Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or amended on appeal, with the consent of Element, Spinco and Subco, each acting reasonably.

**“Element Interim Order”** means the interim order of the Court to be issued under section 182 of the OBCA pursuant to the application by Element providing, among other things, for declarations and directions with respect to the Element Arrangement and the Element Meeting, as such order may be varied or amended at any time prior to the Element Meeting, with the consent of Element, Spinco and Subco, each acting reasonably.

**“Element Meeting”** means the special meeting of Shareholders, including any adjournment(s) or postponement(s) thereof, to be convened as provided in the Element Interim Order to consider and to vote on the Element Arrangement Resolution and, if the Element Arrangement Resolution is approved, the Spinco Equity Plans Resolution and the Share Issuance Resolution, and such other matters as may properly come before the meeting.

**“Element Meeting Materials”** means the Element Circular and notice of meeting, and the form of proxy in respect of the Element Meeting which accompanies the Element Circular.

**“Element Plan of Arrangement”** means the plan of arrangement attached as Appendix A, as amended or supplemented from time to time in accordance with the terms thereof, the terms of this Agreement or made at the discretion of the Court, with the consent of Element, Spinco and Subco, each acting reasonably.

**“Escrow Agreement”** means the escrow agreement dated May 27, 2015 between IAC, Equity Financial Trust Company, CIBC World Markets Inc., BMO Nesbitt Burns Inc. and Deutsche Bank Securities Inc.

**“Excess”** has the meaning given to it in Section 8.7.

**“Exchange Ratio”** means the Class A Exchange Ratio and the Class B Exchange Ratio, in each case as defined in the IAC Plan of Arrangement, as applicable.

**“Fairness Opinions”** means (a) a fairness opinion of BMO Nesbitt Burns Inc. dated as of July 21, 2016, addressed to the Board to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received by Shareholders under the Element Arrangement is fair, from a financial point of view, to the Shareholders; and (b) a fairness opinion of PricewaterhouseCoopers LLP dated as of July 25, 2016, addressed to the Board to the effect that, as of such date, and based upon and subject to various factors, including the scope of review, limitations and assumptions, PwC is of the opinion that the IAC Arrangement is fair, from a financial point of view, to the Shareholders.

**“Fleet Management Business”** means the businesses currently carried on by Element and its Affiliates other than the Commercial Finance Business, and includes, among other things, the fleet finance vertical and related fleet management services, and all the assets and liabilities pertaining thereto held by any of Element or its Affiliates immediately prior to the Element Effective Time. For greater certainty, the Fleet Management Business does not include any portion of the Commercial Finance Business.

“**GAAP**” means Canadian generally accepted accounting principles for publicly accountable enterprises, being International Financial Reporting Standards as issued by the International Accounting Standards Board, as adopted by the Canadian Accounting Standards Board.

“**Governmental Authority**” means any (a) multinational, federal, national, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry or agency, domestic or foreign, (b) any subdivision, agent, commission, board, or authority of any of the foregoing, (c) any quasi-governmental or private body exercising any regulatory, self-regulatory, expropriation or taxing authority under or for the account of any of the foregoing, or (d) any stock exchange.

“**IAC Arrangement**” means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the IAC Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with this Agreement, the IAC Plan of Arrangement or at the direction of the Court.

“**IAC Arrangement Resolution**” means the special resolution of the IAC Shareholders approving the IAC Plan of Arrangement as required by the OBCA and the IAC Interim Order.

“**IAC Articles of Arrangement**” means the articles of arrangement of IAC in respect of the IAC Arrangement in the form required by the OBCA to be sent to the OBCA Director following the issuance of the IAC Final Order and the satisfaction (or waiver, if applicable) of the other conditions herein contained in favour of each of Spinco and IAC.

“**IAC Business**” means the business currently conducted by IAC, which is the business of identifying and evaluating businesses and assets with a view to completing a Qualifying Acquisition, and, having identified and evaluated such opportunities, to negotiate an acquisition subject to acceptance by the TSX.

“**IAC Certificate of Arrangement**” means the Certificate of Arrangement to be issued by the OBCA Director under the OBCA giving effect to the IAC Arrangement.

“**IAC Circular**” means the management information circular of IAC to be prepared and sent to the IAC Shareholders in connection with the IAC Meeting.

“**IAC Class A Shares**” means the existing Class A Restricted Voting Shares in the capital of IAC.

“**IAC Class B Shares**” means the existing Class B Shares in the capital of IAC.

“**IAC Contracts**” has the meaning given to it in Section 4.4(v).

“**IAC Effective Date**” means the effective date of the IAC Arrangement, being the date shown on the IAC Certificate of Arrangement.

“**IAC Effective Time**” means 12:10 a.m. (Eastern Time) on the IAC Effective Date; provided that if the IAC Effective Date occurs on the Element Effective Date, the “IAC Effective Time” shall be 9:30 a.m. (Eastern Time).

“**IAC Fairness Opinion**” means a fairness opinion of Cormark Securities Inc. dated as of July 25, 2016, addressed to the board of directors of IAC to the effect that, as of such date, and based upon and subject to the various factors, assumptions, qualifications and limitations set forth therein, the consideration to be received by holders of IAC Class A Shares under the IAC Arrangement is fair, from a financial point of view, to such shareholders.

**“IAC Final Order”** means the final order of the Court to be made in connection with approval of the IAC Arrangement, as such order may be varied or amended by the Court at any time prior to the IAC Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or amended on appeal, with the consent of Spinco and IAC, each acting reasonably.

**“IAC Interim Order”** means the interim order of the Court to be issued under section 182 of the OBCA pursuant to the application by IAC providing, among other things, for declarations and directions with respect to the IAC Arrangement and the IAC Meeting, as such order may be varied or amended at any time prior to the IAC Meeting, with the consent of Spinco and IAC, each acting reasonably.

**“IAC Meeting”** means the special meeting of IAC Shareholders, including any adjournment(s) or postponement(s) thereof, to be convened as provided in the IAC Interim Order to consider and to vote on the IAC Arrangement Resolution and such other matters as may properly come before the meeting.

**“IAC Net Assets”** means an amount, determined in accordance with this Agreement, equal to all IAC assets (including all funds from the initial public offering of IAC held in escrow), less the sum of (a) all liabilities of IAC to and including the IAC Effective Date (including all escrowed underwriters’ commissions related to such initial public offering and all accrued or estimated fees and expenses in connection with the IAC Arrangement or otherwise), and (b) the aggregate amount of escrowed funds to be paid in respect of Class A IAC Shares for which IAC Shareholders have validly exercised rights of redemption in respect of the IAC Arrangement.

**“IAC Plan of Arrangement”** means the plan of arrangement attached as Appendix B, as amended or supplemented from time to time in accordance with the terms thereof, the terms of this Agreement or made at the discretion of the Court, with the consent of Spinco and IAC, each acting reasonably.

**“IAC Prospectus”** means the (final) non-offering prospectus of IAC that is required to be prepared and filed under Applicable Securities Laws in connection with IAC’s Qualifying Acquisition.

**“IAC Shareholders”** means the registered holders of IAC Shares at the applicable time.

**“IAC Shares”** means the IAC Class A Shares and the IAC Class B Shares.

**“IAC Warrants”** means the warrants issued by IAC entitling each holder thereof to purchase one IAC Class A Share in accordance with the terms and conditions of such warrants.

**“Indemnified Person”** means each Person entitled to indemnification pursuant to Article 8.

**“Indemnifying Party”** means any Party who is obligated to provide indemnification under Article 8.

**“Indemnity Payment”** means any amount required to be paid by an Indemnifying Party pursuant to Article 8.

**“Independent Accountant”** has the meaning given to it in Section 3.8(c).

**“Judgment Conversion Date”** has the meaning given to it in Section 8.10(a).

**“Judgment Currency”** has the meaning given to it in Section 8.10(a).

**“Loss”** means any loss, liability, damage, cost, expense, charge, fine, penalty or assessment of whatever nature or kind, including Taxes, the reasonable out-of-pocket costs and expenses of any action, suit,

proceeding, demand, assessment, judgment, settlement or compromise relating thereto, fines and penalties and reasonable legal fees (on a solicitor and its own client basis) and expenses incurred in connection therewith, excluding loss of profits and consequential damages.

**“Material Adverse Effect”** means, in respect of any corporation, any change, event or occurrence that has, or would have, a material and adverse effect upon the business, operations, assets, liabilities, capitalization, financial condition or results of operation of that corporation and its Affiliates considered as a whole.

**“misrepresentation”** means an untrue statement of a material fact, or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

**“Notes”** has the meaning given to it in the definition of “Confidential Information”.

**“Notice Period”** has the meaning given to it in Section 8.3(a).

**“OBCA”** means the *Business Corporations Act* (Ontario), as amended.

**“OBCA Director”** means the Director appointed pursuant to section 278 of the OBCA.

**“Outside Date”** means October 31, 2016.

**“Party”** means a party to this Agreement.

**“Passport System”** means the system for review and procedures for the filing of prospectuses and related materials in one or more Canadian jurisdictions pursuant to Multilateral Instrument 11-102 – *Passport System* and National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions*.

**“Person”** means any individual, partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, Governmental Authority or other entity.

**“Post-Arrangement Element Common Shares”** means the common shares in the capital of Element having the terms and conditions set out in Exhibit I to the Element Plan of Arrangement, to be issued under the Element Arrangement to Shareholders (other than Dissenting Shareholders) as partial consideration for the disposition of existing common shares in the capital of Element held by them.

**“Post-Arrangement Element Options”** has the meaning given to it in the Element Plan of Arrangement.

**“Pre-Arrangement Transactions”** means the reorganization of the Commercial Finance Business under the ownership of Subco.

**“Prime Rate”** means the floating rate of interest established from time to time by the Bank (and reported to the Bank of Canada) as the reference rate of interest the Bank will use to determine rates of interest payable by its borrowers on Canadian dollar commercial loans made by the Bank to such borrowers in Canada and designated by the Bank as its “*prime rate*”.

**“Qualifying Acquisition”** has the meaning ascribed thereto under the provisions of the TSX Company Manual.

**“Recovery”** has the meaning given to it in Section 8.7.

“**Representatives**” means, collectively, the directors, officers, employees and agents of a Party and its Affiliates at any time and their respective heirs, executors, administrators and other legal representatives.

“**Section 3(a)(10) Exemption**” has the meaning given to it in Section 2.7(a).

“**SEDAR**” means the System for Electronic Document Analysis and Retrieval.

“**Separation Agreement**” means an agreement to be made among Element, Spinco and Subco in respect of, among other things, the reorganization of the Commercial Finance Business under the ownership of Subco and certain arrangements governing the separation of the Commercial Finance Business, in such form as may be agreed to by the parties, acting reasonably.

“**Share Issuance Resolution**” means the ordinary resolution of Shareholders (other than certain interested Shareholders) authorizing Spinco to issue such number of Spinco Common Shares as is necessary to acquire all of the outstanding IAC Shares (other than IAC Shares held by Spinco or any of its Affiliates) pursuant to the IAC Plan of Arrangement, as it may be amended or varied at or at any time prior to the Element Meeting.

“**Shareholders**” means the registered holders of Element Common Shares at the applicable time.

“**Specified Corporation**” has the meaning attributed to such term in subsection 55(1) of the Tax Act.

“**Spinco**” means ECN Capital Corp., an OBCA corporation.

“**Spinco Arrangement Options**” has the meaning given to it in the Element Plan of Arrangement.

“**Spinco Common Shares**” means the common shares in the capital of Spinco having the terms and conditions set out in Exhibit II to the Element Plan of Arrangement.

“**Spinco Disclosure**” means all facts and other information relating to the Commercial Finance Business or Spinco or Subco, or any of their respective Subsidiaries.

“**Spinco DSU Plan**” means the Spinco deferred share unit plan for directors and executives to be established by Spinco, under which deferred share units may be granted.

“**Spinco Equity Plans Resolution**” means the ordinary resolution approving the Spinco Option Plan, Spinco DSU Plan and Spinco Unit Plan, in each case as it may be amended or varied at or at any time prior to the Element Meeting.

“**Spinco Option Plan**” means the share option plan to be established by Spinco and effective as contemplated by Section 2.3(f) of the Element Plan of Arrangement.

“**Spinco Options**” means, pursuant to the Element Arrangement, the options to purchase Spinco Common Shares granted under the Spinco Option Plan, including the Spinco Arrangement Options issued in exchange for Subco Arrangement Options.

“**Spinco Reorganization Shares**” has the meaning given to it in the Element Plan of Arrangement.

“**Spinco Unit Plan**” means the share unit plan to be established by Spinco, under which Spinco performance share units and restricted share units may be granted.

“**Subco**” means 2510204 Ontario Inc., an OBCA corporation and, immediately prior to the Element Effective Time, a direct wholly-owned Subsidiary of Element.

“**Subco Arrangement Options**” has the meaning given to it in the Element Plan of Arrangement.

“**Subco Shares**” means the common shares in the capital of Subco.

“**Subsidiary**” means, in respect of a specified Person, a second Person that is controlled, directly or indirectly, by the specified Person, and includes a Subsidiary of the second Person.

“**Tax Act**” means the *Income Tax Act* (Canada), as amended, including the regulations promulgated thereunder.

“**Tax Gross-Up**” means, with respect to any particular Indemnity Payment, such additional amount as is necessary to place the Indemnified Person in the same after tax position as it would have been in had such Indemnity Payment been received tax free. The Tax Gross-Up amount will be calculated by using the applicable combined federal and provincial income tax rate and/or the foreign tax rate applicable to the Indemnified Person and, except as provided in Section 8.8, without regard to any losses, credits, refunds or deductions that the Indemnified Person may have that could affect the amount of tax payable on any such Indemnity Payment.

“**Taxes**” includes all applicable present and future income taxes, capital taxes, stamp taxes, charges to tax, withholdings, sales and use taxes, value added taxes and goods and services taxes and all penalties, interest and other payments on or in respect thereof.

“**Third Party Beneficiaries**” has the meaning give to that term in Section 10.13.

“**Third Party Claims**” means any claim asserted against an Indemnified Person that is paid or payable to or claimed by any Person who is not a Party.

“**Transaction Costs**” means all fees, costs and expenses incurred directly in connection with the Pre-Arrangement Transactions and the Element Arrangement, including advisory and other professional fees and expenses, printing and mailing costs associated with the Element Meeting Materials and any payments made to Dissenting Shareholders under the Element Arrangement, but specifically excluding fees, costs, expenses and payment obligations incurred in connection with an obligation to indemnify in Article 8.

“**Transition Services Agreement**” means an agreement to be made between Element and Spinco in respect of, among other things, transition services to be provided among the parties for a specified period of time following the Element Effective Time, in such form as may be agreed to by the parties, acting reasonably.

“**TSX**” means the Toronto Stock Exchange.

“**U.S. Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder.

“**U.S. Securities Act**” means the United States Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

“**U.S. Securities Laws**” means federal and state securities legislation of the United States and all rules, regulations and orders promulgated thereunder.

## **1.2 Appendix.**

The following appendices are attached to this Agreement and form a part hereof:

Appendix A – Element Plan of Arrangement

Appendix B – IAC Plan of Arrangement

## **1.3 Construction.**

In this Agreement, unless otherwise expressly stated or the context otherwise requires:

- (a) the division of this Agreement into Articles and Sections and the use of headings are for convenience of reference only and do not affect the construction or interpretation hereof;
- (b) the words “hereunder”, “hereof” and similar expressions refer to this Agreement and not to any particular Article or Section and references to “Articles” and “Sections” are to Articles and Sections of this Agreement;
- (c) words importing the singular include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, Governmental Authorities and other Persons;
- (d) the word “including” means “including without limiting the generality of the foregoing”;
- (e) if any date on which any action is required to be taken under this Agreement is not a Business Day, such action will be required to be taken on the next succeeding Business Day;
- (f) references to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. Any reference in this Agreement to a Person includes the heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns of that Person;
- (g) references to a particular statute or Applicable Law shall be to such statute or Applicable Law and the rules, regulations and published policies made thereunder, as now in effect and as they may be promulgated thereunder or amended from time to time; and
- (h) a reference to the knowledge of a Party means to the best of the knowledge of any of the officers of such Party after due enquiry.

## **1.4 Currency.**

All references to currency herein are to lawful money of Canada unless otherwise specified.

**ARTICLE 2**  
**THE ELEMENT ARRANGEMENT**

**2.1 Element Arrangement.**

- (a) Each of Element, Spinco and Subco hereby agrees that the Element Arrangement will be implemented in accordance with and subject to the terms and conditions contained in this Agreement and the Element Plan of Arrangement.
- (b) Element will, at a time to be determined exclusively by Element, file, proceed with and diligently prosecute an application pursuant to subsection 182(5) of the OBCA for the Element Interim Order as contemplated in Section 2.4.
- (c) After obtaining the Element Interim Order, Element will, at a time to be determined exclusively by Element, convene and hold the Element Meeting for the purpose of considering the Element Arrangement Resolution and, if the Element Arrangement Resolution is approved, the Spinco Equity Plans Resolution and the Share Issuance Resolution, and such other matters as may properly come before the Element Meeting. Element will solicit proxies of Shareholders in favour of the Element Arrangement Resolution and against any resolution submitted by any Person that is inconsistent with the Element Arrangement Resolution and the completion of any of the transactions contemplated by this Agreement.
- (d) If the Element Interim Order and the approval of the Shareholders as set out in the Element Interim Order are obtained, Element will, at a time to be determined exclusively by Element, thereafter take all commercially reasonable steps necessary or desirable to submit the Element Arrangement to the Court and apply for the Element Final Order and, to the extent within its power and commercially reasonable, carry out the terms of the Element Interim Order.
- (e) Subject to (i) obtaining the Element Final Order and (ii) the satisfaction (or waiver, if applicable) of the other conditions herein contained in favour of it, Element will, at a time to be determined exclusively by Element, file, pursuant to subsection 183(1) of the OBCA, the Element Articles of Arrangement to give effect to the Element Arrangement.

**2.2 Element Effective Date and Element Effective Time.**

Subject to Section 2.6, the Element Arrangement shall become effective at the Element Effective Time on the Element Effective Date. Upon issuance of the Element Final Order and subject to the satisfaction or waiver of the conditions precedent in Article 6, Element shall, as soon as practicable, execute and deliver such closing documents and instruments and, at a time to be determined exclusively by Element following satisfaction or waiver of such conditions precedent, Element shall proceed to file the Element Articles of Arrangement, the Element Final Order and such other documents as may be required to give effect to the Element Arrangement with the OBCA Director pursuant to section 182 of the OBCA, whereupon the transactions comprising the Element Arrangement shall occur and shall be deemed to have occurred in the order set out therein without any further act or formality.

**2.3 Element Approval.**

- (a) Element represents and warrants to each of the other Parties that the Board has determined unanimously (subject to abstentions or recusals, if applicable) that:



- (i) the Element Arrangement is in the best interests of Element;
  - (ii) the IAC Arrangement is in the best interests of Element; and
  - (iii) it will recommend that the Shareholders vote in favour of the Element Arrangement Resolution, the Spinco Equity Plans Resolution and the Share Issuance Resolution.
- (b) Element represents and warrants to each of the other Parties that the Board has received the Fairness Opinions.
- (c) Element represents and warrants to each of the other Parties that each of its directors has advised Element that he or she intends to vote all of the Element Common Shares beneficially owned, directly or indirectly, or over which direction or control is exercised, by him or her in favour of the Element Arrangement Resolution and, if the Element Arrangement Resolution is approved, the Spinco Equity Plans Resolution and the Share Issuance Resolution, and will, accordingly, so represent in the Element Circular.
- (d) For greater certainty, nothing in the foregoing or elsewhere in this Agreement shall limit the ability of the Board to act in accordance with its view of its fiduciary duties, including withdrawing, modifying or changing any such determination, recommendation or intention to vote.

#### **2.4 Element Interim Order.**

The notice of motion for the application referred to in Section 2.1(b) shall request that the Element Interim Order provide, among other things:

- (a) for the calling and holding of the Element Meeting for the purpose of, among other things, considering the Element Arrangement Resolution and, if the Element Arrangement Resolution is approved, the Spinco Equity Plans Resolution and the Share Issuance Resolution;
- (b) for the class of Persons to whom notice is to be provided in respect of the Element Arrangement and the Element Meeting and for the manner in which such notice is to be provided;
- (c) that the requisite approval for the Element Arrangement Resolution to be placed before the Element Meeting shall be 66 2/3% of the votes cast on the Element Arrangement Resolution by Shareholders present in person or by proxy at the Element Meeting and that the requisite approval for the Spinco Equity Plans Resolution and the Share Issuance Resolution to be placed before the Element Meeting shall be a majority of the votes cast on such resolutions by Shareholders present in person or by proxy at the Element Meeting;
- (d) that, in all other respects, the terms, restrictions and conditions of the constating documents of Element, including quorum requirements and all other matters, shall apply in respect of the Element Meeting;

- (e) that the Element Meeting may be adjourned or postponed from time to time by Element in accordance with the terms of this Agreement without the need for additional approval of the Court;
- (f) for the grant of the Dissent Rights to the registered Shareholders as set forth in the Element Plan of Arrangement;
- (g) for the notice requirements with respect to the presentation of the application to the Court for the Element Final Order;
- (h) confirmation of the record date for the purposes of determining the Shareholders entitled to receive material and vote at the Element Meeting in accordance with the Element Interim Order;
- (i) that the record date for Shareholders entitled to notice of and to vote at the Element Meeting will not change in respect of any adjournment(s) or postponement(s) of the Element Meeting; and
- (j) for such other matters as Element, Spinco or Subco may reasonably require.

## **2.5 Element Meeting Materials.**

Element shall use its commercially reasonable efforts to prepare the Element Circular, and shall print and make available, directly or indirectly, physical copies of the Element Circular and related materials to all registered and beneficial holders of Element Common Shares and holders of other securities of Element, if any, as required by the Element Interim Order and in accordance with Applicable Laws, irrespective of standing instructions regarding the receipt of proxy-related materials. As of the date the Element Circular is first mailed to the Shareholders and the date of the Element Meeting, the information in the Element Circular shall be complete and correct in all material respects, shall not contain any misrepresentation and shall comply in all material respects with all Applicable Laws. Element agrees to promptly correct any such information in the Element Circular which, if material, shall have become false or misleading at any time prior to the Element Meeting. Without limiting the generality of the foregoing, Element shall ensure that the Element Circular provides holders of Element Common Shares with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Element Meeting, and contains the unanimous recommendation of the Board (subject to abstentions or recusals, if applicable) that the Shareholders vote in favour of the Element Arrangement Resolution, the Spinco Equity Plans Resolution and the Share Issuance Resolution. Spinco, Subco and IAC will cooperate with Element in all aspects of the preparation of the Element Circular, and any amendments or supplements thereto.

## **2.6 Sole Discretion of Element.**

Notwithstanding any other provision of this Agreement, or the adoption of the Element Arrangement Resolution by the Shareholders, the obligations of Element under this Article 2 and elsewhere in this Agreement are subject to:

- (a) Element's sole and absolute right to determine whether to proceed with the Element Arrangement and to determine the timing of the completion of the Element Arrangement, or any prior condition thereto;

- (b) Element's sole and absolute right to terminate this Agreement pursuant to Section 9.2; and
- (c) Element's sole and absolute right to amend this Agreement pursuant to Section 9.1(c) (subject to written notice to IAC of any material amendment).

The Board will have the authority to revoke the Element Arrangement Resolution at any time prior to the issuance of the Element Certificate of Arrangement without notice to or the further approval of the Shareholders or the other Parties and without liability to any of them.

## **2.7 U.S. Securities Laws.**

- (a) Each of Element, Spinco and Subco intend that the issuance of the Post-Arrangement Element Common Shares, the Element Butterfly Shares, the Spinco Common Shares, the Spinco Reorganization Shares, the Spinco Arrangement Options, the Subco Arrangement Options and the Post-Arrangement Element Options under the Element Arrangement will be exempt from the registration requirements of the U.S. Securities Act pursuant to the exemption provided by Section 3(a)(10) thereof (the "**Section 3(a)(10) Exemption**"). Each of Element, Spinco and Subco agrees to act in good faith, consistent with the intent of such Parties and the intended treatment of the Element Arrangement set forth in this Section 2.7.
- (b) In order to ensure the availability of the Section 3(a)(10) Exemption, each of Element, Spinco and Subco agrees that the Element Arrangement will be carried out on the following basis:
  - (i) the Element Arrangement will be subject to the approval of the Court;
  - (ii) the Court will be advised as to the intention of Element, Spinco and Subco to rely on the Section 3(a)(10) Exemption prior to the hearing required to approve the Element Arrangement;
  - (iii) the Court will be required to satisfy itself as to the substantive and procedural fairness of the Element Arrangement;
  - (iv) the Element Final Order will expressly state that the Element Arrangement is approved by the Court as being substantively and procedurally fair to the Persons to whom the Post-Arrangement Element Common Shares, the Element Butterfly Shares, the Spinco Common Shares, the Spinco Reorganization Shares, the Spinco Arrangement Options, the Subco Arrangement Options and the Post-Arrangement Element Options will be issued;
  - (v) Element, Spinco and Subco will ensure that each Person entitled to receive Post-Arrangement Element Common Shares, the Element Butterfly Shares, the Spinco Common Shares, the Spinco Reorganization Shares, the Spinco Arrangement Options, the Subco Arrangement Options and the Post-Arrangement Element Options on completion of the Element Arrangement will be given adequate notice advising them of their right to attend the hearing of the Court to give approval of the Element Arrangement and providing them with sufficient information necessary for them to exercise that right;

- (vi) each Person to whom the Post-Arrangement Element Common Shares, the Element Butterfly Shares, the Spinco Common Shares, the Spinco Reorganization Shares, the Spinco Arrangement Options, the Subco Arrangement Options and the Post-Arrangement Element Options will be issued pursuant to the Element Arrangement will be advised that such securities issued pursuant the Element Arrangement have not been registered under the U.S. Securities Act and will be issued by Element or Spinco, as applicable, in reliance upon the exemption from the registration requirements of the U.S. Securities Act provided by Section 3(a)(10) of the U.S. Securities Act and, in the case of Affiliates of Element, Spinco or Subco, as applicable, will be subject to certain restrictions on resale under the securities laws of the United States, including Rule 144 under the U.S. Securities Act;
- (vii) the Element Interim Order in respect of the Element Meeting will specify that each Person to whom such securities will be issued pursuant to the Element Arrangement will have the right to appear before the Court at the hearing of the Court to give approval of the Element Arrangement so long as such securityholder enters an appearance within a reasonable time; and
- (viii) the Element Final Order shall include a statement to substantially the following effect:

“This Order will serve as the basis for reliance on exemption provided by Section 3(a)(10) of the *United States Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that act, regarding the distribution of securities of Element, Spinco and Subco pursuant to the Plan of Arrangement.”

### **ARTICLE 3 THE IAC ARRANGEMENT**

#### **3.1 IAC Arrangement.**

Spinco and IAC shall proceed to effect the IAC Arrangement under section 182 of the OBCA, pursuant to which, on the IAC Effective Date, on the terms and subject to the conditions contained in the IAC Plan of Arrangement, each IAC Shareholder will receive a number of Spinco Common Shares equal to the Exchange Ratio for each IAC Share then held. Certificates representing fractional Spinco Common Shares will not be issued, but in lieu thereof Spinco will pay, in accordance with the IAC Plan of Arrangement, to each Person who would otherwise have received a certificate representing a fractional Spinco Common Share, an amount determined by reference to the volume weighted average price of Spinco Common Shares on the TSX for the five trading days immediately preceding the second Business Day prior to the IAC Effective Date or, if the Spinco Common Shares have not traded on the TSX for such period, on the basis determined by the Board.

#### **3.2 IAC Approval.**

- (a) IAC represents and warrants to each of the other Parties that the board of directors of IAC has determined unanimously (subject to abstentions or recusals, if applicable) that:
  - (i) the IAC Arrangement is in the best interests of IAC;

- (ii) that the consideration to be received under the IAC Arrangement by the holders of IAC Class A Shares is fair, from a financial point of view; and
  - (iii) it will recommend that holders of IAC Class A Shares vote in favour of the IAC Arrangement Resolution.
- (b) IAC represents and warrants to each of the other Parties that the board of directors of IAC has received the IAC Fairness Opinion.
- (c) IAC represents and warrants to each of the other Parties that each of its directors has advised IAC that he intends to vote all of the IAC Shares beneficially owned, directly or indirectly, or over which direction or control is exercised, by him in favour of the IAC Arrangement Resolution and will, accordingly, so represent in the IAC Circular.

### **3.3 Obligations of IAC.**

- (a) Subject to the terms and conditions of this Agreement, in order to facilitate the IAC Arrangement, IAC shall take all action necessary in accordance with all Applicable Laws, including Applicable Securities Laws, to:
  - (i) make and diligently prosecute an application to the Court for the IAC Interim Order in respect of the IAC Arrangement as soon as practicable after obtaining a final receipt for the IAC Prospectus;
  - (ii) in accordance with the terms of and the procedures contained in the IAC Interim Order, duly call, give notice of, convene and hold the IAC Meeting as promptly as practicable (subject to obtaining a final receipt for the IAC Prospectus), to vote upon the IAC Arrangement Resolution and any other matters as may be properly brought before such meeting (provided that IAC will not propose or submit for consideration at the IAC Meeting any business other than the approval of the IAC Arrangement and the IAC Arrangement Resolution without the prior written consent of Spinco, such consent not to be unreasonably withheld, conditioned or delayed);
  - (iii) solicit proxies of IAC Shareholders in favour of the IAC Arrangement Resolution and against any resolution submitted by any Person that is inconsistent with the IAC Arrangement Resolution and the completion of any of the transactions contemplated by this Agreement, including, if so requested by Spinco, acting reasonably, using dealer and proxy solicitation services firms;
  - (iv) subject to obtaining the approvals as contemplated in the IAC Interim Order and as may be directed by the Court in the IAC Interim Order, take all steps necessary or desirable jointly with Spinco to submit the IAC Arrangement to the Court and apply for the IAC Final Order;
  - (v) deliver the IAC Articles of Arrangement to the OBCA Director following satisfaction or waiver of the conditions set forth in Article 7 in accordance with Section 3.7; and
  - (vi) do all things necessary or desirable to give effect to the IAC Arrangement.

- (b) IAC shall use its reasonable best efforts to file a preliminary prospectus in connection with its Qualifying Acquisition in each of the Provinces and Territories of Canada as soon as practicable; provided that IAC will provide Element and Spinco and its legal counsel with reasonable opportunity to review and comment upon drafts of the preliminary prospectus, including by providing on a timely basis a description of any information required to be supplied by Element and Spinco for inclusion in the preliminary prospectus, and will accept the reasonable comments of Element and Spinco and its legal counsel with respect to any such information required to be supplied by Element and Spinco and included in the preliminary prospectus. IAC agrees that the preliminary prospectus filed pursuant to this Section 3.3(b) shall be in form and substance satisfactory to Element and Spinco, acting reasonably. IAC shall, as soon as reasonably possible after any regulatory deficiencies have been satisfied with respect to such preliminary prospectus on a basis acceptable to Element, Spinco and IAC, acting reasonably, use its reasonable best efforts to file the IAC Prospectus in each of the Provinces and Territories of Canada and obtain a final receipt issued by the Ontario Securities Commission (including the deemed receipt from the other jurisdictions pursuant to the Passport System) at or prior to 5:00 p.m. (Toronto time) on September 19, 2016 (or such later date or time as may be agreed to in writing by Element, Spinco and IAC) for the IAC Prospectus.
- (c) IAC shall use its commercially reasonable efforts to prepare the IAC Circular, and, as soon as practicable following issuance of a final receipt in respect of the IAC Prospectus and approval of the IAC Circular by the TSX, shall print and mail, directly or indirectly, physical copies of the IAC Circular and related materials to all registered and beneficial holders of IAC Shares and holders of other securities of IAC, if any, as required by the IAC Interim Order and in accordance with Applicable Laws, irrespective of standing instructions regarding the receipt of proxy-related materials. As of the date the IAC Circular is first mailed to the IAC Shareholders and the date of the IAC Meeting, the information in the IAC Circular shall be complete and correct in all material respects, shall not contain any misrepresentation and shall comply in all material respects with all Applicable Laws. IAC agrees to promptly correct any such information in the IAC Circular which, if material, shall have become false or misleading at any time prior to the IAC Meeting. Without limiting the generality of the foregoing, IAC shall ensure that the IAC Circular provides holders of IAC Shares with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the IAC Meeting, and contains the unanimous recommendation of the board of directors of IAC (subject to abstentions or recusals, if applicable) that the IAC Shareholders vote in favour of the IAC Arrangement Resolution. Element represents and warrants that, as of the date the IAC Circular is first mailed to the IAC Shareholders, the information in the IAC Circular in respect of Element or Spinco provided by Element or Spinco to IAC in writing for inclusion in the IAC Circular shall be complete and correct in all material respects and shall not contain any misrepresentation; provided that IAC will provide Element and Spinco and its legal counsel with reasonable opportunity to review and comment upon drafts of the IAC Circular, including by providing on a timely basis a description of such information, and will accept the reasonable comments of Element and Spinco and its legal counsel with respect to any such information. Element, Spinco and Subco will cooperate with IAC in all aspects of the preparation of the IAC Circular, and any amendments or supplements thereto.

### **3.4 Interim Order.**

The notice of motion for the application referred to in Section 3.3(a)(i) shall request that the IAC Interim Order provide, among other things:

- (a) for the calling and holding of the IAC Meeting for the purpose of, among other things, considering the IAC Arrangement Resolution;
- (b) for the class of Persons to whom notice is to be provided in respect of the IAC Arrangement and the IAC Meeting and for the manner in which such notice is to be provided;
- (c) that the requisite approval for the IAC Arrangement Resolution to be placed before the IAC Meeting shall be 66 2/3% of the votes cast on the IAC Arrangement Resolution by IAC Shareholders present in person or by proxy at the IAC Meeting and, if required under Applicable Securities Laws, by a majority of the votes cast on the IAC Arrangement Resolution by IAC Shareholders present in person or by proxy at the IAC Meeting after excluding the votes of those Persons whose votes are required to be excluded under Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;
- (d) that, in all other respects, the terms, restrictions and conditions of the constating documents of IAC, including quorum requirements and all other matters, shall apply in respect of the IAC Meeting;
- (e) that the IAC Meeting may be adjourned or postponed from time to time by IAC in accordance with the terms of this Agreement without the need for additional approval of the Court;
- (f) for the grant of the Dissent Rights to the registered IAC Shareholders as set forth in the IAC Plan of Arrangement;
- (g) for the notice requirements with respect to the presentation of the application to the Court for the IAC Final Order;
- (h) confirmation of the record date for the purposes of determining the IAC Shareholders entitled to receive material and vote at the IAC Meeting in accordance with the IAC Interim Order;
- (i) that the record date for IAC Shareholders entitled to notice of and to vote at the IAC Meeting will not change in respect of any adjournment(s) or postponement(s) of the IAC Meeting; and
- (j) for such other matters as Element or Spinco may reasonably require, subject to obtaining the prior consent of IAC, such consent not to be unreasonably withheld, conditioned or delayed.

### **3.5 Conduct of Meeting.**

- (a) Subject to the terms of this Agreement and the IAC Interim Order, IAC agrees to convene and conduct the IAC Meeting in accordance with its constating documents and

Applicable Laws and the IAC Interim Order, and agrees not to propose to adjourn or postpone its meeting without the prior consent of Element and Spinco:

- (i) except as required for quorum purposes (in which case the meeting shall be adjourned and not cancelled, and subsequently reconvened as soon as practicable) or by Applicable Law or by a Governmental Authority; or
  - (ii) except for an adjournment for the purpose of attempting to obtain the requisite approval of the IAC Arrangement Resolution.
- (b) IAC shall promptly advise Element and Spinco of any communication (written or oral) received after the date hereof from any shareholder in opposition to the IAC Arrangement, written notice of dissent, purported exercise or withdrawal of Dissent Rights, and written communications sent by or on behalf of IAC to any IAC Shareholder exercising or purporting to exercise Dissent Rights.
- (c) No Party shall make any payment or settlement offer, or agree to any payment or settlement prior to the IAC Effective Time with respect to Dissent Rights without the prior written consent of the other Parties.
- (d) IAC shall promptly advise Element and Spinco of any notice of redemption rights in respect of IAC Shares, purported exercise of any such redemption rights, and written communications sent by or on behalf of IAC to any IAC Shareholder exercising or purporting to exercise such redemption rights.
- (e) IAC shall advise Element and Spinco as reasonably requested, and on a daily basis on each of the last 10 Business Days prior to the IAC Meeting, as to the aggregate tally of the proxies and votes received in respect of such meeting and all matters to be considered at such meeting.

### **3.6 Court Proceedings.**

IAC will provide Element and Spinco and its legal counsel with reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the IAC Arrangement, including by providing on a timely basis a description of any information required to be supplied by Element and Spinco for inclusion in such material, prior to the service and filing of that material, and will accept the reasonable comments of Element and Spinco and its legal counsel with respect to any such information required to be supplied by Element and Spinco and included in such material and any other matters contained therein. IAC will ensure that all material filed with the Court in connection with the IAC Arrangement is consistent in all material respects with the terms of this Agreement and the IAC Plan of Arrangement. In addition, IAC will not object to legal counsel to Element and Spinco making submissions on the application for the IAC Interim Order and the application for the IAC Final Order as such counsel considers appropriate, provided such submissions are consistent with this Agreement and the IAC Plan of Arrangement. IAC will also provide legal counsel to Element and Spinco on a timely basis with copies of any notice and evidence served on IAC or its legal counsel in respect of the application for the IAC Final Order or any appeal therefrom. Subject to Applicable Laws, IAC will not file any material with, or make any submissions to, the Court in connection with the IAC Arrangement or serve any such material, and will not agree to modify or amend materials so filed or served, except as contemplated hereby or with Element's and Spinco's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; provided that nothing herein shall require Element or Spinco to agree or consent to any increased purchase price or other consideration or other



modification or amendment to such filed or served materials that expands or increases Element's and Spinco's obligations set forth in any such filed or served materials or under this Agreement. IAC shall oppose any proposal from any Person that the IAC Final Order contain any provision inconsistent with this Agreement, and if required by the terms of the IAC Final Order or by Applicable Law to return to Court with respect to the IAC Final Order do so only after notice to, and in consultation and cooperation with, Element and Spinco.

### **3.7 IAC Effective Date.**

The IAC Arrangement shall become effective at the IAC Effective Time on the IAC Effective Date. Upon issuance of the IAC Final Order and subject to the satisfaction or waiver of the conditions precedent in Article 7, but subject to Section 3.8, each of Spinco and IAC shall, as soon as practicable, execute and deliver such closing documents and instruments and, as soon as possible but not later than the third Business Day following satisfaction or waiver of such conditions precedent, IAC shall proceed to file the IAC Articles of Arrangement, the IAC Final Order and such other documents as may be required to give effect to the IAC Arrangement with the OBCA Director pursuant to section 182 of the OBCA, whereupon the transactions comprising the IAC Arrangement shall occur and shall be deemed to have occurred in the order set out therein without any further act or formality.

### **3.8 Determination of IAC Net Assets.**

- (a) IAC shall prepare a draft statement of the IAC Net Assets as of the second Business Day prior to the scheduled IAC Effective Date, which shall be delivered to Spinco and, if prior to the Element Effective Date, Element no later than 10 Business Days prior to the scheduled IAC Effective Date. IAC shall give Spinco and, if prior to the Element Effective Date, Element and their representatives such assistance and access to the books and records of IAC as Element, Spinco and their Representatives may reasonably request in order to enable them to reasonably assess the draft statement of the IAC Net Assets.
- (b) If Spinco does not give a notice of objection in accordance with Section 3.8(c), Spinco shall be deemed to have accepted the draft statement of the IAC Net Assets prepared by IAC which shall be final and binding on the Parties and the draft calculation of IAC Net Assets shall constitute the IAC Net Assets for purposes of this Agreement and the IAC Plan of Arrangement immediately following the expiry date for the giving of such notice of objection.
- (c) If Spinco objects to any matter in the draft statement of the IAC Net Assets prepared pursuant to Section 3.8(a), Spinco shall give notice to IAC no later than three Business Days after delivery of the draft statement. Any notice given by Spinco shall set forth in detail the particulars of such objection. Spinco and IAC shall then use commercially reasonable efforts to resolve such objection for a period of three Business Days following the giving of such notice. If the matter is not resolved by the end of such three-Business Day period, then the dispute with respect to such objection shall be submitted by Spinco and IAC to an accounting partner associated with an accounting firm of recognized national standing in Canada, which is independent of the Parties (the "**Independent Accountant**"). If Spinco and IAC are unable to agree on the Independent Accountant within a further two Business Day period, either such Party may apply under the *Arbitration Act, 1991* (Ontario) to have the Court appoint the Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event within 10 Business days following its appointment), make a determination of the IAC Net Assets, based solely on written submissions of Spinco and IAC given by them to the Independent

Accountant. The submissions of each such Party shall be disclosed to the other Party and each other Party shall be afforded a reasonable opportunity to respond thereto. The decision of the Independent Accountant as to the IAC Net Assets shall be final and binding upon the Parties and shall constitute the IAC Net Assets for purposes of this Agreement and the IAC Plan of Arrangement, provided that one-half of the fees and expenses of the Independent Accountant with respect to the resolution of the dispute shall be deducted in determining the IAC Net Assets.

- (d) The obligations of Spinco and IAC pursuant to Section 3.7 shall be subject to the final determination of the IAC Net Assets pursuant to Section 3.8(b) or 3.8(c), as applicable.

### **3.9 Payment of Consideration.**

Spinco shall, immediately prior to the filing of the IAC Articles of Arrangement with the OBCA Director pursuant to Section 3.7, provide the Depositary with a sufficient number of Spinco Common Shares and cash deliverable to IAC Shareholders pursuant to the IAC Arrangement in accordance with Section 3.1. Upon completion of the IAC Arrangement, Spinco shall cause the Depositary to apply the Spinco Common Shares and the funds so deposited to make payments required by the IAC Plan of Arrangement.

### **3.10 Securityholder Communications.**

Each of Element, Spinco and IAC agrees to cooperate and participate in presentations to securityholders regarding the IAC Arrangement and to promptly advise, consult and cooperate with each other in issuing any press releases or otherwise making public statements with respect to this Agreement or the IAC Arrangement and in making any filing with any Governmental Authority or with any stock exchange, including the TSX, with respect thereto. Each of Element, Spinco and IAC shall use all commercially reasonable efforts to enable the other such Party to review and comment on all such press releases prior to the release thereof and shall enable such other Party to review and comment on such filings prior to the filing thereof; provided, however, that the foregoing shall be subject to each such Party's overriding obligation to make disclosure in accordance with Applicable Laws, and if such disclosure is required and any other such Party has not reviewed or commented on the disclosure, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other such Parties, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure or filing. Each of Element and IAC agrees to issue a separate press release with respect to this Agreement as soon as practicable after its due execution; provided that the press release issued by IAC shall be in form and substance satisfactory to Element, acting reasonably. For the avoidance of doubt, the foregoing shall not prevent Element or IAC from making internal announcements to employees and having discussions with shareholders and financial analysts and other stakeholders so long as such statements and announcements are consistent with the most recent press releases, public disclosures or public statements made by the relevant Party (unless the recommendation of the relevant board of directors has been withdrawn, modified or amended, in accordance with the terms of this Agreement). The Parties consent to this Agreement being filed on SEDAR.

### **3.11 U.S. Securities Laws.**

- (a) Each of Spinco and IAC intends that the issuance of the Spinco Common Shares under the IAC Arrangement will be exempt under the Section 3(a)(10) Exemption. Each of Spinco and IAC agrees to act in good faith, consistent with the intent of such Parties and the intended treatment of the IAC Arrangement set forth in this Section 3.11.

- (b) In order to ensure the availability of the Section 3(a)(10) Exemption, each of Spinco and IAC agrees that the IAC Arrangement will be carried out on the following basis:
- (i) the IAC Arrangement will be subject to the approval of the Court;
  - (ii) the Court will be advised as to the intention of Spinco and IAC to rely on the Section 3(a)(10) Exemption prior to the hearing required to approve the IAC Arrangement;
  - (iii) the Court will be required to satisfy itself as to the substantive and procedural fairness of the IAC Arrangement;
  - (iv) the IAC Final Order will expressly state that the IAC Arrangement is approved by the Court as being substantively and procedurally fair to the Persons to whom the Spinco Common Shares will be issued;
  - (v) Spinco and IAC will ensure that each Person entitled to receive Spinco Common Shares on completion of the IAC Arrangement will be given adequate notice advising them of their right to attend the hearing of the Court to give approval of the IAC Arrangement and providing them with sufficient information necessary for them to exercise that right;
  - (vi) each Person to whom Spinco Common Shares will be issued pursuant to the IAC Arrangement will be advised that such securities issued pursuant the IAC Arrangement have not been registered under the U.S. Securities Act and will be issued by IAC in reliance upon the exemption from the registration requirements of the U.S. Securities Act provided by Section 3(a)(10) of the U.S. Securities Act and, in the case of Affiliates of IAC will be subject to certain restrictions on resale under the securities laws of the United States, including Rule 144 under the U.S. Securities Act;
  - (vii) the IAC Interim Order in respect of the IAC Meeting will specify that each Person to whom such securities will be issued pursuant to the IAC Arrangement will have the right to appear before the Court at the hearing of the Court to give approval of the IAC Arrangement so long as such securityholder enters an appearance within a reasonable time; and
  - (viii) the IAC Final Order shall include a statement to substantially the following effect:

“This Order will serve as the basis for reliance on exemption provided by Section 3(a)(10) of the *United States Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that act, regarding the distribution of common shares of Spinco pursuant to the Plan of Arrangement.”

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties of Element.**

Element represents and warrants to each of the other Parties as follows and acknowledges that the other Parties are relying on such representations and warranties in connection with entering into this Agreement and, to the extent applicable, consummating the Pre-Arrangement Transactions, Element Arrangement and the IAC Arrangement:

- (a) Element is validly existing under the OBCA, has the corporate power to enter into this Agreement and to perform its obligations hereunder and is duly qualified as a corporation to do business in each jurisdiction in which the nature of its business makes such qualification necessary and where the failure to be so qualified would have a Material Adverse Effect on Element.
- (b) This Agreement has been duly authorized, executed and delivered by Element and is a legal, valid and binding obligation of Element, enforceable against Element by each of the Parties in accordance with its terms, subject to bankruptcy, fraudulent transfer, moratorium, reorganization or similar Applicable Laws affecting the rights of creditors generally and the availability of equitable remedies and the enforceability of any limitations of liability or other exculpatory provisions or indemnities that purport to limit or exculpate a Party from, or indemnify such Party for, liabilities imposed by Applicable Law on such Party.
- (c) Except as disclosed to the Parties or except as would not reasonably be expected to have a Material Adverse Effect on Element, the execution and delivery of this Agreement by Element and the consummation of the Element Arrangement and the Pre-Arrangement Transactions will not:
  - (i) result in the breach or violation of any of the provisions of, or constitute a default under, or contravene or cause the acceleration of any obligation of Element or its Affiliates under:
    - (A) any provision of the constating documents or by-laws of Element or resolutions of the Board of Directors (or any committee thereof) or Shareholders;
    - (B) any material judgment, decree, order or award of any Governmental Authority having jurisdiction over Element or its Affiliates;
    - (C) any licence, permit, approval, consent or authorization held by Element or its Affiliates, as applicable, that is necessary to the operation of the Commercial Finance Business;
    - (D) any Applicable Law in respect of Element or any of its Affiliates; or
    - (E) any other contract or agreement that is material to Element or its Affiliates, considered as a whole, or the Commercial Finance Business; or

- (ii) give rise to any right of termination or acceleration of any third party indebtedness of Element, or cause any such indebtedness to come due before its stated maturity.
- (d) Except as disclosed to the Parties or as contemplated in this Agreement, the Element Interim Order or the Element Final Order, there is no requirement for Element to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the Element Arrangement and the Pre-Arrangement Transactions, where failure to comply would reasonably be expected to have a Material Adverse Effect on Element.
- (e) Other than this Agreement or as contemplated by the Pre-Arrangement Transactions and except as disclosed by Element in writing to IAC, neither Element nor any of its Subsidiaries is currently party to any agreement in respect of: (i) the purchase of the Commercial Finance Business or the sale, transfer or other disposition of the Commercial Finance Business currently owned, directly or indirectly, by Element whether by asset sale, transfer of shares or otherwise; or (ii) the change of control of Element (whether by sale or transfer of shares or sale of all or substantially all of the Assets and Properties of Element or otherwise).
- (f) Element's auditors are independent public accountants.
- (g) No holder of outstanding shares in the capital of Element is entitled to any pre-emptive or any similar rights to subscribe for any Spinco Common Shares or other securities of Spinco and there are no rights to acquire, or instruments convertible into or exchangeable for, any securities in the capital of Spinco or any of its Subsidiaries forming part of the Commercial Finance Business that are outstanding.
- (h) No legal or governmental actions, suits, judgments, investigations or proceedings are pending to which Element or its Subsidiaries forming part of the Commercial Finance Business, or to the knowledge of Element, the directors, officers or employees of Element or such Subsidiaries are a party or to which Assets and Properties of Element or such Subsidiaries is subject that would result in a Material Adverse Effect on the Commercial Finance Business and, to the knowledge of Element, no such proceedings have been threatened against or are pending with respect to Element or such Subsidiaries, or with respect to their Assets and Properties and neither Element nor such Subsidiaries is subject to any judgment, order, writ, injunction, decree or award of any Governmental Authority, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the Commercial Finance Business.
- (i) No Subsidiary forming part of the Commercial Finance Business is in violation of its constating documents or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any Contract to which it is a party or by which it or its property may be bound.
- (j) Neither Element nor, to the knowledge of Element, any other party thereto is in material default or breach of any Contract to which an Element Subsidiary forming part of the Commercial Finance Business is party which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the Commercial Finance Business and, except to the extent disclosed to IAC in writing, to the knowledge

of Element, there exists no condition, event or act which, with the giving of notice or lapse of time or both would constitute a material default or breach under any such Contract which would give rise to a right of termination on the part of any other party to such a Contract.

- (k) No order, ruling or determination having the effect of suspending the sale or ceasing the trading in any securities of Spinco has been issued by any regulatory authority and is continuing in effect and no proceedings for that purpose have been instituted or, to the knowledge of Element, are pending, contemplated or threatened by any regulatory authority.
- (l) The minute books and records of the Element Subsidiaries forming part of the Commercial Finance Business made available to counsel for IAC in connection with the due diligence investigation of Spinco for the period from the date of incorporation to the date hereof are all of the minute books of such Subsidiaries and contain copies of all proceedings (or certified copies thereof or drafts thereof pending approval) of the shareholders, the directors and all committees of directors of such Subsidiaries to the date hereof and there have been no other meetings, resolutions or proceedings of the shareholders, directors or any committees of the directors of such Subsidiaries to the date hereof not reflected in such minute books.
- (m) There is no Person acting at the request or on behalf of Element that is entitled to any brokerage or finder's fee or other compensation from Spinco in connection with the transactions contemplated by this Agreement.
- (n) The Spinco Disclosure that Element has provided as of the date hereof, and any Spinco Disclosure that Element subsequently provides, to IAC for inclusion in the IAC Prospectus or the IAC Circular, if any, will be true, complete and correct in all material respects and will not contain any misrepresentation, in each case as of the date of the IAC Prospectus or the IAC Circular, as applicable.

#### **4.2 Representations and Warranties of Subco.**

Subco represents and warrants to each of the Parties as follows and acknowledges that the other Parties are relying on such representations and warranties in connection with entering into this Agreement and, to the extent applicable, consummating the Pre-Arrangement Transactions, Element Arrangement and the IAC Arrangement:

- (a) Subco is validly existing under the OBCA, has the corporate power to enter into this Agreement and to perform its obligations hereunder and is duly qualified as a corporation to do business in each jurisdiction in which the nature of its business makes such qualification necessary and where the failure to be so qualified would have a Material Adverse Effect on Subco.
- (b) This Agreement has been duly authorized, executed and delivered by Subco and is a legal, valid and binding obligation of Subco, enforceable against Subco by each of the Parties in accordance with its terms, subject to bankruptcy, fraudulent transfer, moratorium, reorganization or similar Applicable Laws affecting the rights of creditors generally and the availability of equitable remedies and the enforceability of any limitations of liability or other exculpatory provisions or indemnities that purport to limit

or exculpate a Party from, or indemnify such Party for, liabilities imposed by Applicable Law on such Party.

- (c) Except as disclosed to the Parties or except as would not reasonably be expected to have a Material Adverse Effect on Subco, the execution and delivery of this Agreement by Subco and the consummation of the Element Arrangement and the Pre-Arrangement Transactions will not:
  - (i) result in the breach or violation of any of the provisions of, or constitute a default under, or contravene or cause the acceleration of any obligation of Subco or its Affiliates under:
    - (A) any provision of the constating documents or by-laws of Subco or resolutions of the board of directors (or any committee thereof) or the sole shareholder of Subco;
    - (B) any material judgment, decree, order or award of any Governmental Authority having jurisdiction over Subco or its Affiliates;
    - (C) any licence, permit, approval, consent or authorization held by Subco or its Affiliates, as applicable, that is necessary to the operation of the Commercial Finance Business;
    - (D) any Applicable Law in respect of Subco or any of its Affiliates; or
    - (E) any other contract or agreement that is material to Subco or its Affiliates, considered as a whole, or the Commercial Finance Business; or
  - (ii) give rise to any right of termination or acceleration of any third party indebtedness of Subco or its Affiliates, or cause any such indebtedness to come due before its stated maturity.
- (d) The authorized capital of Subco consists of an unlimited number of Subco Shares and all Subco Shares are owned by Element or a Subsidiary thereof.
- (e) No Person holds any securities convertible into Subco Shares or any other shares of Subco or has any agreement, warrant, option or any other right capable of becoming an agreement, warrant or option for the purchase or other acquisition of any unissued shares of Subco, other than as contemplated by this Agreement.
- (f) Except as disclosed to the Parties or as contemplated in this Agreement, the Element Interim Order or the Element Final Order, there is no requirement for Subco to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the Element Arrangement and the Pre-Arrangement Transactions where failure to comply would reasonably be expected to have a Material Adverse Effect on Subco.
- (g) The Spinco Disclosure that Subco has provided as of the date hereof, and any Spinco Disclosure that Subco subsequently provides, to Element for inclusion in the Element Circular, if any, will be true, complete and correct in all material respects and will not

contain any misrepresentation, in each case as of the date of the Element Circular. The Spinco Disclosure that Subco has provided as of the date hereof, and any Spinco Disclosure that Subco subsequently provides, to IAC for inclusion in the IAC Prospectus or the IAC Circular, if any, will be true, complete and correct in all material respects and will not contain any misrepresentation, in each case as of the date of the IAC Prospectus or the IAC Circular, as applicable.

#### **4.3 Representations and Warranties of Spinco.**

Spinco represents and warrants to each of the Parties as follows and acknowledges that the Parties are relying on such representations and warranties in connection with entering into this Agreement and, to the extent applicable, consummating the Pre-Arrangement Transactions, Element Arrangement and the IAC Arrangement:

- (a) Spinco is validly existing under the OBCA, has the corporate power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed and delivered by Spinco and is a legal, valid and binding obligation of Spinco, enforceable against Spinco by each of the Parties in accordance with its terms, subject to bankruptcy, fraudulent transfer, moratorium, reorganization or similar Applicable Laws affecting the rights of creditors generally and the availability of equitable remedies and the enforceability of any limitations of liability or other exculpatory provisions or indemnities that purport to limit or exculpate a Party from, or indemnify such Party for, liabilities imposed by Applicable Law on such Party.
- (c) Except as disclosed to the Parties or except as would not reasonably be expected to have a Material Adverse Effect on Spinco, the execution and delivery of this Agreement by Spinco and the consummation of the Pre-Arrangement Transactions, the Element Arrangement and the IAC Arrangement will not:
  - (i) result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the acceleration of any obligation of Spinco under:
    - (A) any provision of the constating documents or by-laws of Spinco or resolutions of the board of directors (or any committee thereof) of Spinco;
    - (B) any material judgment, decree, order or award of any Governmental Authority having jurisdiction over Spinco; or
    - (C) any Applicable Law in respect of Spinco or any of its Affiliates.
- (d) The authorized capital of Spinco consists of an unlimited number of Spinco Common Shares, an unlimited number of preferred shares, issuable in series, and an unlimited number of Spinco Reorganization Shares, and no shares in the capital stock of Spinco have been issued and none will be issued until the Element Effective Date.
- (e) No Person holds any securities convertible into Spinco Common Shares or any other shares of Spinco or has any agreement, warrant, option or any other right capable of



becoming an agreement, warrant or option for the purchase or other acquisition of any unissued shares of Spinco, other than as contemplated by this Agreement.

- (f) Spinco has no assets and no liabilities and it has carried on no business other than relating to and contemplated by this Agreement, the Element Plan of Arrangement or the IAC Plan of Arrangement.
- (g) Except as disclosed to the Parties or as contemplated in this Agreement, the Element Interim Order, the Element Final Order, the IAC Interim Order or the IAC Final Order, there is no requirement for Spinco to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the Pre-Arrangement Transactions, the Element Arrangement or the IAC Arrangement where failure to comply would reasonably be expected to have a Material Adverse Effect on Spinco.
- (h) The Spinco Disclosure that Spinco has provided as of the date hereof, and any Spinco Disclosure that Spinco subsequently provides, to Element for inclusion in the Element Circular, if any, will be true, complete and correct in all material respects and will not contain any misrepresentation, in each case as of the date of the Element Circular. The Spinco Disclosure that Spinco has provided as of the date hereof, and any Spinco Disclosure that Spinco subsequently provides, to IAC for inclusion in the IAC Prospectus or the IAC Circular, if any, will be true, complete and correct in all material respects and will not contain any misrepresentation, in each case as of the date of the IAC Prospectus or the IAC Circular, as applicable.

#### **4.4 Representations and Warranties of IAC.**

IAC represents and warrants to each of the Parties as follows and acknowledges that the Parties are relying on such representations and warranties in connection with entering into this Agreement and consummating the IAC Arrangement:

- (a) IAC is validly existing under the OBCA, has the corporate power to enter into this Agreement and to perform its obligations hereunder and is duly qualified as a corporation to do business in each jurisdiction in which the nature of its business makes such qualification necessary and where the failure to be so qualified would have a Material Adverse Effect on IAC.
- (b) This Agreement has been duly authorized, executed and delivered by IAC and is a legal, valid and binding obligation of IAC, enforceable against IAC by each of the Parties in accordance with its terms, subject to bankruptcy, fraudulent transfer, moratorium, reorganization or similar Applicable Laws affecting the rights of creditors generally and the availability of equitable remedies and the enforceability of any limitations of liability or other exculpatory provisions or indemnities that purport to limit or exculpate a Party from, or indemnify such Party for, liabilities imposed by Applicable Law on such Party.
- (c) Except as disclosed to the Parties or except as would not reasonably be expected to have a Material Adverse Effect on IAC, the execution and delivery of this Agreement by IAC and the consummation of the IAC Arrangement will not:

- (i) result in the breach or violation of any of the provisions of, or constitute a default under, or contravene or cause the acceleration of any obligation of IAC or its Affiliates under:
    - (A) any provision of the constating documents or by-laws of IAC or resolutions of the board of directors of IAC (or any committee thereof) or IAC Shareholders;
    - (B) any material judgment, decree, order or award of any Governmental Authority having jurisdiction over IAC or its Affiliates;
    - (C) any licence, permit, approval, consent or authorization held by IAC or its Affiliates, as applicable;
    - (D) any Applicable Law in respect of IAC or any of its Affiliates; or
    - (E) any other contract or agreement that is material to IAC or its Affiliates, considered as a whole; or
  - (ii) give rise to any right of termination or acceleration of any third party indebtedness of IAC, or cause any such indebtedness to come due before its stated maturity.
- (d) Except (i) as disclosed to the Parties, (ii) as contemplated in this Agreement, the IAC Interim Order or the IAC Final Order, or (iii) (A) the approval of the IAC Arrangement and the IAC Circular by the TSX; (B) the issuance of a final receipt for the IAC Prospectus in accordance with Applicable Securities Laws; and (C) any filings with the OBCA Director, there is no requirement for IAC to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the IAC Arrangement, where failure to comply would reasonably be expected to have a Material Adverse Effect on IAC.
- (e) The authorized capital of IAC consists of an unlimited number of IAC Class A Shares, of which 23,000,000 IAC Class A Shares are issued and outstanding and an unlimited number of IAC Class B Shares, of which 6,843,750 IAC Class B Shares are issued and outstanding, in each case as fully paid and non-assessable shares in the capital of IAC.
- (f) IAC has no subsidiaries.
- (g) IAC is a “reporting issuer” as that term is defined under Applicable Securities Laws in each of the provinces and territories and is not in default of the requirements of the Applicable Securities Laws in such jurisdictions in all material respects.
- (h) IAC is in compliance in all material respects with all of the policies and rules of the TSX.
- (i) IAC has filed all forms, reports, documents and information required to be filed by it, whether pursuant to Applicable Securities Laws or otherwise, with the applicable securities commissions (the “**Disclosure Documents**”) and IAC does not have any confidential filings with any securities authorities. As of the time the Disclosure Documents were filed with the applicable securities regulators and on SEDAR (or, if

amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the Disclosure Documents complied in all material respects with the requirements of the Applicable Securities Laws in the jurisdictions they were filed; and (ii) none of the Disclosure Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

- (j) IAC has been conducting the IAC Business in compliance in all material respects with all Applicable Laws of each jurisdiction in which it carries on the IAC Business and has not received a notice of material non-compliance, and, to the knowledge of IAC, there are no facts that would give rise to a notice of material non-compliance with any such Applicable Laws.
- (k) The financial statements of IAC consisting of: (i) the condensed interim financial statements for the period of the date of incorporation of April 17, 2015 to June 30, 2015; (ii) the condensed interim financial statements for the three month period ended September 30, 2015; (iii) the annual financial statements of IAC for the period of the date of incorporation of April 17, 2015 to December 31, 2015; (iv) the audited balance sheet of IAC as of December 31, 2015; and (v) the condensed interim financial statements for the three month period ended March 31, 2016, have, in each case, been prepared in accordance with GAAP consistently applied throughout the periods referred to therein and present fairly, in all material respects, the financial position (including the assets and liabilities, whether absolute, contingent or otherwise as required by GAAP) of IAC as at such dates and the results of its operations and its cash flows for the periods then ended and contain and reflect adequate provisions or allowance for all reasonably anticipated liabilities, expenses and losses of IAC in accordance with GAAP and there has been no change in accounting policies or practices of IAC since March 31, 2016.
- (l) IAC is a taxable Canadian corporation and all Taxes due and payable or required to be collected or withheld and remitted, by IAC have been paid, collected or withheld and remitted, as applicable. All tax returns, declarations, remittances and filings required to be filed by IAC have been timely filed with all appropriate Governmental Authorities and all such returns, declarations, remittances and filings are complete and accurate and no material fact or facts have been omitted therefrom. To the knowledge of IAC, no examination of any tax return of IAC is currently in progress by any Governmental Authority and there are no issues or disputes outstanding with any Governmental Authority respecting any Taxes that have been paid, or may be payable, by IAC. There are no agreements, waivers or other arrangements with any Governmental Authority providing for an extension of time for any assessment or reassessment of Taxes with respect to IAC.
- (m) IAC has established on its books and records reserves that are adequate for the payment of all material Taxes not yet due and payable and there are no liens for Taxes on the assets of IAC that are material, and there are no audits pending of the tax returns of IAC (whether federal, state, provincial, local or foreign) and there are no claims which have been asserted relating to any such tax returns, which audits, inquiries and claims, if determined adversely, would result in the assertion by any Governmental Authority of any deficiency that would result in a Material Adverse Effect on IAC.

- (n) IAC maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets.
- (o) IAC's auditors are independent public accountants.
- (p) No holder of outstanding shares in the capital of IAC is entitled to any pre-emptive or any similar rights to subscribe for any IAC Class A Shares, IAC Class B Shares or other securities of IAC and, other than pursuant to the IAC Warrants, there are no rights to acquire, or instruments convertible into or exchangeable for, any securities in the capital of IAC. There are 11,937,500 IAC Warrants issued and outstanding.
- (q) No third party has any ownership right, title, interest in, claim in, lien against or any other right to the Assets and Properties purported to be owned by IAC.
- (r) No legal or governmental actions, suits, judgments, investigations or proceedings are pending to which IAC, or to the knowledge of IAC, the directors, officers or employees of IAC are a party or to which IAC's Assets and Properties is subject that would result in a Material Adverse Effect on IAC and, to the knowledge of IAC, no such proceedings have been threatened against or are pending with respect to IAC, or with respect to its Assets and Properties and IAC is not subject to any judgment, order, writ, injunction, decree or award of any Governmental Authority, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on IAC.
- (s) IAC is not in violation of its constating documents or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any Contract to which it is a party or by which it or its property may be bound.
- (t) IAC's initial public offering of common shares, completed on May 27, 2015 pursuant to a prospectus dated May 15, 2015, was completed in accordance with Applicable Securities Laws and the rules and policies of the TSX.
- (u) Other than this Agreement, IAC is not currently party to any agreement in respect of:
  - (i) the purchase of any material property or assets or any interest therein or the sale, transfer or other disposition of any material property or assets or any interest therein currently owned, directly or indirectly, by IAC whether by asset sale, transfer of shares or otherwise; or (ii) the change of control of IAC (whether by sale or transfer of shares or sale of all or substantially all of the Assets and Properties of IAC or otherwise). IAC is not party to any material Contract, written or oral, other than:
    - (i) this Agreement;
    - (ii) the underwriting agreement dated May 15, 2015 among IAC, INFOR Financial Group Inc., CIBC World Markets Inc., BMO Nesbitt Burns Inc., GMP Securities L.P., TD Securities Inc., Canaccord Genuity Corp., National Bank Financial Inc., Cormark Securities Inc., and Manulife Securities Incorporated;
    - (iii) the Make Whole Agreement and Undertaking dated May 27, 2015 from INFOR Financial Group Inc. to IAC;

- (iv) the Warrant Agency Agreement dated May 27, 2015 between IAC and Equity Financial Trust Company;
  - (v) the Forfeiture and Transfer Restrictions Agreement and Undertaking dated May 27, 2015 from INFOR Financial Group Inc. and Element Investment Corp. to IAC, CIBC World Markets Inc., BMO Nesbitt Burns Inc., Deutsche Bank Securities Inc. and the Toronto Stock Exchange;
  - (vi) the Escrow Agreement; and
  - (vii) a transfer agent, registrar and disbursing agent agreement dated as of May 27, 2015 between IAC and Equity Financial Trust Company.
- (v) All Contracts specified in Section 4.4(u) (the “**IAC Contracts**”) are in good standing in all material respects and in full force and effect.
  - (w) Neither IAC nor, to the knowledge of IAC, any other party thereto is in material default or breach of any IAC Contract and, except to the extent disclosed to Element and Spinco in writing, to the knowledge of IAC, there exists no condition, event or act which, with the giving of notice or lapse of time or both would constitute a material default or breach under any IAC Contract which would give rise to a right of termination on the part of any other party to an IAC Contract.
  - (x) No order, ruling or determination having the effect of suspending the sale or ceasing the trading in any securities of IAC (including the IAC Class A Shares) has been issued by any regulatory authority and is continuing in effect and no proceedings for that purpose have been instituted or, to the knowledge of IAC, are pending, contemplated or threatened by any regulatory authority.
  - (y) IAC is not party to any agreement, nor, to the knowledge of IAC, is there any shareholders agreement or other Contract which in any manner affects the voting control of any of the securities of IAC.
  - (z) Except as set forth in the prospectus related to the initial public offering of IAC, there is no agreement, plan or practice of IAC relating to the payment of any management, consulting, service or other fee or any bonus, pensions, share of profits or retirement allowance, insurance, health or other employee benefit other than in the ordinary course of business or in respect of professional service fees.
  - (aa) IAC has no, and since incorporation has not had any, employees. IAC is not a party to or bound by any collective agreement and is not currently conducting negotiations with any labour union or employee association. There are no employment Contracts, agreements or engagements, either oral or written, with any director, officer or employees of IAC.
  - (bb) Except the IAC Warrants and as otherwise disclosed by IAC to Element and Spinco in writing, IAC does not have any plan for retirement, bonus, stock purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or otherwise contributed to, or required to be contributed to, by IAC for the benefit of any current or former director, officer, employee or consultant of IAC, each of which has been maintained in all material

respects with its terms and with the requirements prescribed by any and all applicable statutes, orders, rules and regulations.

- (cc) Except as disclosed by IAC to Element and Spinco in writing and the transactions contemplated by this Agreement, none of the directors or officers of IAC or any associate or Affiliate of any of the foregoing has any material interest, direct or indirect, in any material transaction or any proposed material transaction with IAC that materially affects, is material to or will materially affect IAC. IAC is not indebted to: (i) any director, officer or shareholder of IAC; (ii) any individual related to any of the foregoing by blood, marriage or adoption; or (iii) any corporation controlled, directly or indirectly, by any one or more of those Persons referred to in this Section 4.4(cc). None of those Persons referred to in this Section 4.4(cc) is indebted to IAC. Except as disclosed by IAC to Element and Spinco in writing, IAC is not currently a party to any material Contract, agreement or understanding with any officer, director, employee, shareholder or any other Person not dealing at arm's length with IAC.
- (dd) Except as disclosed by IAC to Element and Spinco in writing, IAC has no insurance policies in place.
- (ee) The minute books and records of IAC made available to counsel for Element and Spinco in connection with the due diligence investigation of IAC for the period from the date of incorporation to the date hereof are all of the minute books of IAC and contain copies of all proceedings (or certified copies thereof or drafts thereof pending approval) of the shareholders, the directors and all committees of directors of IAC to the date hereof and there have been no other meetings, resolutions or proceedings of the shareholders, directors or any committees of the directors of IAC to the date hereof not reflected in such minute books.
- (ff) There is no Person acting at the request or on behalf of IAC that is entitled to any brokerage or finder's fee or other compensation in connection with the transactions contemplated by this Agreement.

#### **4.5 No Representations and Warranties.**

Spinco, Subco and IAC agree and acknowledge that Element is not making any representation and warranty to Spinco as to any aspect of the Commercial Finance Business, it being understood and agreed that Spinco shall take the assets pertaining to such business, and shall assume, perform and discharge the liabilities pertaining to such business, on an "as-is", "where-is" basis.

### **ARTICLE 5 COVENANTS**

#### **5.1 Covenants in respect of Element Arrangement.**

In respect of the Element Arrangement, each of Element, Spinco and Subco covenants and agrees with and in favour of each other Party that it will:

- (a) use all commercially reasonable efforts and do all things reasonably required of it to carry out and give effect to the Pre-Arrangement Transactions and to cause the Element Arrangement to become effective on such date as determined exclusively by Element, including using all commercially reasonable efforts to:

- (i) obtain the Element Interim Order and the Element Final Order;
  - (ii) obtain the approval of Shareholders required for the implementation of the Element Arrangement;
  - (iii) obtain the approval of Shareholders required for the adoption of the Spinco Option Plan, Spinco DSU Plan and Spinco Unit Plan;
  - (iv) obtain such other consents, orders, rulings or approvals and assurances as are necessary or desirable for the implementation of the Pre-Arrangement Transactions and the Element Arrangement, including those referred to in Section 6.1; and
  - (v) satisfy the other conditions precedent referred to in Section 6.1 and Section 6.2;
- (b) do and perform all such acts and things, and execute and deliver all such agreements, assurances, notices and other documents and instruments, as may reasonably be required to facilitate the carrying out of the Element Arrangement;
  - (c) prior to the Element Effective Date, cooperate with and assist each other Party in dealing with transitional matters relating to or arising from the Pre-Arrangement Transactions, the Element Arrangement or the Element Plan of Arrangement; and
  - (d) prior to the Element Effective Date, cooperate in making such amendments to this Agreement as may be necessary to implement the Element Plan of Arrangement or as may be desired by Element to enable it to carry out transactions deemed advantageous by it for the separation of the Commercial Finance Business from Element's remaining Fleet Management Business.

## **5.2 Covenants of Element.**

Subject to the rights of Element provided elsewhere in this Agreement, Element covenants and agrees with and in favour of each other Party that it will (and will cause each of its Affiliates, as applicable, to):

- (a) not perform any act or enter into any transaction that could interfere or could be inconsistent with the completion of any Pre-Arrangement Transactions, the Element Arrangement or the IAC Arrangement, except as provided in this Section 5.2;
- (b) on or before the Element Effective Date, assist and cooperate in the preparation and filing with all applicable securities commissions or similar securities regulatory authorities in Canada and the United States of all necessary applications to seek exemptions, if required, from the prospectus, registration and other requirements of the applicable securities laws of jurisdictions in Canada and the United States for the issue by Element of Post-Arrangement Element Common Shares and Element Butterfly Shares, and by Spinco of Spinco Common Shares and other exemptions that are necessary or desirable in connection with the Pre-Arrangement Transactions, the Element Arrangement and the IAC Arrangement; and
- (c) prior to the Element Effective Date, obtain confirmation from the TSX of the continued listing of the Post-Arrangement Element Common Shares (including the Post-

Arrangement Element Common Shares which, as a result of the Arrangement, are issuable upon the exercise of Post-Arrangement Element Options), and jointly with Spinco, make an application to list the Element Butterfly Shares, the Spinco Common Shares issuable pursuant to the Element Arrangement and the IAC Arrangement and issuable under the Spinco Option Plan, Spinco DSU Plan and Spinco Unit Plan on the TSX.

### **5.3 Covenants of Element and Spinco.**

Each of Element and Spinco covenants and agrees with each of the Parties from the date of execution hereof to and including, in the case of Element, the Element Effective Date, and, in the case of Spinco, the IAC Effective Date:

- (a) not to, directly or indirectly, solicit, initiate, knowingly encourage, cooperate with or facilitate (including by way of furnishing any non-public information or entering into any form of agreement, arrangement or understanding) the submission, initiation or continuation of any oral or written inquiries or proposals or expressions of interest regarding, constituting or that may reasonably be expected to lead to any activity, arrangement or transaction or propose any activities or solicitations in opposition to or in competition with the IAC Arrangement, and without limiting the generality of the foregoing, not to induce or attempt to induce any other Person to initiate any shareholder proposal or “take-over bid,” exempt or otherwise, within the meaning of Applicable Securities Laws, for securities or assets of Spinco (or, prior to the Element Effective Date, Subco or the Commercial Finance Business), nor to undertake any transaction or negotiate any transaction which would be or potentially could be in conflict with the IAC Arrangement, including allowing access to any third party (and its representatives) to conduct due diligence, nor to permit any of its officers or directors to do so, except as required by statutory obligations. In the event Element, Spinco or any of its Affiliates, including any of their officers or directors, receives any form of offer or inquiry in respect of any of the foregoing, Element or Spinco, as applicable, shall forthwith (in any event within one Business Day following receipt) notify IAC of such offer or inquiry and provide IAC with such details as it may request;
- (b) to cooperate fully with IAC and to use all reasonable commercial efforts to assist IAC in its efforts to complete the IAC Arrangement, unless such cooperation and efforts would subject Element or Spinco to any material cost or liability or to be in breach of applicable statutory and regulatory requirements;
- (c) to operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice;
- (d) that none of Element, Spinco or Subco shall in respect of the Commercial Finance Business, except in connection with or related to the Pre-Arrangement Transactions, the Element Arrangement, the IAC Arrangement or any other transactions contemplated by this Agreement, without IAC’s prior written consent:
  - (i) issue any debt, equity or other securities;
  - (ii) borrow money or incur any indebtedness for money borrowed, except in the ordinary course of business;



- (iii) make loans, advances, or any other payments, except in the ordinary course of business, excluding salaries at current rates and routine advances to employees of Spinco or Subco for expenses incurred in the ordinary course;
  - (iv) alter or amend Spinco's articles or by-laws in any manner which may adversely affect the success of the IAC Arrangement; and
  - (v) except as otherwise permitted or contemplated herein, enter into any transaction or material Contract which is not in the ordinary course of business or engage in any business enterprise or activity materially different from the Commercial Finance Business as of the date hereof;
- (e) use all commercially reasonable efforts to obtain all necessary consents, assignments or waivers from third parties and amendments or terminations to any instrument or agreement, to provide all notices required in connection with the IAC Arrangement and take such other measures as may be necessary to fulfil its obligations under and to carry out the transactions contemplated by this Agreement;
  - (f) make other necessary filings and applications under Applicable Laws required on the part of Element or Spinco in connection with the transactions contemplated herein, and take all reasonable action necessary to be in compliance with such Applicable Laws;
  - (g) use all commercially reasonable efforts to conduct its affairs so that Element's, Spinco's and Subco's representations and warranties contained herein shall be true and correct on and as of the IAC Effective Date as if made on the IAC Effective Date, except to the extent that such representations and warranties require modification to give effect to the transactions contemplated herein;
  - (h) immediately notify IAC of any legal or governmental actions, suits, judgments, investigations, injunction, complaint, action, suit, motion, judgement, regulatory investigation, regulatory proceeding or similar proceeding by any Person, Governmental Authority or other regulatory body, whether actual or threatened, with respect to the IAC Arrangement or which could otherwise delay or impede the transactions contemplated hereby;
  - (i) notify IAC immediately upon becoming aware that any of the representations and warranties of Element, Spinco or Subco, respectively, contained herein are no longer true and correct in any material respect; and
  - (j) use all commercially reasonable efforts to cause each of the conditions precedent set forth in Section 7.1 and Section 7.3 to be satisfied.

#### **5.4 Covenants of Spinco and Subco.**

Each of Spinco and Subco covenants and agrees with and in favour of Element that it will (and Subco will cause each of its Affiliates, as applicable, to):

- (a) not perform any act or enter into any transaction that could interfere or could be inconsistent with the completion of any Pre-Arrangement Transaction, the Element Arrangement or IAC Arrangement, except as provided in this Section 5.4;

- (b) on or before the Element Effective Date, assist and cooperate in the preparation and filing with all applicable securities commissions or similar securities regulatory authorities in Canada and the United States of all necessary applications to seek exemptions, if required, from the prospectus, registration and other requirements of the applicable securities laws of jurisdictions in Canada and the United States for the issue by Element of Post-Arrangement Element Common Shares and Element Butterfly Shares, and by Spinco of Spinco Common Shares and other exemptions that are necessary or desirable in connection with the Pre-Arrangement Transactions, the Element Arrangement and the IAC Arrangement;
- (c) prior to the Element Effective Date, assist and cooperate in obtaining confirmation from the TSX of the continued listing of the Post-Arrangement Element Common Shares (including the Post-Arrangement Element Common Shares which, as a result of the Arrangement, are issuable upon the exercise of Post-Arrangement Element Options), and jointly with Element, make an application to list the Element Butterfly Shares, the Spinco Common Shares issuable pursuant to the Element Arrangement and the IAC Arrangement and issuable under the Spinco Option Plan, Spinco DSU Plan and Spinco Unit Plan on the TSX;
- (d) obtain the written consent of Element prior to issuing any press releases or otherwise making public statements with respect to this Agreement or the consummation of the Element Arrangement; and
- (e) in the case of Spinco, not issue shares in its capital stock prior to the Element Effective Time, and only issue such initial shares in accordance with the terms of the Element Arrangement.

## **5.5 Covenants of IAC.**

IAC covenants and agrees with Element, Spinco and Subco from the date of execution hereof to and including the IAC Effective Date that it will:

- (a) not perform any act or enter into any transaction that could interfere or could be inconsistent with the completion of the Element Arrangement, the IAC Arrangement, or, to the knowledge of IAC, any Pre-Arrangement Transactions, except as provided in this Section 5.5;
- (b) on or before the IAC Effective Date, assist and cooperate in the preparation and filing with all applicable securities commissions or similar securities regulatory authorities in Canada and the United States of all necessary applications to seek exemptions, if required, from the prospectus, registration and other requirements of the applicable securities laws of jurisdictions in Canada and the United States for the issue by Spinco of Spinco Common Shares and other exemptions that are necessary or desirable in connection with the Pre-Arrangement Transactions, the Element Arrangement and the IAC Arrangement;
- (c) not to, directly or indirectly, solicit, initiate, knowingly encourage, cooperate with or facilitate (including by way of furnishing any non-public information or entering into any form of agreement, arrangement or understanding) the submission, initiation or continuation of any oral or written inquiries or proposals or expressions of interest regarding, constituting or that may reasonably be expected to lead to any activity,

arrangement or transaction or propose any activities or solicitations in opposition to or in competition with the IAC Arrangement, and without limiting the generality of the foregoing, not to induce or attempt to induce any other Person to initiate any shareholder proposal or “take-over bid,” exempt or otherwise, within the meaning of Applicable Securities Laws, for securities of IAC, nor to undertake any transaction or negotiate any transaction which would be or potentially could be in conflict with the IAC Arrangement, including allowing access to any third party (and its representatives) to conduct due diligence, nor to permit any of its officers or directors to do so, except as required by statutory obligations. In the event IAC or any of its Affiliates, including any of their officers or directors, receives any form of offer or inquiry in respect of any of the foregoing, IAC shall forthwith (in any event within one Business Day following receipt) notify Element and Spinco of such offer or inquiry and provide Element and Spinco with such details as it may request;

- (d) to cooperate fully with Element and Spinco and to use all reasonable commercial efforts to assist Element and Spinco in their respective efforts to complete the IAC Arrangement, unless such cooperation and efforts would subject IAC to cost or liability or to be in breach of applicable statutory and regulatory requirements;
- (e) to operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice;
- (f) not to, without Spinco’s, and prior to the Element Effective Date not without Element’s, prior written consent:
  - (i) issue any debt, equity or other securities;
  - (ii) borrow money or incur any indebtedness for money borrowed;
  - (iii) make loans, advances, or any other payments, except for payments of cash in respect of IAC’s operating expenses and professional fees incurred in the ordinary course of business, including for greater certainty such expenses and fees in connection with the transactions contemplated hereby (with regular notice to Element and Spinco of any such professional fee payments made after the date hereof), and routine reimbursement expenses incurred in the ordinary course by directors and officers of IAC;
  - (iv) make any capital expenditures;
  - (v) declare or pay any dividends or distribute any of IAC’s Assets or Properties to IAC Shareholders;
  - (vi) alter or amend IAC’s articles or by-laws in any manner which may adversely affect the success of the IAC Arrangement, except as required to give effect to the matters contemplated herein;
  - (vii) except as otherwise permitted or contemplated herein, enter into any transaction or material Contract which is not in the ordinary course of business or engage in any business enterprise or activity materially different from that carried on by IAC as of the date hereof;

- (viii) sell, pledge, lease, dispose of, grant any interest in, encumber or agree to sell, pledge, lease, dispose of, grant any interest in or encumber any of its Assets or Properties;
  - (ix) redeem, purchase or offer to purchase any IAC Shares or its other securities;
  - (x) request or authorize the distribution of any funds held in escrow on account of IAC Shares, other than as contemplated by this Agreement;
  - (xi) acquire, directly or indirectly, any assets, including but not limited to securities of other companies; or
  - (xii) except as otherwise permitted or contemplated herein, approve, authorize or implement any change to the business, financial condition or management of IAC;
- (g) use all commercially reasonable efforts to obtain all necessary consents, assignments or waivers from third parties and amendments or terminations to any instrument or agreement and take such other measures as may be necessary to fulfil its obligations under and to carry out the transactions contemplated by this Agreement, as applicable, and the IAC Plan of Arrangement;
- (h) make other necessary filings and applications under Applicable Laws required on the part of it in connection with the transactions contemplated herein, and take all reasonable action necessary to be in compliance with such Applicable Laws;
- (i) use all commercially reasonable efforts to provide for the release of all funds deposited pursuant to the Escrow Agreement to be released in accordance with its terms upon, and concurrent with or as soon as practicable after, completion of the IAC Arrangement;
- (j) use all commercially reasonable efforts to conduct its affairs so that all of its representations and warranties contained herein shall be true and correct on and as of the IAC Effective Date as if made on the IAC Effective Date, except to the extent that such representations and warranties require modification to give effect to the transactions contemplated herein;
- (k) immediately notify Element and Spincor of any legal or governmental actions, suits, judgments, investigations, injunction, complaint, action, suit, motion, judgement, regulatory investigation, regulatory proceeding or similar proceeding by any Person, Governmental Authority or other regulatory body, whether actual or threatened, with respect to the IAC Arrangement or which could otherwise delay or impede the transactions contemplated hereby;
- (l) notify Element and Spincor immediately upon becoming aware that any of the representations and warranties of IAC contained herein are no longer true and correct in any material respect;
- (m) immediately upon receipt of any written audit inquiry, assessment, reassessment, confirmation or variation of an assessment, indication that an assessment is being considered, request for filing of a waiver or extension of time or any other notice in writing relating to taxes, interest, penalties, losses or tax pools (an “**Assessment**”),

deliver to Element and Spinco a copy thereof together with a statement setting out, to the extent then determinable, an estimate of the obligations, if any, of it on the assumption that such Assessment is valid and binding; and

- (n) use all commercially reasonable efforts to cause each of the conditions precedent set forth in Section 7.1 and Section 7.2 to be satisfied.

## **5.6 Tax-Related Covenants.**

- (a) Each Party covenants and agrees with and in favour of each other Party that: (i) it and any successor thereto will not, on or before the Element Effective Date, perform any act or enter into any transaction or permit any transaction within its control to occur that could reasonably be considered to interfere or be inconsistent with the Pre-Arrangement Transactions or the Element Arrangement; (ii) neither it nor any successor thereto will perform any act or enter into any transaction or permit any transaction, in each such case, within its control to occur that would cause Element or any Affiliate of Element that is a corporation, to the extent applicable, to cease to be a Specified Corporation on or prior to the Element Effective Date; and (iii) it and any successor thereto will fulfill, and will cause any Person controlled, after the Element Effective Date, by it, to fulfill, all representations or undertakings provided by it, or on its behalf and made with its knowledge and consent, to tax counsel in connection with the Pre-Arrangement Transactions and the Element Arrangement.
- (b) Each Party covenants and agrees with and in favour of each other Party that, for a period of three years after the Element Effective Date, it will not (and will cause its Subsidiaries not to) take any action, omit to take any action, or enter into any transaction that could cause any dividend deemed to have been paid or received under the Element Arrangement for purposes of the Tax Act to become subject to subsection 55(2) of the Tax Act.
- (c) Each Party covenants and agrees with and in favour of each other Party that, except to the extent otherwise required by law, it will file its tax returns and make all other filings, notifications, designations and elections, including section 85 elections, pursuant to the Tax Act in such a manner that results in the parties to the Element Arrangement not being considered to have realized any increased taxable income solely by virtue of the consummation of the Element Arrangement.
- (d) Each Party covenants and agrees with and in favour of each other Party to cooperate in the preparation and filing, in the form and within the time limits prescribed or otherwise contemplated in the Tax Act or other applicable tax law, of all tax returns, filings, notifications, designations and elections under the Tax Act in respect of the transactions contemplated in the Element Plan of Arrangement or the IAC Plan of Arrangement and this Agreement (and any similar tax returns, filings, elections, notifications or designations that may be required under applicable provincial or foreign legislation).

## **5.7 Post-Element Effective Time Covenants.**

- (a) Subject to the rights of Element provided elsewhere in this Agreement and except as set forth in the Separation Agreement, Element covenants and agrees with and in favour of each other Party that it will (and will cause each of its Affiliates, as applicable, to), from the Element Effective Time until the last day on which any Spinco Arrangement Options

are outstanding that are held by or related to a Person who (directly or indirectly) received such options pursuant to the Element Arrangement, notify Spinco as soon as practicable after any such Person ceases to be a director of, or ceases to be employed by, or provide services to, the “Corporation” (as defined in the Amended and Restated Element Option Plan). Such notice shall contain such information as to the termination of such Person’s directorship or employment as is necessary in order to permit Spinco to properly apply the termination provisions in section 2.6 of the Spinco Option Plan to Spinco Arrangement Options held by or related to such Person.

- (b) Except as set forth in the Separation Agreement, each of Spinco and Subco covenants and agrees with and in favour of Element that it will (and Spinco will cause each of its Affiliates, as applicable, to), from the Element Effective Time until the last day on which any Post-Arrangement Element Options are outstanding that are held by or related to a Person who (directly or indirectly) received such options pursuant to the Element Arrangement, notify Element as soon as practicable after any such Person ceases to be a director of, or ceases to be employed by, or provide services to, the “Corporation” (as defined in the Spinco Option Plan). Such notice shall contain such information as to the termination of such Person’s directorship or employment as is necessary in order to permit Element to properly apply the termination provisions in section 2.6 of the Amended and Restated Element Option Plan to the Post-Arrangement Element Options held by or related to such Person.

## **5.8 Insurance and Indemnification**

- (a) Prior to the IAC Effective Date, IAC shall purchase customary “tail” policies of directors’ and officers’ liability insurance providing protection no less favourable in the aggregate to the protection provided by the policies maintained by IAC which are in effect immediately prior to the IAC Effective Date and providing protection in respect of claims arising from facts or events which occurred on or prior to the IAC Effective Date and Spinco shall maintain such tail policies in effect without any reduction in scope or coverage for six (6) years from the IAC Effective Date.
- (b) Spinco shall honour all rights to indemnification or exculpation now existing in favour of present and former officers and directors of IAC and acknowledges that such rights shall survive the consummation of the IAC Arrangement and shall continue in full force and effect in accordance with their terms for a period of not less than six (6) years from the IAC Effective Date.
- (c) If Spinco or any of its wholly-owned Subsidiaries or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers all or substantially all of their properties and assets to any Person, Spinco shall ensure that any such successor or and assign (including, as applicable, any acquirer of substantially all of the properties and assets of IAC) assumes all of the obligations set forth in this Section 5.8.

## **5.9 TSX De-listing.**

Subject to Applicable Laws, Element, Spinco and IAC shall use their commercially reasonable efforts to cause the IAC Shares to be de-listed from the TSX promptly, with effect promptly following the acquisition by Spinco of the IAC Shares pursuant to the IAC Arrangement.

## **5.10 Spinco Board of Directors**

Element, Spinco and IAC shall use their commercially reasonable efforts to appoint William Holland and Neil Selfe, directors of IAC on the date hereof, to the board of directors of Spinco, effective as soon as practicable following completion of the IAC Arrangement.

## **5.11 Alternative Transaction Structure.**

At the request of Spinco, IAC shall use commercially reasonable efforts to assist Spinco to successfully implement and complete any alternative transaction structure (including a take-over bid) that would result in Spinco acquiring, directly or indirectly, all of the IAC Shares so long as such an alternative transaction: (a) would not prejudice the IAC Shareholders; (b) would provide IAC Shareholders with consideration not less than under the Exchange Ratio; (c) would not result in a completion date later than the Outside Date; and (d) is otherwise on terms and conditions no more onerous in any material respect than the IAC Arrangement and this Agreement. In the event that the transaction structure is so modified, the relevant provisions of this Agreement shall be modified as necessary in order that they shall apply with full force and effect, *mutatis mutandis*, but with the adjustments necessary to reflect the revised transaction structure, and the Parties shall execute and deliver an agreement in writing giving effect to and evidencing such amendments as may be reasonably required as a result of such modifications and adjustments.

# **ARTICLE 6 CONDITIONS TO ELEMENT ARRANGEMENT**

## **6.1 Conditions Precedent.**

In addition to, and without in any way limiting, Element's rights referred to under Section 2.6 and Element's rights specifically provided for elsewhere in this Agreement, the obligations of Element to consummate the transactions contemplated hereby, and in particular the Element Arrangement, are subject to the satisfaction, on or before the Element Effective Date or such other time specified, of the following conditions, any of which may be waived by Element without prejudice to its right to rely on any other of such conditions:

- (a) the Element Interim Order shall have been obtained in form and substance satisfactory to Element, in its sole discretion, and will not have been set aside or modified in a manner unacceptable to Element, on appeal or otherwise;
- (b) the Element Final Order shall have been obtained in form and substance satisfactory to Element, in its sole discretion, and will not have been set aside or modified in a manner unacceptable to Element, on appeal or otherwise;
- (c) the Pre-Arrangement Transactions shall have been completed;
- (d) the Element Arrangement Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Element Meeting in accordance with the Element Interim Order and Applicable Laws;
- (e) the Spinco Equity Plans Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Element Meeting in accordance with Applicable Laws;

- (f) the Share Issuance Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Element Meeting in accordance with Applicable Laws;
- (g) all material consents, orders, rulings, approvals, opinions and assurances, including regulatory, judicial, Shareholder, third party and advisor opinions, approvals and orders, required or necessary, in the sole discretion of Element, for the completion of the Pre-Arrangement Transactions, the Element Arrangement, the transactions contemplated by this Agreement in connection with the Element Arrangement and the Element Plan of Arrangement will have been obtained or received from the Persons having jurisdiction in the circumstances and all will be in full force and effect, and none of the consents, orders, rulings, approvals, opinions or assurances contemplated herein shall contain terms or conditions or require undertakings or security that are considered unsatisfactory or unacceptable by Element, in its sole discretion;
- (h) no action will have been instituted and be continuing on the Element Effective Date, and there will not be in force any order or decree, in each case restraining or enjoining the consummation of the Pre-Arrangement Transactions, the Element Arrangement or the transactions contemplated by this Agreement in connection with the Element Arrangement and the Element Plan of Arrangement, and no cease trading or similar order with respect to any securities of any of the Parties will have been issued and remain outstanding;
- (i) no law, regulation or policy will have been proposed, enacted, promulgated or applied that interferes or is inconsistent with the completion of the Pre-Arrangement Transactions, the Element Arrangement or any of the other transactions contemplated by this Agreement in connection with the Element Arrangement and the Element Plan of Arrangement, including any material change to the income tax laws of Canada or the United States, or any province, state or territory thereof;
- (j) there shall not have occurred a Material Adverse Effect of Element, Spinco or Subco;
- (k) there shall not, as of the Element Effective Date, be Shareholders that hold, in the aggregate, in excess of 0.5% of all outstanding Element Common Shares that have validly exercised their Dissent Rights in respect of the Element Arrangement and not withdrawn such exercise;
- (l) the written Fairness Opinions will have been received by the Board and will not have been withdrawn or modified;
- (m) the Element Articles of Arrangement, Element Final Order, Element Plan of Arrangement and all necessary related documents, in form and substance satisfactory to Element, in its sole discretion, will have been filed and shall have been accepted for filing with the applicable Governmental Authorities;
- (n) the TSX will have conditionally approved the listing thereon, in substitution for the listing thereon of the Element Common Shares, of the Post-Arrangement Element Common Shares to be issued pursuant to the Element Arrangement (including the Post-Arrangement Element Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of Post-Arrangement Element Options) prior to the Element Effective Time, subject only to compliance with the usual requirements of the TSX;



- (o) the TSX will have conditionally approved the listing thereon of the Element Butterfly Shares to be issued pursuant to the Element Arrangement and the Spinco Common Shares to be issued pursuant to the Element Arrangement and issuable under the Spinco Option Plan, Spinco DSU Plan and Spinco Unit Plan prior to the Element Effective Time, subject only to compliance with the usual requirements of the TSX;
- (p) each of the Spinco DSU Plan, the Spinco Option Plan and the Spinco Unit Plan shall have been approved and adopted by the board of directors of Spinco;
- (q) Element, Spinco and Subco shall have entered into the Separation Agreement;
- (r) Element, Spinco and Subco shall have entered into the Transition Services Agreement;
- (s) the Board shall not have revoked its approval of the Element Arrangement at any time prior to the Element Effective Date; and
- (t) this Agreement shall not have been terminated in respect of the Element Arrangement by Element, Spinco or Subco pursuant to the provisions of Article 9.

The foregoing conditions are for the sole benefit of Element and may be waived, in whole or in part, by Element at any time. These conditions will not give rise to or create any duty on the part of Element or the Board to waive or not to waive such conditions and will not in any way limit Element's right to terminate this Agreement as set forth in Section 9.2 or alter the consequences of any such termination from those specified in Article 9. Any determination made by Element prior to the Element Effective Time concerning the satisfaction and waiver of any or all of the conditions set forth in this Section 6.1 will be final and conclusive, and neither Element nor any of its Affiliates or Representatives shall have any liability as a result of any such determination.

## **6.2 Conditions to Obligations of Element, Spinco and Subco.**

The obligation of each of Element, Spinco and Subco to complete the transactions contemplated by this Agreement in connection with the Element Arrangement is further subject to the conditions (which may be waived, in whole or in part, by such Party without prejudice to its right to rely on any other condition in its favour) that (i) the covenants of each other Party to be performed on or before the Element Effective Date pursuant to the terms of this Agreement will have been duly performed in all material respects and (ii) except as set forth in this Agreement, the representations and warranties of each other Party will be true and correct in all material respects as at the Element Effective Date, with the same effect as if such representations and warranties had been made at, and as of, such time.

## **6.3 Merger of Conditions.**

The conditions set out in Section 6.1 and Section 6.2 will be conclusively deemed to have been satisfied, waived or released upon the filing by Element of the Element Articles of Arrangement under the OBCA to give effect to the Element Plan of Arrangement.

**ARTICLE 7**  
**CONDITIONS TO IAC ARRANGEMENT**

**7.1 Mutual Conditions.**

The respective obligations of Spinco and IAC to consummate the IAC Arrangement are subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by the mutual consent of such Parties without prejudice to their right to rely on any other of such conditions:

- (a) the Pre-Arrangement Transactions and the Element Arrangement shall have been completed in accordance with their terms and the Element Effective Time shall have occurred;
- (b) the Share Issuance Resolution shall have been approved by the requisite number of votes cast by Shareholders at the Element Meeting in accordance with Applicable Laws;
- (c) the IAC Interim Order and the IAC Final Order shall have each been obtained on terms consistent with this Agreement, and shall not have been set aside or modified in a manner unacceptable to either of Spinco or IAC, acting reasonably, on appeal or otherwise;
- (d) the IAC Arrangement Resolution shall have been passed by the IAC Shareholders at the IAC Meeting in accordance with the IAC Interim Order;
- (e) the IAC Articles of Arrangement to be filed with the OBCA Director in accordance with this Agreement shall be in form and substance satisfactory to each of Spinco and IAC, acting reasonably;
- (f) the written approval of the TSX of the IAC Arrangement under the TSX rules and policies and such other matters as may require TSX approval in order to give effect to the IAC Arrangement shall have been obtained;
- (g) the Forfeiture and Transfer Restrictions Agreement and Undertaking dated May 27, 2015 from INFOR Financial Group Inc. and Element Investment Corp. to IAC, CIBC World Markets Inc., BMO Nesbitt Burns Inc., Deutsche Bank Securities Inc. and the Toronto Stock Exchange, shall have been amended in form and substance acceptable to each of INFOR Financial Group Inc. and Element Investment Corp., in each case acting reasonably;
- (h) the conditional approval to the listing of the Spinco Common Shares issuable pursuant to the IAC Arrangement (including the Spinco Common Shares issuable upon the exercise of existing IAC Warrants) on the TSX shall have been obtained;
- (i) receipt of all regulatory and third party approvals, authorizations and consents as are required to be obtained by Element, Spinco or IAC in connection with the IAC Arrangement;
- (j) no prohibition at law against completion of the IAC Arrangement and the transactions contemplated hereby shall be in effect; and

- (k) no act, action, suit, proceeding, objection or opposition shall have been threatened or taken, entered or promulgated before or by any Governmental Authority or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of Applicable Law, and no Applicable Law, regulation, policy, judgment, decision, order, ruling or directive (whether or not having the force of Applicable Law) shall have been enacted, promulgated, amended or applied, which would be reasonably expected to have a Material Adverse Effect on either Spinco or IAC (before or after completion of the IAC Arrangement).

## **7.2 Spinco Conditions.**

The obligation of Spinco to consummate the IAC Arrangement is subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by Spinco without prejudice to its right to rely on any other such conditions:

- (a) the representations and warranties made by IAC in this Agreement shall be true and correct as of the date of this Agreement and as of the IAC Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on IAC (and for this purpose, any reference to “material” or “Material Adverse Effect” in such representations and warranties shall be ignored); and IAC shall have provided to Spinco a certificate of two senior officers of IAC (on behalf of IAC and without personal liability) certifying the foregoing on the IAC Effective Date;
- (b) IAC shall have complied in all material respects with its covenants herein to be complied with by it on or prior to the IAC Effective Time; and IAC shall have provided to Spinco a certificate of two senior officers of IAC (on behalf of IAC and without personal liability) certifying compliance with such covenants on the IAC Effective Date;
- (c) no Material Adverse Effect on IAC shall have occurred after the date hereof and prior to the IAC Effective Date;
- (d) all funds deposited pursuant to the Escrow Agreement shall have been released in connection with the IAC Arrangement in accordance with the Escrow Agreement, including all funds to be distributed to holders of IAC Class A Shares that validly exercised redemption rights in respect of the IAC Arrangement;
- (e) INFOR Financial Group Inc. shall have entered into an escrow agreement with, among others, Spinco providing for the escrow for a period of five years from the IAC Effective Date of 25% the Spinco Common Shares received by it pursuant to the IAC Arrangement on terms disclosed to INFOR Financial Group Inc. by Element prior to the date hereof, in form and substance satisfactory to Spinco, acting reasonably;
- (f) the aggregate fair market value of Spinco on the Element Effective Date, as determined by the Board for the purposes of the Exchange Ratio, shall not be less than 95% of the estimated equity net book value of the Commercial Finance Business as of Element Effective Date, with estimated equity net book value to be determined by Element, in accordance with GAAP and subject to such adjustments as are reasonable and appropriate in the circumstances, including to account for the Pre-Arrangement Transactions and in

respect of foreign exchange rates, and such determination (i) to be provided to IAC in writing for purposes of this Section 7.2(f) and Section 7.3(f) only, and for no other purpose, and (ii) not to be disclosed by IAC to any other Person;

- (g) holders of less than 25% of the outstanding Class A IAC Shares shall have validly exercised rights of redemption in respect of the IAC Arrangement and the Qualifying Acquisition; and
- (h) holders of less than 5% of the outstanding IAC Shares shall have validly exercised rights of dissent in respect of the IAC Arrangement that have not been withdrawn as of the IAC Effective Date.

The conditions in this Section 7.2 are for the exclusive benefit of Spinco and may be asserted by Spinco regardless of the circumstances or may be waived in writing by Spinco in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which Spinco may have.

### **7.3 IAC Conditions.**

The obligation of IAC to consummate the IAC Arrangement is subject to the satisfaction, on or before the IAC Effective Date or such other time specified, of the following conditions, any of which may be waived by IAC without prejudice to its right to rely on any other such conditions:

- (a) the representations and warranties made by Element in this Agreement shall be true and correct as of the date of this Agreement and as of the Element Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on Element (and for this purpose, any reference to “material” or “Material Adverse Effect” in such representations and warranties shall be ignored); and Element shall have provided to IAC a certificate of two senior officers of Element (on behalf of Element and without personal liability) certifying the foregoing on the IAC Effective Date;
- (b) the representations and warranties made by Spinco in this Agreement shall be true and correct as of the date of this Agreement and as of the IAC Effective Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not result or would not reasonably be expected to result in a Material Adverse Effect on Spinco (and for this purpose, any reference to “material” or “Material Adverse Effect” in such representations and warranties shall be ignored); and Spinco shall have provided to IAC a certificate of a director of Spinco (on behalf of Spinco and without personal liability) certifying the foregoing on the IAC Effective Date;
- (c) Element shall have complied in all material respects with its covenants herein to be complied with by it on or prior to the Element Effective Time; and Element shall have provided to IAC a certificate of two senior officers of Element (on behalf of Element and without personal liability) certifying compliance with such covenants on the IAC Effective Date;

- (d) Spinco shall have complied in all material respects with its covenants herein to be complied with by it on or prior to the IAC Effective Time; and Spinco shall have provided to IAC a certificate of a director of Spinco (on behalf Spinco and without personal liability) certifying compliance with such covenants on the IAC Effective Date;
- (e) no Material Adverse Effect on Spinco shall have occurred after the date hereof and prior to the IAC Effective Date; and
- (f) the aggregate fair market value of Spinco on the Element Effective Date, as determined by the Board for the purposes of the Exchange Ratio, shall not be greater than 105% of the estimated equity net book value of the Commercial Finance Business as of Element Effective Date, with estimated equity net book value to be determined by Element, in accordance with GAAP and subject to such adjustments as are reasonable and appropriate in the circumstances, including to account for the Pre-Arrangement Transactions and in respect of foreign exchange rates, and such determination (i) to be provided to IAC in writing for purposes of Section 7.2(f) and this Section 7.3(f) only, and for no other purpose, and (ii) not to be disclosed by IAC to any other Person.

The conditions in this Section 7.3 are for the exclusive benefit of IAC and may be asserted by IAC regardless of the circumstances or may be waived by IAC in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which IAC may have.

#### **7.4 Notice and Cure Provisions.**

Spinco, on the one hand, and IAC, on the other hand, will give prompt written notice to the other of the occurrence, or failure to occur, at any time from the date hereof until the IAC Effective Date, of any event or state of facts which occurrence or failure would, or would reasonably be expected to:

- (a) cause any of the representations or warranties of Element or Spinco, on the one hand, and IAC, on the other hand, contained herein to be untrue or inaccurate such that any condition in this Article 7 would not be satisfied; or
- (b) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by Element or Spinco, on the one hand, and IAC, on the other hand, prior to or at the IAC Effective Date such that any condition in this Article 7 would not be satisfied.

Neither Spinco, on the one hand, and IAC, on the other hand, may elect to terminate this Agreement (solely in respect of the IAC Arrangement) pursuant to Section 9.2(g) or 9.2(h) unless forthwith, and in any event prior to the issuance of the IAC Certificate of Arrangement by the OBCA Director, the Party intending to rely thereon has delivered a written notice to the other Party or Parties specifying in reasonable detail all breaches of covenants, inaccuracies of representations and warranties or other matters which the Party delivering such notice is asserting as the basis for the non-fulfillment of the applicable condition or the availability of a termination right, as the case may be. If any such notice is delivered, provided that the receiving Party is proceeding diligently to cure any such matter capable of cure prior to the Outside Date to the satisfaction of the Party delivering such notice, acting reasonably, neither Spinco, on the one hand, and IAC, on the other hand may terminate this Agreement (solely in respect of the IAC Arrangement) until the earlier of (i) the expiration of a period of ten Business Days from the date of receipt of such notice, and (ii) the Outside Date, if such matter has not been cured by such date. More than one notice may be delivered by a Party. If such notice has been delivered within ten

Business Days prior to the date of the IAC Meeting, Spinco or IAC may elect to postpone the IAC Meeting until the expiry of such period.

### **7.5 Merger of Conditions.**

The conditions set out in Section 7.1, Section 7.2 and Section 7.3 will be conclusively deemed to have been satisfied, waived or released upon the filing by IAC of the IAC Articles of Arrangement under the OBCA to give effect to the IAC Plan of Arrangement.

## **ARTICLE 8 INDEMNITIES**

### **8.1 Indemnity by Element.**

Subject to Section 10.12, Element will indemnify and hold harmless Spinco, its Affiliates and its Representatives against any Loss suffered or incurred by any such Indemnified Person resulting from:

- (a) a breach of a representation or warranty herein or pursuant hereto by Element or Subco;
- (b) a breach of a covenant herein or pursuant hereto by Element; and
- (c) a breach of a covenant herein or pursuant hereto by Subco, to the extent such breach was caused by Element or one of its Affiliates (as at the time of such breach).

### **8.2 Indemnity by Spinco.**

Subject to Section 8.10, Spinco will indemnify and hold harmless Element, its Affiliates and their respective Representatives against any Loss suffered or incurred by any such Indemnified Person resulting from:

- (a) a breach of a representation or warranty herein or pursuant hereto by Spinco; and
- (b) a breach of a covenant herein or pursuant hereto by Spinco, to the extent such breach occurs after the Element Effective Time.

### **8.3 Notice of Third Party Claims.**

- (a) If an Indemnified Person receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Person must provide written notice to the Indemnifying Party within a reasonable time thereafter, but in any event, no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifying Party must describe the Third Party Claim in reasonable detail and indicate, to the extent reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Person. In respect of any notice of a Third Party Claim concerning Taxes, an Indemnified Person shall deliver with its notice a copy of any assessment, reassessment, notice of confirmation thereof, proposal to assess or reassess, appeal or notification of a similar proceeding, together with all correspondence related to such documents. The Indemnifying Party will then have a period of 30 days (the “**Notice Period**”) within which to satisfy such Third Party Claim or, failing that, to give notice to the Indemnified Person that it intends to dispute such Third Party Claim and assume control of the negotiation, settlement or defence of the Third Party Claim (a “**Dispute**”).

**Notice**”), which notice must be accompanied by reasonable particulars in writing of the basis of such dispute; *provided, however*, that notwithstanding the foregoing, the Indemnifying Party shall not be permitted to assume the defence of the Third Party Claim if: (i) such Third Party Claim seeks equitable relief against the Indemnified Person as a primary form of relief; or (ii) such Third Party Claim involves criminal liability.

- (b) If an Indemnified Person has reason to believe that a Person may be investigating the possibility of asserting a Third Party Claim, it must notify the Indemnifying Party as soon as reasonably practicable and provide reasonable details of the circumstances thereof. The Indemnified Person and the Indemnifying Party will seek to cooperate with a view to satisfying the Person who may assert the Third Party Claim that there is no reasonable basis therefor.

#### **8.4 Defence of Third Party Claims.**

- (a) If an Indemnifying Party elects to assume control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party must at all times act reasonably and in good faith in pursuing such negotiation, settlement or defence, keep the Indemnified Persons fully informed as to the progress and status of such defence of the Third Party Claim and provide copies to the Indemnified Persons of all material documents, records and other materials relating to the negotiation, settlement or defence of the Third Party Claim. The Indemnifying Party must provide the Indemnified Persons with drafts of documents that the Indemnifying Party proposes to send or file in advance of the sending of or filing of the same and the Indemnified Persons will have the reasonable opportunity to provide comments thereon to the Indemnifying Party; *provided, however*, that it will not result in any undue delays. The Indemnifying Party agrees to pay all of its own expenses of participating in or assuming such negotiation, settlement or defence. The Indemnified Persons will cooperate in good faith in the negotiation, settlement or defence of each Third Party Claim, even if the negotiation, settlement or defence has been assumed by the Indemnifying Party, and may participate in such negotiation, settlement or defence assisted by counsel of its choice and at its own expense, except in those circumstances in which the Indemnified Person believes in good faith that there are material issues between the Indemnifying Party and the Indemnified Persons or there are defences available to the Indemnified Persons that are not available to the Indemnifying Party, in either of which cases the Indemnified Persons may participate in such negotiation, settlement or defence assisted by counsel of its choice at the expense of the Indemnifying Party to the extent such expenses are reasonable.
- (b) Neither the Indemnifying Party nor the Indemnified Persons will enter into any compromise or settlement of any Third Party Claim without obtaining the prior written consent of the other of them, such consent not to be unreasonably withheld or delayed; *provided, however*, that: (1) if the Indemnifying Party wishes to settle a Third Party Claim in an amount acceptable to the third party claimant, but the Indemnified Persons do not wish so to settle, the Indemnifying Party will be required to indemnify the Indemnified Persons only up to the lesser of the amount for which the Indemnifying Party would have settled the Third Party Claim and the amount which the Indemnified Persons were or will be required to pay such third party in connection with such Third Party Claim; and (2) if the Indemnified Persons have not received a Dispute Notice within the Notice Period confirming the intent of the Indemnifying Party in respect of a Third Party Claim or if the Indemnifying Party, having elected to assume the negotiation, settlement or defence of any Third Party Claim, fails to take reasonable steps necessary to defend

diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Persons that the Indemnified Person *bona fide* believes on reasonable grounds that the Indemnifying Party has failed to take such steps (with such grounds to be specified in reasonable detail), the Indemnified Persons may, at their option, elect to settle or compromise the Third Party Claim or assume such defence, assisted by counsel of their choosing, and the Indemnifying Party will be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Persons with respect to such Third Party Claim.

#### **8.5 Direct Claims.**

Any Direct Claim must be asserted by providing notice to the Indemnifying Party within a reasonable time after the Indemnified Person becomes aware of such Direct Claim, but in any event not later than 60 days after the Indemnified Person becomes aware of such Direct Claim. The Indemnifying Party will then have a period of 30 days within which to satisfy such Direct Claim or, failing that, to give notice to the Indemnified Person that it intends to dispute such Direct Claim, which notice must be accompanied by reasonable particulars in writing of the basis of such dispute.

#### **8.6 Failure to Give Timely Notice.**

The failure to give timely notice as provided in this Article 8 will not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, the Party that was entitled to receive such notice suffered damage or was otherwise prejudiced.

#### **8.7 Reduction in Subrogation.**

If at any time subsequent to the making of any Indemnity Payment, the amount of the indemnified loss is reduced pursuant to any claim, recovery, settlement or payment by or against any other Person (a “**Recovery**”), such that, taking the Recovery into account, the amount of the Indemnity Payment in respect of the Loss exceeds the amount of the Loss, the Indemnified Person must promptly repay to the Indemnifying Party the amount of the excess (the “**Excess**”) (less any costs, expenses (including Taxes) or premiums incurred in connection therewith) together with interest (a) from the date of payment of the Indemnity Payment in respect of which the repayment is being made to but excluding the earlier of the date of repayment of the Excess and the date that is 60 days after the Excess arises, but only to the extent that the Recovery giving rise to the Excess included interest, at the rate applied to the amount of the Recovery and (b) from and including the date that is 60 days after the Excess arises to but excluding the date of repayment of the Excess, at the Prime Rate. Notwithstanding the foregoing provisions of this Section, no payment must be made hereunder to the extent the Indemnified Person is entitled to an Indemnity Payment hereunder that remains unpaid. Upon making a full Indemnity Payment, the Indemnifying Party will, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Person against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Person recovers full payment of its Loss, any and all claims of the Indemnifying Party against such third party on account of such Indemnity Payment will be postponed and subordinated in right of payment to the Indemnified Person’s rights against such third party.

#### **8.8 Tax Effect.**

If any Indemnity Payment received by an Indemnified Person would constitute income for Tax purposes to such Indemnified Person, the Indemnifying Party will pay a Tax Gross-Up to the Indemnified Person at the same time and on the same terms, as to interest and otherwise, as the Indemnity Payment. The amount of any Loss for which indemnification is provided will be adjusted to take into account any



Tax benefit realized by the Indemnified Person or any of its Affiliates by reason of the Loss for which indemnification is so provided or the circumstances giving rise to such Loss. For purposes of this Section, any Tax benefit will be taken into account at such time as it is received by the Indemnified Person or its Affiliate. Notwithstanding the foregoing provisions of this Section, if an Indemnity Payment would otherwise be included in the Indemnified Person's income, the Indemnified Person covenants and agrees to make all such elections and take such actions as are available, acting reasonably, to minimize or eliminate Taxes with respect to the Indemnity Payment.

### **8.9 Payment and Interest.**

All Losses (other than Taxes) will bear interest at a rate per annum, calculated and payable monthly, equal to the Prime Rate per annum from and including the date the Indemnified Person disbursed funds or suffered or incurred a Loss to but excluding the day of payment by the Indemnifying Party to the Indemnified Person, with interest on overdue interest at the same rate. All Losses that are Taxes will bear interest at a rate per annum, calculated and payable monthly, equal to the Prime Rate from and including the date the Indemnified Person paid such Taxes to but excluding the day of payment by the Indemnifying Party to the Indemnified Person of the Indemnity Payment in respect of such Taxes, with interest on overdue interest at the same rate.

### **8.10 Judgment Currency.**

- (a) If for the purpose of obtaining or enforcing judgment against the Indemnifying Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (the "**Judgment Currency**") an amount due in Canadian dollars under this Agreement, the conversion will be made at the rate of exchange prevailing on the Business Day immediately preceding:
  - (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
  - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the "**Judgment Conversion Date**").
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 8.10(a)(i), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Indemnifying Party must pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian dollars, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

### **8.11 Exclusive Remedy.**

Subject to Section 8.13 and except for remedies for injunctive or equitable relief, claims for fraud or intentional misrepresentation or as otherwise expressly provided in this Agreement, the indemnification rights set forth in this Article 8 shall be the sole and exclusive remedy for any Direct Claim or Third Party Claim arising out of this Agreement by Element, Subco or Spinco.

### **8.12 Mitigation.**

Nothing in this Agreement shall in any way restrict or limit the general obligation at law of an Indemnified Person to mitigate any Loss which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant, obligation or agreement of the Indemnifying Party hereunder. If any such Loss can be reduced by any Recovery (including under or pursuant to any insurance coverage), the Indemnified Person shall take all appropriate and reasonable steps to enforce such Recovery. Notwithstanding the foregoing, no Indemnified Person shall have any obligation to mitigate any Loss prior to or in connection with any application of remedies for injunctive or equitable relief.

### **8.13 Superseding Indemnity.**

Notwithstanding anything else contained herein, concurrently with the execution and delivery of the Separation Agreement, the indemnity provisions contained in the Separation Agreement shall supersede and replace this Article 8 and this Article 8 shall be of no further force or effect. Any Direct Claim or Third Party Claim advanced or right to advance a Direct Claim or Third Party Claim under this Article 8 prior to the Element Effective Date may be continued or advanced under the Separation Agreement and the provisions of the Separation Agreement shall apply *mutatis mutandis* with respect to any such Direct Claim or Third Party Claim or right.

## **ARTICLE 9 AMENDMENT AND TERMINATION**

### **9.1 Amendment.**

- (a) This Agreement may, at any time and from time to time before and after the holding of the Element Meeting, but not later than the Element Effective Date, be amended in respect of the Element Arrangement by written agreement of Element, Spinco and Subco without, subject to Applicable Law, further notice to or authorization on the part of the Shareholders or IAC Shareholders, but subject to written notice to IAC of any material amendment. Without limiting the generality of the foregoing, any such amendment may:
  - (i) change the time for performance of any of the obligations or acts of Element, Spinco and Subco in respect of the Element Arrangement;
  - (ii) waive any inaccuracies or modify any representation contained herein or in any document to be delivered pursuant hereto in respect of the Element Arrangement;
  - (iii) except as otherwise provided herein, waive compliance with or modify any of the covenants contained herein or waive or modify performance of any of the obligations of Element, Spinco and Subco in respect of the Element Arrangement; or
  - (iv) make such alterations, modifications or amendments to this Agreement as Element, Spinco and Subco may consider necessary or desirable in connection with the Pre-Arrangement Transactions, the Element Arrangement, the Element Interim Order or the Element Final Order.

- (b) This Agreement may, at any time and from time to time before and after the holding of the IAC Meeting, but not later than the IAC Effective Date, be amended in respect of the IAC Arrangement by written agreement of the Parties without, subject to Applicable Law, further notice to or authorization on the part of the Shareholders or IAC Shareholders. Without limiting the generality of the foregoing, any such amendment may:
- (i) change the time for performance of any of the obligations or acts of the Parties;
  - (ii) waive any inaccuracies or modify any representation contained herein or in any document to be delivered pursuant hereto;
  - (iii) except as otherwise provided herein, waive compliance with or modify any of the covenants contained herein or waive or modify performance of any of the obligations of the Parties; or
  - (iv) make such alterations, modifications or amendments to this Agreement as the Parties may consider necessary or desirable in connection with the IAC Arrangement, the IAC Interim Order or the IAC Final Order;

provided that no such amendment shall change the provisions hereof regarding the consideration to be received by securityholders of IAC pursuant to the IAC Arrangement without approval by such securityholders given in the same manner as required for the approval of the IAC Arrangement.

- (c) Notwithstanding the foregoing, Element reserves the right, in its sole discretion, subject to written notice to IAC of any material amendment (without any right of approval), but without notice to or the approval of the other Parties, the Shareholders or the IAC Shareholders, to amend: (i) the Element Plan of Arrangement so long as such amendment(s) is not, in the opinion of Element (acting reasonably), materially adverse to the other Parties; and (ii) this Agreement to the extent Element may reasonably consider such amendment necessary or desirable due to the Pre-Arrangement Transactions, the Element Arrangement, the Element Interim Order or the Element Final Order. None of the Parties (or their respective Affiliates or Representatives) shall have any liability to the Shareholders, the IAC Shareholders or the other Parties, as applicable, for any amendment made pursuant to the foregoing sentence of this Section 9.1(c).

## **9.2 Termination.**

This Agreement may be terminated as follows:

- (a) by Element, at any time before or after the holding of the Element Meeting but prior to the issue under the OBCA of the Element Certificate of Arrangement, in its sole and absolute discretion;
- (b) solely in respect of the IAC Arrangement, by Element, if the Board of Directors, after consultation with its financial and legal advisors, determines in good faith that proceeding with the IAC Arrangement would prohibit, materially delay or materially impede consummation of the Element Arrangement;

- (c) solely in respect of the IAC Arrangement, by IAC, if the board of directors of IAC, after consultation with its financial and legal advisors, determines in good faith that an amendment made by Element, Spinco and/or Subco, as applicable, pursuant to Section 9.1(a) or Section 9.1(c) is materially adverse to IAC or holders of IAC Class A Shares;
- (d) by any Party if any of the Element Arrangement Resolution or the Spinco Equity Plans Resolution shall have failed to receive the requisite vote of the Shareholders at the Element Meeting (including any adjournment or postponement thereof) in accordance with the Element Interim Order;
- (e) solely in respect of the IAC Arrangement, by any Party if the Share Issuance Resolution shall have failed to receive the requisite vote of the Shareholders at the Element Meeting (including any adjournment or postponement thereof) in accordance with Applicable Laws;
- (f) solely in respect of the IAC Arrangement, by Element (prior to the Element Effective Date), Spinco or IAC if the IAC Arrangement Resolution shall have failed to receive the requisite vote of the IAC Shareholders at the IAC Meeting (including any adjournment or postponement thereof) in accordance with the IAC Interim Order;
- (g) solely in respect of the IAC Arrangement, by Element (prior to the Element Effective Date) or Spinco (i) by notice to IAC if any of the conditions contained in Section 7.1 or Section 7.2 shall not be fulfilled or performed by the Outside Date (provided that the Party seeking termination is in compliance with its obligations under Section 7.4, if applicable, and not then in breach of this Agreement so as to cause any of the conditions set forth in Section 7.1 or Section 7.2 not to be satisfied) or (ii) upon a breach by IAC of Section 5.5(a) that could reasonably result in a condition set forth in Section 7.1 or Section 7.2 which has not been waived to be incapable of being satisfied on or before the Outside Date;
- (h) solely in respect of the IAC Arrangement, by IAC (i) by notice to Element and Spinco if any of the conditions contained in Section 7.1 and Section 7.3 shall not be fulfilled or performed by the Outside Date (provided that IAC is in compliance with its obligations under Section 7.4, if applicable, and not then in breach of this Agreement so as to cause any of the conditions set forth in Section 7.1 or Section 7.3 not to be satisfied) or (ii) upon a breach by Element or Spinco of Section 5.3(a) that could reasonably result in a condition set forth in Section 7.1 and Section 7.3 which has not been waived to be incapable of being satisfied on or before the Outside Date; or
- (i) at any time before or after the holding of the IAC Meeting or the Element Meeting by mutual agreement of the Parties in writing, without further action on the part of the Shareholders or IAC Shareholders.

### **9.3 Effect of Termination.**

If this Agreement is terminated as aforesaid, the Party terminating this Agreement shall be released from all obligations under this Agreement (but solely in respect of the IAC Arrangement, in the case of a termination pursuant to Section 9.2(e), 9.2(g) or 9.2(h)) other than the obligations that by their terms survive the termination of this Agreement, all rights of specific performance against such Party shall terminate and, unless such Party can show that the condition or conditions the non-performance of

which has caused such Party to terminate this Agreement were reasonably capable of being performed by the other Party, then the other Party shall also be released from all obligations hereunder (in the case of a termination pursuant to Section 9.2(e), 9.2(g) or 9.2(h), solely in respect of the IAC Arrangement), except any liability expressly contemplated hereby; and further provided that any of such conditions may be waived in full or in part by any of the Parties without prejudice to its rights of termination in the event of the non-fulfilment or non-performance of any other condition.

#### **9.4 Survival.**

If this Agreement is not terminated pursuant to the provisions of Section 9.2, or terminated solely in respect of the IAC Arrangement, this Agreement (excluding the conditions referred to in Section 6.3) will continue in effect for a period of one year after the Element Effective Date, except that the provisions of Sections 5.7 will continue in effect for the period referred to therein, and the provisions of Article 10 will continue indefinitely.

### **ARTICLE 10 GENERAL**

#### **10.1 Expenses.**

Except as otherwise agreed to by the Parties, the Parties agree that all Transaction Costs will be the responsibility of, and will be paid for by, Element. Subject to the foregoing, each of the Parties shall be responsible for their own costs and charges incurred with respect to the transactions contemplated herein including all costs and charges incurred prior to the date of this Agreement and all legal and accounting fees and disbursements relating to preparing the documents relating to the transactions contemplated herein.

#### **10.2 Notices.**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and delivered personally or by courier or by facsimile or email addressed to the recipient as follows:

- (a) to Element:

Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1

Attention: Bradley Nullmeyer  
Fax: 1-888-772-8129  
Email: [bnullmeyer@elementcorp.com](mailto:bnullmeyer@elementcorp.com)

- (b) to Subco:

2510204 Ontario Inc.  
c/o Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1

Attention: Jim Nikopoulos  
Fax: 1-888-772-8129  
Email: [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com)

(c) to Spinco:

ECN Capital Corp.  
c/o Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1

Attention: Jim Nikopoulos  
Fax: 1-888-772-8129  
Email: [jnikopoulos@elementcorp.com](mailto:jnikopoulos@elementcorp.com)

(d) to IAC:

INFOR Acquisition Corp.  
c/o INFOR Financial Group  
Royal Bank Plaza  
South Tower  
200 Bay Street, Suite 2350  
Toronto, ON M5J 2J2

Attention: Neil Selfe  
Fax: 1-416-981-7033  
Email: [nselfe@inforfg.com](mailto:nselfe@inforfg.com)

with a copy to:

INFOR Acquisition Corp.  
c/o INFOR Financial Group  
Royal Bank Plaza  
South Tower  
200 Bay Street, Suite 2350  
Toronto, ON M5J 2J2

Attention: Brian Gibson, Chair, Independent Committee of the Board of Directors of  
INFOR Acquisition Corp.  
Fax: 1-416-981-7033  
Email: [bgibson@tavaniri.com](mailto:bgibson@tavaniri.com)

or other such address that a Party may, from time to time, advise the other Parties hereto by notice in writing given in accordance with the foregoing. Date of receipt of any such notice will be deemed to be the date of actual delivery thereof or, if given by facsimile or email, on the day of transmittal if given (with confirmation of delivery) prior to 5:00 p.m. (recipient's local time) and on the next Business Day if so given after such time.

### **10.3 Confidentiality.**

- (a) Each Party shall treat confidentially and not disclose, and shall cause each of its representatives to treat confidentially and not disclose, other than as expressly contemplated by this Agreement, any Confidential Information of the other Parties.
- (b) A Party may disclose Confidential Information only to those of its representatives who need to know such Confidential Information for the purpose of implementing the transactions contemplated by this Agreement. No Party shall use, nor permit its representatives to use, Confidential Information for any other purpose or in any way that is, directly or indirectly, detrimental to the applicable Party disclosing such Confidential Information.
- (c) Following the termination of this Agreement in accordance with the provisions of this Agreement, each Party that received Confidential Information shall (and shall cause each of its representatives to) (a) return promptly to the disclosing Party all physical copies of the Confidential Information of the such disclosing Party (excluding Notes) then in such Party's possession or in the possession of its representatives, and (b) destroy all (i) electronic copies of such Confidential Information, and (ii) Notes (including electronic copies thereof) prepared by such receiving Party or any of its representatives, in a manner that ensures the same may not be retrieved or undeleted by such receiving Party or any of its representatives; provided that the foregoing provisions do not apply to Confidential Information that is retained in the computer backup system of a Party or its representatives provided that such Confidential Information will be destroyed in accordance with the regular ongoing records retention process of such Party or its representatives and that such Confidential Information is not used prior to its destruction.

### **10.4 Assignment.**

No Party may assign its rights or obligations under this Agreement, the Element Arrangement or the IAC Arrangement without the prior written consent of the other Parties, *provided* that no such consent will be required for Element, Spinco or Subco to assign its rights and obligations under this Agreement, the Element Arrangement and the IAC Arrangement to a corporate successor to such Party or to a purchaser of all or substantially all of the assets of such Party.

### **10.5 Further Assurances.**

Each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order further to perform and carry out the terms and intent hereof.

### **10.6 Binding Effect.**

This Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns and specific references to "successors" elsewhere in this Agreement will not be construed to be in derogation of the foregoing.

### **10.7 Waiver.**

Any waiver or release of any of the provisions of this Agreement, to be effective, must be in writing executed by the Party granting the same.

#### **10.8 Entire Agreement.**

This Agreement together with the agreements and other documents herein or therein referred to constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect thereto.

#### **10.9 Governing Law; Attornment.**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and will be treated in all respects as an Ontario contract. For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have non-exclusive jurisdiction to entertain any action arising under this Agreement. Each Party hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **10.10 Specific Performance.**

The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement in respect of the IAC Arrangement were not performed by another Party in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each Party shall be entitled to an injunction or injunctions and other equitable relief to prevent breaches or threatened breaches of the provisions of this Agreement in respect of the IAC Arrangement or to otherwise obtain specific performance of any such provisions, any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief hereby being waived.

#### **10.11 Waiver of Conflict.**

The Parties acknowledge that each of Element, Spinco and Subco, and their respective Affiliates, are currently represented by legal counsel retained by Element in connection with the preparation and finalization of this Agreement. Each of Element, Spinco, Subco, and IAC, on behalf of itself and its respective Affiliates, waives any conflict with respect to such common representation that may arise before, at or after the date of this Agreement.

#### **10.12 Limitation on Liability.**

No Representative of a Party shall have any personal liability whatsoever on behalf of such Party (or any of its Affiliates) to any other Party under this Agreement, the Pre-Arrangement Transactions or the Arrangements or any other transactions entered into, or documents delivered, in connection with any of the foregoing. In no event will Element, Spinco or Subco be liable to any other Party for any special, consequential, indirect, collateral, incidental or punitive damages or lost profits or failure to realize expected savings or other commercial or economic loss of any kind, however caused and on any theory of liability, arising in any way out of this Agreement, whether or not such Person has been advised of the possibility of such damages; *provided, however*, that the foregoing will not limit any Party's indemnification obligations for Losses with respect to Third-Party Claims as set forth in Article 8.

#### **10.13 No Third Party Beneficiaries.**

This Agreement is solely for the benefit of, and is not intended to confer any rights or remedies on any Person other than the Parties (and their respective successors and permitted assigns) except for the



indemnification rights provided for in Sections 8.1 and 8.2 which are intended for the benefit of, in addition to the Parties hereto, the Affiliates and Representatives of Element, Spinco, Subco and IAC, respectively, as and to the extent applicable in accordance with their terms, and will be enforceable, as applicable, by each of such Indemnified Persons and his or her heirs, executors, administrators and other legal representatives (collectively, the “**Third Party Beneficiaries**”). Spinco and Subco will hold the rights and benefits of Section 8.1 in trust for and on behalf of the applicable Third Party Beneficiaries and Element will hold the rights and benefits of Section 8.2 in trust for and on behalf of the applicable Third Party Beneficiaries. Each of Element, Spinco and Subco hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the applicable Third Party Beneficiaries as directed by such Third Party Beneficiaries. Except as otherwise expressly provided in this Section 10.13, this Agreement will not provide any Person (including any Shareholder) with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

#### **10.14 Severability.**

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a) the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

#### **10.15 Counterparts.**

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date hereof.

**ELEMENT FINANCIAL CORPORATION**

By /s/ Bradley Nullmeyer  
Name: Bradley Nullmeyer  
Title: President

**ECN CAPITAL CORP.**

By /s/ Jim Nikopoulos  
Name: Jim Nikopoulos  
Title: Senior Vice President, General  
Counsel and Secretary

**2510204 ONTARIO INC.**

By /s/ Jim Nikopoulos  
Name: Jim Nikopoulos  
Title: Secretary

**INFOR ACQUISITION CORP.**

By /s/ Neil M. Selfe  
Name: Neil M. Selfe  
Title: Chief Executive Officer

By /s/ Brian J. Gibson  
Name: Brian J. Gibson  
Title: Director

**APPENDIX A  
ELEMENT PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT UNDER SECTION 182  
OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)**

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms will have the respective meanings set out below and grammatical variations of such terms will have the corresponding meanings:

“**Amended and Restated Element Option Plan**” means the Element Financial Corporation Share Option Plan enacted June 1, 2010, and amended and restated May 17, 2011 and May 13, 2014, as amended and restated by the Board prior to or pursuant to the Arrangement.

“**Arrangement**” means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in this Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement, this Plan of Arrangement or at the direction of the Court;

“**Arrangement Agreement**” means the arrangement agreement dated July 25, 2016 among Element, Spinco, Subco and INFOR Acquisition Corp. relating to, among other things, the Arrangement, as it may be amended, modified or supplemented from time to time in accordance with its terms;

“**Arrangement Resolution**” means the special resolution of the Shareholders approving this Plan of Arrangement as required by the OBCA and the Interim Order;

“**Board**” or “**Board of Directors**” means the Board of Directors of Element;

“**Business Day**” means a day, other than a Saturday, Sunday or statutory or civic holiday in Ontario, when banks are generally open for the transaction of business in Toronto, Ontario;

“**Butterfly Multiple**” means an amount equal to the fraction (A)/(B) where:

- (A) is the Subco Share Number; and
- (B) is the aggregate number of Element Common Shares issued and outstanding immediately after the step set forth in Section 2.3(a);

“**Butterfly Proportion**” means an amount equal to the fraction (A)/(B) where:

- (A) is the volume weighted average trading price of the Spinco Common Shares on the TSX for the first five trading days commencing on the date upon which the Spinco Common Shares commence trading on the TSX following the completion of the Arrangement; and
- (B) is the sum of the amount determined under (A) above, plus the volume weighted average trading price of the Element Common Shares on the TSX for the first five trading days commencing on the date upon which the Element Common Shares commence trading on

the TSX without any entitlement to the Spinco Common Shares (including both prior to and following the Effective Date);

“**Certificate of Arrangement**” means the Certificate of Arrangement to be issued by the OBCA Director under the OBCA giving effect to the Arrangement;

“**Court**” means the Ontario Superior Court of Justice;

“**Dissent Rights**” has the meaning ascribed thereto in Section 3.1 of this Plan of Arrangement;

“**Dissenting Shareholder**” means a Shareholder who dissents in respect of the Arrangement in strict compliance with the Dissent Rights and who has not withdrawn such exercise of Dissent Rights prior to the Effective Time;

“**Distribution Record Date**” means the close of business on the last trading day on the TSX immediately prior to the Effective Date or such other date as the Board and the board of directors of Spinco may select;

“**Effective Date**” means the effective date of the Arrangement, being the date shown on the Certificate of Arrangement;

“**Effective Time**” means 9:00 a.m. (Eastern Time) on the Effective Date;

“**Element**” means Element Financial Corporation, an OBCA corporation, the name of which shall be changed from and after the completion of the transactions set forth in Section 2.3(s) of this Plan of Arrangement to Element Fleet Management Corp.;

“**Element Butterfly Shares**” means the new class of special shares in the capital of Element having the rights, privileges, restrictions and conditions set out in Exhibit I to this Plan of Arrangement;

“**Element Common Shares**” means, prior to the Arrangement, the existing common shares in the capital of Element that are to be re-designated as “Class A Common Shares” pursuant to Section 2.3(b) of this Plan of Arrangement, and, after the Arrangement, the Post-Arrangement Element Common Shares;

“**Element DSU Plan**” means the Element Financial Corporation Deferred Share Unit Plan for Directors and Executives, amended and restated effective as of May 13, 2013;

“**Element DSUs**” means the deferred share units issued by Element pursuant to the Element DSU Plan.

“**Element Option Holder**” means a Person who holds an Element Option;

“**Element Options**” means the options to purchase Element Common Shares granted under the Amended and Restated Element Option Plan that are outstanding immediately prior to the Effective Time;

“**Element PSU Plan**” means the Element Financial Corporation Share Unit Plan adopted in February 2014;

“**Element PSUs**” means the performance share units issued by Element pursuant to the Element PSU Plan.

“**Element Redemption Note**” has the meaning ascribed thereto in Section 2.3(j) of this Plan of Arrangement;

“**Encumbrances**” means mortgages, charges, pledges, liens, hypothecs, security interests, encumbrances, adverse claims and rights of third parties to acquire or restrict the use of property;

“**Final Order**” means the final order of the Court to be made in connection with approval of the Arrangement, as such order may be varied or amended by the Court at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or amended on appeal;

“**Governmental Authority**” means any (a) multinational, federal, national, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry or agency, domestic or foreign, (b) any subdivision, agent, commission, board, or authority of any of the foregoing, (c) any quasi-governmental or private body exercising any regulatory, self-regulatory, expropriation or taxing authority under or for the account of any of the foregoing, or (d) any stock exchange;

“**Interim Order**” means the interim order of the Court to be issued under section 182 of the OBCA pursuant to the application by Element providing, among other things, for declarations and directions with respect to the Arrangement and the Meeting, as such order may be varied or amended at any time prior to the Meeting;

“**Meeting**” means the special meeting of Shareholders, including any adjournment(s) or postponement(s) thereof, to be convened as provided in the Interim Order to consider and to vote on Arrangement Resolution and, if the Arrangement Resolution is approved, the Spinco Option Plan Resolution and such other matters as may properly come before the meeting;

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended;

“**OBCA Director**” means the Director appointed pursuant to section 278 of the OBCA;

“**Participating Shareholder**” means a Shareholder, other than a Dissenting Shareholder;

“**Person**” means any individual, partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, Governmental Authority or other entity.;

“**Plan of Arrangement**” means this plan of arrangement, as amended or supplemented from time to time in accordance with the terms hereof;

“**Post-Arrangement Element Common Shares**” means the common shares in the capital of Element having the terms and conditions set out in Exhibit I to this Plan of Arrangement, to be issued under the Arrangement to Shareholders (other than Dissenting Shareholders) as partial consideration for the disposition of existing common shares in the capital of Element held by them;

“**Post-Arrangement Element Options**” means the options to purchase Post-Arrangement Element Common Shares granted under the Amended and Restated Element Option Plan pursuant to Section 2.3(g) of this Plan of Arrangement;

“**Shareholders**” means the registered holders of Element Common Shares at the applicable time;

“**Spinco**” means ECN Capital Corp., an OBCA corporation;

“**Spinco Arrangement Options**” means the Spinco Options to be granted pursuant to Section 2.3(l) of this Plan of Arrangement;

“**Spinco Common Shares**” means the common shares in the capital of Spinco having the terms and conditions set out in Exhibit II to this Plan of Arrangement;

“**Spinco Option Plan**” means the share option plan to be established by Spinco and effective as contemplated by Section 2.3(f) of this Plan of Arrangement.

“**Spinco Options**” means, pursuant to the Arrangement, the options to purchase Spinco Common Shares granted under the Spinco Option Plan, including the Spinco Arrangement Options issued as consideration for the disposition of Subco Arrangement Options;

“**Spinco Redemption Note**” has the meaning ascribed thereto in Section 2.3(i) of this Plan of Arrangement;

“**Spinco Reorganization Shares**” means the shares designated as the reorganization preferred shares in the capital of Spinco;

“**Subco**” means 2510204 Ontario Inc., an OBCA corporation and, immediately prior to the Effective Time, a direct wholly-owned Subsidiary of Element;

“**Subco Arrangement Options**” means options to purchase Subco Shares granted pursuant to Section 2.3(g) of this Plan of Arrangement;

“**Subco FMV**” means the fair market value as of the Effective Date of 100% of the issued and outstanding Subco Shares, as determined by the Board;

“**Subco Proportion**” means an amount equal to the fraction (A)/(B) where:

- (A) is the number of Subco Shares issued and outstanding at the time the applicable Subco Arrangement Option is granted pursuant to Section 2.3(g) of this Plan of Arrangement; and
- (B) is the number of Spinco Common Shares issued and outstanding at the time the applicable Subco Arrangement Option referred to in (A) above is granted,

with the intention that (a) the excess, if any, of (i) the total value, immediately after such grant, of the Spinco Common Shares for which a Spinco Option is exercisable, over (ii) the total amount payable by the holder to acquire the Spinco Common Shares under the Spinco Option, does not exceed (b) the excess, if any, of (iii) the total value, immediately before such grant, of the Subco Shares for which a Subco Arrangement Option is exercisable, over (iv) the total amount payable by the holder to acquire the Subco Shares under the Subco Arrangement Option;

“**Subco Share Number**” means the number obtained by dividing the Subco FMV by \$1.00;

“**Subco Shares**” means the common shares in the capital of Subco;

“**Subsidiary**” means, in respect of a specified Person, a second Person that is controlled, directly or indirectly, by the specified Person, and includes a Subsidiary of the second Person;

“**Tax Act**” means the *Income Tax Act* (Canada), as amended, including the regulations promulgated thereunder;

“**Transfer Agent**” means the transfer agent for the Element Common Shares or the Spinco Common Shares, as applicable;

“**Transferred Property**” means all of the issued and outstanding Subco Shares held by Element immediately prior to the Effective Time; and

“**TSX**” means the Toronto Stock Exchange.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Plan of Arrangement into Articles, Sections, and other portions and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number and/or a letter refer to the specified Article or Section of this Plan of Arrangement. The terms “hereof”, “herein” and “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular Article, Section or other portion hereof.

## **1.3 Rules of Construction**

In this Plan of Arrangement, unless the context otherwise requires, (a) words importing the singular number include the plural and *vice versa*, (b) words importing any gender include all genders, and (c) “include”, “includes” and “including” will be deemed to be followed by the words “without limitation”.

## **1.4 Currency**

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars.

## **1.5 Date for Any Action**

If the date on which any action is required or permitted to be taken hereunder by a Person is not a Business Day, such action will be required or permitted to be taken on the next succeeding day which is a Business Day.

## **1.6 References to Dates, Statutes, etc.**

- (a) In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.
- (b) In this Plan of Arrangement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute, regulation, direction or instrument is to that statute, regulation, direction or instrument as now enacted or as the same may from time to time be amended, re-enacted or replaced, and in the case of a reference to a statute, includes any regulations, rules, policies or directions made thereunder. Any reference in this Plan of Arrangement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with its terms.

## **1.7 Time**

Time will be of the essence in every matter or action contemplated hereunder. All times expressed herein are Toronto, Ontario time unless otherwise stipulated herein.

## **1.8 Exhibits**

The following Exhibits are attached to this Plan of Arrangement and form part hereof:

- Exhibit I – Initial Amendment to the Articles of Element Financial Corporation
- Exhibit II – Terms and Conditions of the Shares of Spinco
- Exhibit III – Spinco Option Plan
- Exhibit IV – By-Laws of Spinco
- Exhibit V – Subsequent Amendment to the Articles of Element Financial Corporation

## **ARTICLE 2 THE ARRANGEMENT**

### **2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

### **2.2 Binding Effect**

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on: (i) Element and its Subsidiaries, including Subco; (ii) Spinco; (iii) all Shareholders (including those described in Section 3.1) and all beneficial owners of Element Common Shares; (iv) all registered and beneficial owners of preferred shares of Element; (v) all Element Option Holders; (vi) all holders of Element DSUs; and (vii) all holders of Element PSUs.

### **2.3 Effective Time**

Commencing at the Effective Time, the following events, matters or transactions will occur and will be deemed to occur in the following sequence, at one minute intervals, without any further act, authorization or formality:

- (a) The Element Common Shares held by Dissenting Shareholders, who duly exercise their Dissent Rights and who are ultimately entitled to be paid fair value for those Element Common Shares, will be transferred to Element and cancelled and will cease to be outstanding, and such Dissenting Shareholders will cease to have any rights as Shareholders other than the right to be paid the fair value for their Element Common Shares by Element;
- (b) The articles of Element will be amended as set out in Exhibit I to this Plan of Arrangement to:
  - (i) change the designation of the Element Common Shares from “Common Shares” to “Class A Common Shares” and change the voting rights attached to the Element Common Shares, whether issued or unissued, to two votes per share; and



- (ii) create and authorize the issuance of (in addition to the shares it is authorized to issue immediately before such amendment):
    - (A) an unlimited number of Post-Arrangement Element Common Shares; and
    - (B) an unlimited number of Element Butterfly Shares;
- each new class having the rights, privileges, restrictions and conditions set out in such Exhibit;
- (c) Pursuant to a reorganization of the capital of Element, each Element Common Share outstanding on the Effective Date held by a Participating Shareholder will be changed into one Post-Arrangement Element Common Share and a number (or fraction) of Element Butterfly Shares equal to the Butterfly Multiple in accordance with section 168(1)(h) of the OBCA and subsection 86(1) of the Tax Act, such that:
  - (i) the aggregate addition to the stated capital accounts of the Post-Arrangement Element Common Shares and the Element Butterfly Shares issued by Element pursuant to this Section 2.3(c) will equal the “paid-up capital” (for purposes of the Tax Act) of the Element Common Shares (excluding any Element Common Shares transferred to Element pursuant to Section 2.3(a)) immediately before the event described in this Section 2.3(c). Such addition to the stated capital accounts will be allocated to the Element Butterfly Shares on the basis of \$1.00 per Element Butterfly Share, with the remaining amount, if any, being allocated to the Post-Arrangement Element Common Shares;
  - (ii) no other consideration will be received by any holder of such Element Common Shares;
  - (iii) the Element Common Shares so exchanged will be cancelled;
  - (iv) the Post-Arrangement Element Common Shares will, outside and not as part of this Plan of Arrangement, continue without interruption to be listed for trading on the TSX and, for greater certainty, such continued listing will be effective before the redemption of the Spinco Reorganization Shares pursuant to Section 2.3(i) and the redemption of the Element Butterfly Shares pursuant to Section 2.3(j);
- (d) Each Participating Shareholder will transfer to Spinco, with good and marketable title thereto and free and clear of all Encumbrances, all such Participating Shareholder’s Element Butterfly Shares and, as the sole consideration therefor, Spinco will issue in exchange that number of Spinco Common Shares as is equal to the number of Element Common Shares held by such Participating Shareholder immediately before the Effective Time, such that:
  - (i) at the time of such transfer the stated capital account for the Spinco Common Shares will be increased by \$1.00 for each Element Butterfly Share so transferred; and
  - (ii) the Spinco Common Shares will, outside and not as part of this Plan of Arrangement, be listed on the TSX (subject to standard post-closing listing

conditions imposed by the TSX in similar circumstances) and, for greater certainty, such listing on the TSX will occur before the redemption of the Spinco Reorganization Shares pursuant to Section 2.3(i) and the redemption of the Element Butterfly Shares pursuant to Section 2.3(j);

- (e) The terms and conditions of the Amended and Restated Element Option Plan will become effective in accordance with the terms of such plan;
- (f) The Spinco Option Plan will come into force with the terms and conditions set out in Exhibit III to this Plan of Arrangement;
- (g) For each Element Option outstanding on the Effective Date held by an Element Option Holder, such holder will dispose of such Element Option and (i) Element will grant one Post-Arrangement Element Option to such holder and (ii) Subco will grant one Subco Arrangement Option to such holder, such that:
  - (i) the only consideration an Element Option Holder will receive for the disposition of his or her Element Options will be Post-Arrangement Element Options and Subco Arrangement Options, with such exchange being subject to Section 2.4; and
  - (ii) the Element Options so disposed of will be cancelled;
- (h) Element will transfer the Transferred Property, with good and marketable title thereto and free and clear of all Encumbrances, to Spinco in consideration for the issuance by Spinco to Element of that number of Spinco Reorganization Shares as is equal to Subco Share Number, and in respect of such transfer:
  - (i) Element will jointly elect with Spinco, in prescribed form and within the time allowed by subsection 85(6) of the Tax Act, to have the provisions of subsection 85(1) of the Tax Act apply to the transfer of the Transferred Property; and
  - (ii) the amount added to the stated capital in respect of the Spinco Reorganization Shares issued as consideration for the transfer of the Transferred Property will equal the amount Element and Spinco agree to in their election referred to in Section 2.3(h)(i);
- (i) Spinco (i) will redeem all of the Spinco Reorganization Shares held by Element and will issue to Element, in consideration therefor, a non-interest bearing demand promissory note in a principal amount equal to the aggregate redemption amount for the Spinco Reorganization Shares so redeemed (the “**Spinco Redemption Note**”), and (ii) shall be deemed to have designated the full amount of the dividend, if any, that will be deemed under the Tax Act to be paid by it to Element upon the redemption of the Spinco Reorganization Shares in this Section 2.3(i) to be an eligible dividend for the purposes of subsection 89(14) of the Tax Act, which designation shall be deemed to have been made at the time of such deemed dividend;
- (j) Element (i) will redeem all of the Element Butterfly Shares held by Spinco and will issue to Spinco, in consideration therefor, a non-interest bearing demand promissory note in a principal amount equal to the aggregate redemption amount for the Element Butterfly

Shares so redeemed (the “**Element Redemption Note**”), and (ii) shall be deemed to have designated the full amount of the dividend, if any, that will be deemed under the Tax Act to be paid by it to Spinco upon the redemption of the Element Butterfly Shares in this Section 2.3(j) to be an eligible dividend for purposes of subsection 89(14) of the Tax Act, which designation shall be deemed to have been made at the time of such deemed dividend;

- (k) Element will demand repayment of the principal amount of the Element Redemption Note and, simultaneously, Spinco will demand repayment of the principal amount of the Spinco Redemption Note, and the principal amount due from Spinco to Element under the Element Redemption Note shall be set off against the principal amount due from Element to Spinco under the Spinco Redemption Note; following such set off, all amounts under each of the Element Redemption Note and Spinco Redemption Note shall thereby have been satisfied and discharged in full, and each of the Element Redemption Note and the Spinco Redemption Note will be cancelled;
- (l) For each Subco Arrangement Option acquired by an Element Option Holder pursuant to Section 2.3(g), such holder will dispose of such Subco Arrangement Option and Spinco will grant one Spinco Arrangement Option to such holder, such that:
  - (i) the only consideration an Element Option Holder will receive for the disposition of his or her Subco Arrangement Options will be Spinco Arrangement Options, with such exchange being subject to Section 2.4; and
  - (ii) the Subco Arrangement Options so disposed of will be cancelled;
- (m) The articles of Spinco will be amended by deleting the Spinco Reorganization Shares from the share capital which Spinco is authorized to issue, such that, following such amendment, Spinco will be authorized to issue an unlimited number of Spinco Common Shares and an unlimited number of preferred shares, issuable in series;
- (n) The by-laws of Spinco will be the by-laws set out in Exhibit IV to the Plan of Arrangement, and such by-laws will be deemed to have been confirmed by the shareholders of Spinco;
- (o) The following directors of Element will resign from the Board: Gordon Giffin; Harold Bridge; Pierre Lortie; and Paul Stoyan;
- (p) The directors of Spinco will be: Gordon Giffin; Steven Hudson; Pierre Lortie; William Lovatt; David Morris; Bradley Nullmeyer; and Paul Stoyan;
- (q) The directors of Spinco will have the authority to appoint one or more additional directors of Spinco, who will hold office for a term expiring not later than the close of the next annual meeting of shareholders of Spinco, but the total number of directors so appointed may not exceed one third of the number of Persons who become directors of Spinco as contemplated by Section 2.3(p);
- (r) Ernst & Young LLP will be the initial auditors of Spinco, to hold office until the close of the first annual meeting of shareholders of Spinco, or until Ernst & Young LLP resigns as contemplated by section 150 of the OBCA or are removed from office as contemplated

by section 149 of the OBCA, and the directors of Spinco will be authorized to fix their remuneration;

- (s) The articles of Element will be amended, as set out in Exhibit V to this Plan of Arrangement, by:
  - (i) deleting the Element Butterfly Shares and the Element Common Shares (other than the Post-Arrangement Element Common Shares) from the share capital which Element is authorized to issue, such that, following such amendment, Element will be authorized to issue an unlimited number of Post-Arrangement Element Common Shares and an unlimited number of preferred shares, issuable in series; and
  - (ii) changing the name of Element from “Element Financial Corporation” to “Element Fleet Management Corp.”;
- (t) The directors of Element will be: Paul Damp; Steven Hudson; William Lovatt; Bradley Nullmeyer; Joan-Lamm Tennant, Brian Tobin; and Richard Venn;
- (u) Spinco will resolve by special resolution to reduce the stated capital in respect of each class of shares of Subco to \$1.00 without any distribution to the shareholder of Subco, in accordance with section 34 of the OBCA; and
- (v) Spinco will resolve to voluntarily dissolve Subco in accordance with Part XVI of the OBCA and subsection 88(1) of the Tax Act, and in connection therewith:
  - (i) all of the rights, title and interest of Subco in and to all of its property, assets and business of every kind and nature, real and personal, both tangible and intangible, and movable and immovable, wherever situate shall be transferred and assigned to Spinco; and
  - (ii) Spinco shall assume and become liable to pay, satisfy, discharge and observe, perform and fulfill all of the liabilities and obligations of Subco.

## **2.4 Effect on Options**

- (a) For purposes of the disposition of Element Options in Section 2.3(g), for each Element Common Share that an Element Option Holder would have been entitled to acquire under its Element Option, such holder will be entitled to acquire (i) one Post-Arrangement Element Common Share under the Post-Arrangement Element Option received pursuant to the Arrangement and (ii) a number of Subco Shares equal to the Subco Proportion under the Subco Arrangement Option received pursuant to the Arrangement. The original exercise price of each Element Option Holder’s Element Options will be allocated as follows:
  - (i) for each Subco Arrangement Option, an amount equal to the Butterfly Proportion of the original exercise price of the related Element Option (rounded up to the nearest whole cent) will be payable to Subco for the number of Subco Shares equal to the Subco Proportion acquired under the Subco Arrangement Options; and

- (ii) for each Post-Arrangement Element Option, an amount equal to the remainder of the original exercise price of the related Element Option (rounded up to the nearest whole cent) will be payable to Element for each Post-Arrangement Element Common Share acquired under the Post-Arrangement Element Options.
- (b) For the purposes of the disposition of Subco Arrangement Options in Section 2.3(l), for the number of Subco Shares equal to the Subco Proportion that an Element Option Holder would have been entitled to acquire under its Subco Arrangement Option, such holder will be entitled to acquire one Spinco Common Share under the Spinco Arrangement Option received pursuant to the Arrangement. The exercise price of each Spinco Arrangement Option shall be equal to the exercise price of the Subco Arrangement Option as consideration for the disposition of which the Spinco Arrangement Option was received pursuant to the Arrangement.
- (c) Except as provided for in this Section 2.4, the terms and conditions of each Subco Arrangement Option granted in respect of an Element Option shall be substantially similar to the terms and conditions of such Element Option, including in respect of such option's term and termination conditions. Except as provided for in this Section 2.4, the terms and conditions of each Spinco Arrangement Option granted in respect of a Subco Arrangement Option shall be substantially similar to the terms and conditions of such Subco Arrangement Option, including in respect of such option's term and termination conditions.
- (d) The disposition of the Element Options and the Subco Arrangement Options described in this Section 2.4 is intended to be effected in a manner that complies with Section 409A of the U.S. Internal Revenue Code of 1986, as amended.

## **2.5 Effect on Element PSUs and Element DSUs**

- (a) Pursuant to and in accordance with the Element PSU Plan, with respect to each Participant (as defined in the Element PSU Plan), such Participant's holding of Element PSUs will be adjusted such that, following completion of the Arrangement:
  - (i) the "Share" (as defined in the Element PSU Plan) applicable to each Element PSU held by such Participant at the Effective Time shall refer to a Post-Arrangement Element Common Share in place of an Element Common Share; and
  - (ii) the aggregate number of Element PSUs held by such Participant shall be increased by crediting the Participant with additional Element PSUs equal in number to the number of Element PSUs held by such Participant at the Effective Time, with the "Share" (as defined in the Element PSU Plan) applicable to each additional Element PSU credited to such Participant pursuant to this Section 2.5(a)(ii) referring to a Spinco Common Share in place of an Element Common Share.
- (b) Pursuant to and in accordance with the Element DSU Plan:
  - (i) each Eligible Participant's holding of Element DSUs will be adjusted such that, following completion of the Arrangement: (1) the "Share" (as defined in the

Element DSU Plan) applicable to each Element DSU shall refer to a Post-Arrangement Element Common Share in place of an Element Common Share; and (2) the aggregate number of Element DSUs held by such Eligible Participant (as defined in the Element DSU Plan) shall be equal to (A) the number of Element DSUs held by such Eligible Participant at the Effective Time, multiplied by (B) the fair market value of an Element Common Share immediately prior to the Effective Time, divided by the fair market value of a Post-Arrangement Element Common Share following completion of the Arrangement, in each case as determined by the Board; and

- (ii) in respect of each Eligible Participant (as defined in the Element DSU Plan) whose Termination Date (as defined in the Element DSU Plan) will occur in connection with the Arrangement and who is not a U.S. Taxpayer (as defined in the Element DSU Plan), following the adjustment set forth in Section 2.5(b)(i), each Element DSU held by such Eligible Participant will be redeemed in accordance with the terms of such Element DSU and the Element DSU Plan
- (c) In the case of an Eligible Participant (as defined in the Element DSU Plan) who is a U.S. Taxpayer (as defined in the Element DSU Plan) whose Termination Date (as defined in the Element DSU Plan generally, without specific reference to U.S. Taxpayers) will occur in connection with the Arrangement, each Element DSU will be dealt with in manner determined by the Board, acting reasonably.

## **2.6 Registers of Holders**

- (a) Upon the transfer of the Element Common Shares held by Dissenting Shareholders pursuant to Section 2.3(a), the name of each Dissenting Shareholder will be removed from the register of holders of Element Common Shares.
- (b) Upon the exchange of the Element Common Shares pursuant to Section 2.3(c), the name of each Participating Shareholder will be deemed to be removed from the register of holders of Element Common Shares and will be deemed to be added to the registers of holders of Post-Arrangement Element Common Shares and Element Butterfly Shares as the holder of the number of Post-Arrangement Element Common Shares and Element Butterfly Shares respectively issued to such Participating Shareholder.
- (c) Upon the cancellation of Element Common Shares pursuant to Sections 2.3(a) and 2.3(c), appropriate entries will be made in the register of holders of Element Common Shares.
- (d) Upon the transfer of the Element Butterfly Shares pursuant to Section 2.3(d), (i) the name of each Participating Shareholder will be deemed to be removed from the register of holders of Element Butterfly Shares and will be deemed to be added to the register of holders of Spinco Common Shares, and (ii) Spinco will be deemed to be recorded as the registered holder of the Element Butterfly Shares on the register of holders of Element Butterfly Shares and will be deemed to be the legal and beneficial owner thereof.
- (e) Upon the transfer of the Transferred Property pursuant to Section 2.3(h), (i) Element will be deemed to be removed from the register of holders of Subco Shares and will be deemed to be added to the register of holders of Spinco Reorganization Shares, and (ii) Spinco will be deemed to be recorded as the registered holder of the Subco Shares on the

register of holders of Subco Shares and will be deemed to be the legal and beneficial owner thereof.

- (f) Upon the redemption of the Spinco Reorganization Shares pursuant to Section 2.3(i), Element will be deemed to be removed from the register of holders of Spinco Reorganization Shares and appropriate entries will be made in the register of holders of Spinco Reorganization Shares.
- (g) Upon the redemption of the Element Butterfly Shares pursuant to Section 2.3(j), Spinco will be deemed to be removed from the register of holders of Element Butterfly Shares and appropriate entries will be made in the register of holders of Element Butterfly Shares.

## **2.7 Arrangement Effectiveness**

The Arrangement will become finally and conclusively binding and effective as at the Effective Time.

## **2.8 Deemed Fully Paid and Non-Assessable Shares**

All Post-Arrangement Element Common Shares, Element Butterfly Shares, Spinco Common Shares, Spinco Reorganization Shares and Spinco Common Shares issued pursuant hereto will be deemed to be or have been validly issued and outstanding as fully paid and non-assessable shares for all purposes of the OBCA.

## **2.9 Supplementary Actions**

Notwithstanding that the transaction and events set out in Section 2.3 will occur, and shall be deemed to occur, in the order therein set out without any other act, authorization or formality, each of Element and Spinco will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may be required to further document or evidence any of the transactions or events set out in Section 2.3, including any resolution of directors authorizing the issue, transfer or purchase for cancellation of shares, any share transfer powers evidencing the transfer of shares and any receipt therefore, any promissory notes and receipts therefore and any necessary additions to, or deletions from, share registers.

# **ARTICLE 3 RIGHTS OF DISSENT**

## **3.1 Rights of Dissent**

- (a) Pursuant to the Interim Order, Shareholders may exercise rights of dissent with respect to their Element Common Shares pursuant to and in the manner set forth in section 185 of the OBCA as modified by the Interim Order, the Final Order and this Article 3 (“**Dissent Rights**”) in connection with the Arrangement provided that, notwithstanding section 185 of the OBCA, the written notice setting forth such a Shareholder’s objection to the Arrangement and exercise of Dissent Rights must be received by Element not later than 5:00 p.m. (Eastern Time) on the second Business Day immediately preceding the date of the Meeting or any date to which the Meeting may be adjourned or postponed and provided further that Dissenting Shareholders who duly exercise their Dissent Rights and who:

- (i) are ultimately entitled to be paid fair value for their Element Common Shares, will be deemed to have transferred their Element Common Shares to Element as of the Effective Time as set out in Section 2.3(a) and will be entitled to be paid the fair value of such Element Common Shares, determined as of the close of business on the Business Day immediately preceding the date on which the Arrangement Resolution is adopted, by Element and will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights; or
- (ii) are ultimately not entitled, for any reason, to be paid fair value for such Element Common Shares will be deemed to have participated in the Arrangement as of and from the Effective Time on the same basis as a Participating Shareholder and shall be entitled to receive only the consideration contemplated in Section 2.3 that such holder would have received pursuant to the Arrangement if such holder had not exercised Dissent Rights.

### **3.2 Recognition of Dissenting Shareholders**

From and after the Effective Time, neither Element nor Spinco, or any other Person, will be required to recognize a Dissenting Shareholder as a holder of Element Common Shares or as a holder of any securities of any of Element or Spinco or any of their respective Subsidiaries and, subject to Section 3.1(a)(ii), at the Effective Time, the names of the Dissenting Shareholders will be deleted from the register of holders of Element Common Shares previously maintained or caused to be maintained by Element in accordance with Section 2.6(a).

### **3.3 Dissent Right Availability**

A Shareholder will not be entitled to exercise Dissent Rights with respect to Element Common Shares if such holder votes (or instructs, or is deemed by submission of any incomplete proxy to have instructed, his, her or its proxyholder to vote) in favour of the Arrangement Resolution. In addition to any other restrictions under section 185 of the OBCA and for greater certainty, none of the following shall be entitled to exercise Dissent Rights: (i) holders of Element Options; (ii) holders of Element DSUs; and (iii) holders of Element PSUs.

### **3.4 Withholding Taxes**

All payments made to a Dissenting Shareholder pursuant to this Article 3 will be subject to, and paid net of, all applicable withholding taxes.

## **ARTICLE 4 CERTIFICATES AND PAYMENTS**

### **4.1 Entitlement to Share Certificates**

- (a) Prior to the Distribution Record Date, share certificates representing Element Common Shares will be deemed for all purposes to be certificates representing the Post-Arrangement Element Common Shares and Spinco Common Shares issued to Participating Shareholders under the Arrangement.
- (b) As soon as practicable after the Effective Date, Spinco will issue and deliver, or cause its Transfer Agent to issue and deliver, to each Shareholder of record at the close of business



in Toronto, Ontario on the Distribution Record Date, new certificates representing the Spinco Common Shares to which such holder is entitled pursuant to the Arrangement.

- (c) Following the close of business in Toronto, Ontario on the Distribution Record Date, the certificates representing Element Common Shares will be deemed for all purposes to be certificates representing only the Post-Arrangement Element Common Shares issued to Participating Shareholders under the Arrangement.
- (d) No certificates will be delivered to evidence the Element Butterfly Shares issued to Participating Shareholders under Section 2.3(c).

#### **4.2 Lost Certificates**

If any certificate representing, immediately prior to the Effective Time, one or more Element Common Shares has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and the giving by such Person of a bond satisfactory to Element in such sum as Element may determine against any claim that may be made against Element with respect to the certificate alleged to have been lost, stolen or destroyed, Element (or its Transfer Agent) will make such distribution or delivery in respect of the Element Common Shares represented by such lost, stolen or destroyed certificate as determined in accordance with Section 4.1(a).

#### **4.3 Withholding Rights**

Element and Spinco will be entitled to deduct and withhold from amounts payable under this Plan of Arrangement to any Person, such amounts as Element is required or permitted to deduct and withhold with respect to such payment under the Tax Act or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts will be treated for all purposes hereof as having been paid to the Person, in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority.

#### **4.4 Restatement of Articles**

Outside and not as part of this Plan of Arrangement, the articles of Element will be restated to reflect the amendments in this Plan of Arrangement and the restated articles of Element will be filed with the OBCA Director pursuant to section 173 of the OBCA. Outside and not as part of this Plan of Arrangement, the articles of Spinco will be restated to reflect the amendments in this Plan of Arrangement and the restated articles of Spinco will be filed with the OBCA Director pursuant to section 173 of the OBCA.

### **ARTICLE 5 AMENDMENTS**

#### **5.1 Amendments to Plan of Arrangement**

- (a) Subject to the provisions of the Interim Order, any amendment, modification or supplement to this Plan of Arrangement may be proposed by Element at any time prior to or at the Meeting with or without any other prior notice or communication and, if so proposed and accepted by the Shareholders voting at the Meeting, will become part of this Plan of Arrangement for all purposes.

- (b) This Plan of Arrangement may be amended, modified or supplemented unilaterally by Element, after the Meeting, provided that each such amendment, modification or supplement is approved by the Court and communicated to any Person(s) in the manner required by the Court.
- (c) Any amendment, modification or supplement to this Plan of Arrangement which is approved or directed by the Court following the Meeting will be effective only if it is consented to by Element and, if required by the Court, is consented to by or communicated to the Shareholders in the manner directed by the Court.
- (d) Notwithstanding Section 5.1(b), any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order unilaterally by Element, provided that it concerns a matter which, in the reasonable opinion of Element, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any holder of Post-Arrangement Element Common Shares or Spinco Common Shares.

## **ARTICLE 6 FURTHER ASSURANCES**

### **6.1 Further Assurances**

Notwithstanding that the transactions and events set out herein will occur and will be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order further to document or evidence any of the transactions or events set out herein.

## **ARTICLE 7 TERMINATION**

### **7.1 Termination**

Notwithstanding any prior approvals by the Court or by Shareholders, the Board of Directors may decide not to proceed with the Arrangement and to revoke the Arrangement Resolution at any time prior to the issuance of the Certificate of Arrangement, without further approval of the Court or the Shareholders.

## EXHIBIT I

### **Initial Amendment to the Articles of Element Financial Corporation**

The Articles of Element Financial Corporation (the “**Corporation**”) are amended as follows in accordance with the provisions of the plan of arrangement involving the Corporation, its shareholders and Spinco under section 182 of the *Business Corporations Act* (Ontario) (the “**Plan of Arrangement**”):

- (i) to redesignate the Common Shares, both issued and unissued, as “Class A Common Shares”;
- (ii) to increase the authorized capital of the Corporation by creating an unlimited number of shares to be designated as “Special Shares” (referred to as “Element Butterfly Shares” in the Plan of Arrangement);
- (iii) to increase the authorized capital of the Corporation by creating an unlimited number of shares to be designated as “Common Shares”;
- (iv) to delete section 7 of the Articles of the Corporation in its entirety and replace it with the following to give effect to the foregoing: “The Corporation is authorized to issue (i) an unlimited number of common shares without nominal or par value to be designated as Class A Common Shares; (ii) an unlimited number of common shares without nominal or par value to be designated as Common Shares; (iii) an unlimited number of preferred shares, issuable in series; and (iv) and an unlimited number of shares to be designated as Special Shares.”;
- (v) to delete section 8 of the Articles of the Corporation to the extent related to the Common Shares and Preferred Shares of the Corporation (and not, for the avoidance of doubt, the terms of any Series of Preferred Shares) and replace it with the following: “Please see the attached Schedule 1”; and
- (vi) to annex to the Articles of the Corporation the following Schedule 1:

#### **“Schedule 1**

##### **ARTICLE 1 INTERPRETATION**

- 1.01 References to “Act”: In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, “Act” means the *Business Corporations Act* (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

**ARTICLE 2**  
**CLASS A COMMON SHARES AND COMMON SHARES**

The rights, privileges, restrictions and conditions attaching to the Class A Common Shares and the Common Shares are as follows:

2.01            Class A Common Shares

The holders of the Class A Common Shares shall be entitled:

- (a) to vote at all meetings of shareholders of the Corporation except meetings at which only holders of a specified class of shares are entitled to vote. The holders of Class A Common Shares are entitled to two votes for each one Class A Common Share held on all polls taken at such meetings.
- (b) to receive, subject to the rights of the holders of another class of shares, any dividend declared by the Corporation; and
- (c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

2.02            Common Shares

The holders of the Common Shares shall be entitled:

- (a) to vote at all meetings of shareholders of the Corporation except meetings at which only holders of a specified class of shares are entitled to vote. The holders of Common Shares are entitled to one vote for each one Common Share held on all polls taken at such meetings.
- (b) to receive, subject to the rights of the holders of another class of shares, any dividend declared by the Corporation; and
- (c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

2.03            Equality: With the exception of voting privileges, the Class A Common Shares and the Common Shares shall have the same rights and attributes and be the same in all respects.

**ARTICLE 3**  
**PREFERRED SHARES**

The rights, privileges, restrictions and conditions attaching to the preferred shares are as follows:

3.01            One or More Series. The preferred shares may at any time and from time to time be issued in one or more series.

3.02            Terms of Each Series. Subject to the Act, the directors may fix, before the issue thereof, the number of preferred shares of each series, the designation, rights, privileges,

restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-up of the Corporation, any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of the series.

- 3.03 Ranking of Preferred Shares. The preferred shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the common shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the preferred shares of any series is not paid in full, the preferred shares of such series shall participate rateably with the preferred shares of every other series in respect of all such dividends and amounts.

#### **ARTICLE 4 SPECIAL SHARES**

The rights, privileges, restrictions and conditions attaching to the special shares are as follows:

- 4.01 Dividends: The holders of Special Shares shall be entitled to receive non-cumulative cash dividends if, as and when declared by the board of directors of the Corporation out of the assets of the Corporation lawfully applicable to the payment of dividends in such amounts and payable in such manner as the board of directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or concurrently with the holders of the Special Shares, the board of directors may, in its sole discretion, declare dividends on the Special Shares to the exclusion of any other class of shares of the Corporation. No dividends may be paid on any other class of shares of the Corporation if the realizable value of the net assets of the Corporation after the payment of the dividends would be less than the aggregate of the Element Butterfly Share Redemption Amount (as defined below) relating to all the Special Shares then outstanding.
- 4.02 Liquidation: In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the property and assets of the Corporation for the purpose of winding up the affairs of the Corporation, holders of Special Shares shall be entitled to a payment in priority to all other classes of shares of the Corporation of an amount per Special Share equal to the Element Butterfly Share Redemption Amount to the extent of the amount of value of the property and assets of the Corporation lawfully available for distribution to its shareholders. Except for a distribution in the amount of the Element Butterfly Share Redemption Amount as aforesaid, the holders of Special Shares shall not as such be entitled to receive or participate in any distribution of the property and assets of the Corporation among its shareholders.
- 4.03 Redemption: Subject to the provisions of the Act, the Corporation may at any time and from time to time redeem all or any part of the Special Shares at an amount per share

(which shall be paid in money or, at the discretion of the Corporation, by the issuance of one or more promissory notes) equal to the Element Butterfly Share Redemption Amount. The “Element Butterfly Share Redemption Amount” shall be an amount equal to \$1.00 per Special Share, plus the amount of any declared but unpaid dividends on such share.

- 4.04 Retraction: Following the Effective Date, subject to the provisions of the Act, every registered holder of Special Shares may at any time, at the option of such holder, require the Corporation to redeem the whole or any part of the Special Shares registered in such holder’s name by depositing with the Corporation an irrevocable written request for the same, together with the share certificate or certificates, if any, representing the Special Shares to be redeemed. Upon receipt of such request and certificate or certificates the Corporation shall, subject to the provisions of the Act, redeem such Special Shares and pay such holder the Element Butterfly Share Redemption Amount for each Special Share so redeemed.
- 4.05 Cancellation: Any Special Shares that are redeemed by the Corporation pursuant to any of the provisions hereof shall for all purposes be considered to have been redeemed on, and shall be cancelled concurrently with, the payment by the Corporation to or to the benefit of the holder thereof of the Element Butterfly Share Redemption Amount.
- 4.06 Voting: Subject to the provisions of the Act, the holders of Special Shares shall not be entitled to receive notice of or attend or vote at any meetings of the shareholders of the Corporation.
- 4.07 Amount Specified: For purposes of Subsection 191(4) of the *Income Tax Act* (Canada) the amount specified in respect of each Special Share shall be \$1.00 per Special Share.

## EXHIBIT II

### Terms and Conditions of the Shares of Spinco

#### ARTICLE 1 INTERPRETATION

- 1.01 References to “Act”: In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, “Act” means the Business Corporations Act (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule, as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

#### ARTICLE 2 COMMON SHARES

The rights, privileges, restrictions and conditions attaching to the common shares are as follows:

- 2.01 The holders of the Common Shares shall be entitled:
- (a) to vote at all meetings of shareholders of the Corporation except meetings at which only holders of a specified class of shares are entitled to vote. The holders of Common Shares are entitled to one vote for each one Common Share held on all polls taken at such meetings.
  - (b) to receive, subject to the rights of the holders of another class of shares, any dividend declared by the Corporation; and
  - (c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

#### ARTICLE 3 PREFERRED SHARES

The rights, privileges, restrictions and conditions attaching to the preferred shares are as follows:

- 3.01 One or More Series. The preferred shares may at any time and from time to time be issued in one or more series.
- 3.02 Terms of Each Series. Subject to the Act, the directors may fix, before the issue thereof, the number of preferred shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-

up of the Corporation, any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of the series.

- 3.03 Ranking of Preferred Shares. The preferred shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the common shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the preferred shares of any series is not paid in full, the preferred shares of such series shall participate rateably with the preferred shares of every other series in respect of all such dividends and amounts.”

#### **ARTICLE 4 REORGANIZATION PREFERRED SHARES**

The rights, privileges, restrictions and conditions attaching to the reorganization preferred shares are as follows:

- 4.01 Dividends: The holders of reorganization preferred shares shall be entitled to receive non-cumulative cash dividends if, as and when declared by the board of directors of the Corporation out of the assets of the Corporation lawfully applicable to the payment of dividends in such amounts and payable in such manner as the board of directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or concurrently with the holders of the reorganization preferred shares, the board of directors may, in its sole discretion, declare dividends on the reorganization preferred shares to the exclusion of any other class of shares of the Corporation. No dividends may be paid on any other class of shares of the Corporation if the realizable value of the net assets of the Corporation after the payment of the dividends would be less than the aggregate of the Spinco Reorganization Preferred Share Redemption Amounts (as defined below) relating to all the reorganization preferred shares then outstanding.
- 4.02 Liquidation: In the event of the liquidation, dissolution or winding up of the Corporation or other distribution of the property and assets of the Corporation for the purpose of winding up the affairs of the Corporation, holders of reorganization preferred shares shall be entitled to a payment in priority to all other classes of shares of the Corporation of an amount per reorganization preferred shares equal to the Spinco Reorganization Preferred Share Redemption Amount to the extent of the amount of value of the property and assets of the Corporation lawfully available for distribution to its shareholders. Except for a distribution in the amount of the Spinco Reorganization Preferred Share Redemption Amount as aforesaid, the holders of reorganization preferred shares shall not as such be entitled to receive or participate in any distribution of the property and assets of the Corporation among its shareholders.
- 4.03 Redemption: Subject to the provisions of the Act, the Corporation may at any time and from time to time redeem all or any part of the reorganization preferred shares at an amount per share (which shall be paid in money or, at the discretion of the Corporation, by the issuance of one or more promissory notes) equal to the Spinco Reorganization Preferred Share Redemption Amount. The “Spinco Reorganization Preferred Share



Redemption Amount” shall be an amount equal to \$1.00 per reorganization preferred share, plus the amount of any declared but unpaid dividends on such share.

- 4.04 Retraction: Following the Effective Date, subject to the provisions of the Act, every registered holder of reorganization preferred shares may at any time, at the option of such holder, require the Corporation to redeem the whole or any part of the reorganization preferred shares registered in such holder’s name by depositing with the Corporation an irrevocable written request for the same, together with the share certificate or certificates, if any, representing the reorganization preferred shares to be redeemed. Upon receipt of such request and certificate or certificates the Corporation shall, subject to the provisions of the Act, redeem such reorganization preferred shares and pay such holder the Spinco Reorganization Preferred Share Redemption Amount for each reorganization preferred shares so redeemed.
- 4.05 Cancellation: Any reorganization preferred shares that are redeemed by the Corporation pursuant to any of the provisions hereof shall for all purposes be considered to have been redeemed on, and shall be cancelled concurrently with, the payment by the Corporation to or to the benefit of the holder thereof of the Spinco Reorganization Preferred Share Redemption Amount.
- 4.06 Voting: Subject to the provisions of the Act, the holders of reorganization preferred shares shall not be entitled to receive notice of or attend or vote at any meetings of the shareholders of the Corporation.
- 4.07 Amount Specified: For purposes of Subsection 191(4) of the *Income Tax Act* (Canada) the amount specified in respect of each reorganization preferred share shall be \$1.00 per reorganization preferred share.

**EXHIBIT III**  
**Spinco Option Plan**

See attached.

**ECN CAPITAL CORP.  
SHARE OPTION PLAN**

**(enacted July 21, 2016)**

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## 1. GENERAL PROVISIONS

### 1.1 Interpretation

For the purposes of the Plan (defined below), unless otherwise defined herein, the following terms have the following meanings:

- (a) “**affiliate**” has the meaning attributed to that term in the *Business Corporations Act* (Ontario);
- (b) “**Applicable Law**” means any applicable provision of law, domestic or foreign, including, without limitation, applicable securities legislation, together with all regulations, rules, policy statements, rulings, notices, orders or other instruments promulgated thereunder, and Stock Exchange Rules;
- (c) “**Black-Out Period**” means a period of time imposed pursuant to the Insider Trading Policy of the Corporation upon certain designated persons during which those persons may not trade in any securities of the Corporation;
- (d) “**Board**” means the board of directors of the Corporation;
- (e) “**Cashless Exercise**” has the meaning attributed to that term in Section 2.9(b);
- (f) “**Cause**” in respect of a Participant has the meaning ascribed thereto in Participant’s written employment agreement with the Corporation, or, in the event the Participant is not party to any such written employment agreement, means “just cause” “or “cause” for termination of the Participant’s employment by the Corporation as determined under Applicable Law;
- (g) “**Change of Control**” means:
  - (i) the consummation of any transaction or series of transactions including any consolidation, amalgamation, arrangement, merger or issue of voting shares in the capital of the Corporation, the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly or indirectly, of more than 50% of the voting shares in the capital of the Corporation, measured by voting power rather than number of shares (but shall not include the creation of a holding company or similar transaction that does not involve any material change in the indirect beneficial ownership of the shares in the capital of the Corporation);
  - (ii) the direct or indirect sale, transfer or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation, taken as a whole, to any Person or group of Persons acting jointly or in concert for purposes of such transaction (other than to any affiliates of the Corporation);
  - (iii) the election at a meeting of the Corporation’s shareholders of that number of individuals that would represent a majority of the Board as directors of the Corporation, who are not included in the slate for election as directors proposed to the Corporation’s shareholders by management of the Corporation or a transaction or series of transactions as a result of which a majority of the directors of the Corporation are removed from office at any annual or special meeting of shareholders or as a result of a transaction referred to in clause (i)

immediately above, or a majority of the directors of the Corporation resign from office over a period of 60 days or less, and the vacancies created thereby are filled by nominees proposed by any Person other than directors or management of the Corporation in place immediately prior to the removal or resignation of the directors; or

- (iv) the completion of any transaction or the first of a series of transactions which would have the same or similar effect as any transaction or series of transactions referred to in clauses (i), (ii) or (iii) referred to immediately above;
- (h) “**Code**” means the United States Internal Revenue Code of 1986, as amended, and any applicable United States Treasury Regulations and other binding regulatory guidance thereunder;
- (i) “**Combination**” has the meaning attributed to that term in Section 2.11(d);
- (j) “**Committee**” has the meaning attributed to that term in Section 1.3(a);
- (k) “**Corporation**” means ECN Capital Corp., a corporation incorporated under the laws of Ontario, and includes: (i) any successor to ECN Capital Corp. resulting from any amalgamation, arrangement or other reorganization of, or involving, ECN Capital Corp. or any continuance under the laws of another jurisdiction and (ii) any affiliate of ECN Capital Corp. or any such successor;
- (l) “**Disability**” means the mental or physical state of the Participant such that, as a result of illness, disease, mental or physical disability or similar cause, the Participant has been unable to fulfil his or her obligations as an employee of the Corporation either for any consecutive six-month period or for any period of twelve months (whether or not consecutive) in any consecutive 24-month period, provided that, where the Participant has entered into a Participant Services Agreement with the Corporation, “Disability” will have the meaning attributed to that term, or the term equivalent in concept, contained in that Participant Services Agreement, and provided that the term “Disabled” has the same meaning with necessary grammatical changes;
- (m) “**Eligible Person**” means any Employee, officer, director and consultant (including any advisor) of the Corporation; a Participant will cease to be an Eligible Person on his Termination Date;
- (n) “**Employee**” means any Person treated as an employee in the records of the Corporation;
- (o) “**Fair Market Value**” means, at any date in respect of the Shares, the closing sale price of such Shares on the Stock Exchange (with the greatest volume of securities traded) on the trading day immediately preceding such date. In the event that such Shares did not trade on such trading day, the Fair Market Value shall be the average of the bid and ask prices in respect of such Shares at the close of trading on such trading day. If no quotation is made for the applicable day, the Fair Market Value on such day shall be determined in the manner set forth in the preceding sentence for the next preceding trading day. Notwithstanding the foregoing, if there is no reported closing price or high bid/low asked price that satisfies the preceding sentences, the Fair Market Value on any day shall be determined by such methods and procedures as shall be established from time to time by the Board in its sole discretion. If any Stock Exchange, other than the Toronto Stock Exchange, requires a different formula for the calculation of “Fair Market Value”; the definition of Fair Market Value shall be amended accordingly. For purposes of Options

granted to or held by U.S. Taxpayers, Fair Market Value shall have the meaning provided in Exhibit A to the Plan;

- (p) “**Insider**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (q) “**Non-Employee Director**” means a director of the Corporation, other than a director of the Corporation that is an Employee;
- (r) “**Option**” means a right granted to an Eligible Person to purchase Shares on the terms of the Plan;
- (s) “**Option Agreement**” has the meaning attributed to that term in Section 2.3;
- (t) “**Participant**” means any Eligible Person to whom an Option has been granted or, in the case of such person’s death, his legal representative(s);
- (u) “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (v) “**Plan**” means this share option plan of the Corporation, as the same may be supplemented and amended from time to time;
- (w) “**Proposed Transaction**” has the meaning attributed to that term in Section 2.10;
- (x) “**Regulations**” means the regulations governing the Plan and made by the Board from time to time, including the regulations set out in Schedule 1.1(x) as the same may be amended or supplemented from time to time;
- (y) “**Security Based Compensation Arrangement**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (z) “**Share**” means a common share of the Corporation and such other share as may be substituted for it as a result of any amendments to the articles of the Corporation, or consolidation, merger, amalgamation, arrangement, reorganization or otherwise involving the Corporation, including any rights that form a part of the common share or substituted share;
- (aa) “**Stock Exchange**” means the Toronto Stock Exchange, or if the Shares are not listed on the Toronto Stock Exchange, such other stock exchange on which the Shares are listed, or if the Shares are not listed on any stock exchange, then on the over-the-counter market;
- (bb) “**Stock Exchange Rules**” means the applicable rules of any stock exchange upon which shares of the Corporation are listed;
- (cc) “**Termination Date**” means the last date on which a Participant provides services to the Corporation and not the last day upon which the Corporation pays wages or salaries in lieu of notice of termination, whether statutory, contractual or otherwise;

- (dd) “**Transfer**” means any disposition, transfer, sale, exchange, assignment, gift, bequest, disposition, hypothecation, mortgage, charge, pledge, encumbrance, grant of security interest, or any arrangement by which possession, legal title or beneficial ownership passes, directly or indirectly, from one Person or entity to another, or to the same Person or entity in a different capacity, whether or not voluntary and whether or not for value, and includes any agreement to effect the foregoing; and the words “Transferred”, “Transferring” and similar words have corresponding meanings; and
- (ee) “**U.S. Taxpayer**” means a Participant who is a citizen or permanent resident of the United States for purposes of the Code or a Participant for whom the amounts payable or Shares issued or issuable under the Plan are subject to taxation under the Code.

Words importing the singular number include the plural and vice versa, and words indicating gender include all genders. The term “**including**” means “including without limitation”.

The Plan will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **1.2 Purpose**

The purpose of the Plan is to advance the interests of the Corporation through the motivation, attraction and retention of officers, directors and employees of the Corporation and such other key individuals as the Board deems reasonably appropriate.

## **1.3 Administration**

- (a) The Plan will be administered by the Board or a committee of the Board duly appointed for such purpose by the Board. To the extent permitted by Applicable Law, the Board may delegate any or all of the powers under the Plan to one or more committees or subcommittees of the Board (a “**Committee**”). Except as otherwise noted, all references in the Plan to the “Board” will mean the Board or a Committee of the Board to the extent that the Board’s power or authority under the Plan has been delegated to such Committee.
- (b) Subject to the limitations of the Plan (including Section 3.3), Applicable Law and the requirements of each applicable Stock Exchange, the Board has the authority: (i) to grant to Eligible Persons Options to purchase Shares, (ii) to determine the terms, limitations, restrictions and conditions upon such grants, including the nature and duration of any restrictions applicable to a sale or other disposition of Shares acquired upon exercise of an Option and the nature of events, if any, that may cause any Participant’s rights in respect of Shares acquired upon exercise of an Option to be forfeited and the duration of the period of such forfeiture, (iii) to interpret the Plan and to adopt, amend and rescind such administrative guidelines and other rules and Regulations relating to the Plan as the Board may from time to time deem advisable, subject to required prior approval by any applicable regulatory authority or Stock Exchange; (iv) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Option Agreement; and (v) to make all other determinations and to take all other actions in connection with the implementation and administration of the Plan as the Board may deem necessary or advisable. The Board’s interpretation and determination of the Plan, its guidelines and rules and the Regulations will be conclusive and binding upon all parties concerned.
- (c) Every director of the Corporation will at all times be indemnified and saved harmless by the Corporation from and against all costs, charges and expenses whatsoever including any income tax liability arising from any such indemnification, which such director may sustain



or incur by reason of any action, suit or proceeding, taken or threatened against such director, otherwise than by the Corporation, for or in respect of any act done or omitted in good faith by the director in respect of the Plan in the director's capacity as a director of the Corporation, such costs, charges and expenses to include any amount paid to settle such action, suit or proceeding or in any satisfaction of any judgment rendered therein.

#### **1.4 Shares Issuable under the Plan**

The maximum number of Shares that may be issued under the Plan shall be a number equal to 10% of the number of issued and outstanding Shares on a non-diluted basis at any time, provided that the number of Shares issued or issuable under all Security Based Compensation Arrangements of the Corporation shall not exceed 10% of the issued and outstanding Shares, calculated from time to time at the date at which the rights to acquire Shares under such Security Based Compensation Arrangements are granted. Any Shares subject to an Option that has been granted under the Plan and that is subsequently cancelled or terminated for any reason without having been exercised will again be available for grants under the Plan. No fractional Shares may be issued, and the Board may determine the manner in which any fractional Share value will be treated.

## **2. OPTIONS**

### **2.1 Grants**

- (a) An Eligible Person may receive Options on one or more occasions under the Plan and may receive separate Options on any one occasion.
- (b) Options may be granted only to those consultants who meet the following requirements:
  - (i) the consultant must be engaged to provide on a *bona fide* basis consulting, technical, management, advisory or other services to the Corporation under a written contract between the Corporation and either the consultant or a company or partnership employing the consultant or of which the consultant is a shareholder or partner; and
  - (ii) the consultant provides such services on a continuous basis for an initial, renewable or extended period of twelve (12) months or more.
- (c) The following Insider participation limits shall apply:
  - (i) the number of Shares issuable to Insiders, at any time, pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 10% of the issued and outstanding Shares;
  - (ii) the number of Shares issued to Insiders, within a one-year period, pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 10% of the issued and outstanding Shares;
  - (iii) the number of Shares issuable to Non-Employee Directors pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 1% of the issued and outstanding Shares; and
  - (iv) the equity value of Options granted to a Non-Employee Director, within a one-year period, pursuant to the Plan shall not exceed \$100,000; and

- (v) the aggregate equity value of all awards, that are eligible to be settled in Shares, granted to a Non-Employee Director, within a one year-period, pursuant to all Security Based Compensation Arrangements (including, for greater certainty, the Plan), and subject to the limitations set forth in Section 2.1(c)(iv), shall not exceed \$150,000.

## **2.2 Option Exercise Price**

The Board will establish the exercise price of an Option at the time that the Option is granted, which exercise price must be in all cases not less than the price required by applicable regulatory authorities or any applicable Stock Exchange, which in the case of (a) the Toronto Stock Exchange or (b) any Option granted to a U.S. Taxpayer, is the Fair Market Value.

## **2.3 Option Agreements**

Each Option must be confirmed by an agreement in substantially the form attached hereto as Schedule 2.3 or in such other form as is approved of by the Board from time to time (each, an “**Option Agreement**”) signed by the Corporation and by the Participant.

## **2.4 Prohibition on Transfer of Options**

Options are personal to the Participant and are non-transferable except as provided herein. No Participant may Transfer any Option or any interest in any Option now or hereafter held by the Participant except in accordance with the Plan. A purported Transfer of any Option in violation of the Plan will not be valid, and the Corporation will not issue any Shares upon the attempted exercise of an improperly Transferred Option. Subject to Applicable Law and upon notice to the Corporation, substantially in the form set forth in Schedule 2.4, a Participant may Transfer Options, or Shares received under the exercise of Options, to any RRSP, RRIF, TFSA or similar retirement or investment fund established by and for the Participant or under which the Participant is the beneficiary. Upon death of a Participant, the Participant’s Option(s) will become part of the Participant’s estate, and any right of the Participant may be exercised by the deceased Participant’s legal representatives in accordance with the Plan, provided the legal representatives comply with all obligations of the deceased Participant. If the legal representatives of a deceased Participant exercise a Participant’s Option in accordance with the terms of the Plan, the Corporation will have no obligation to issue any Shares until evidence satisfactory to the Corporation has been provided by the legal representatives that they are entitled to purchase Shares under the Plan.

## **2.5 Prohibition on Pledge of Options**

For greater certainty, a Participant may not mortgage, hypothecate, pledge or grant a security interest in any Option.

## **2.6 Termination, Death or Disability of a Participant**

- (a) If a Termination Date occurs in respect of a Participant for any reason whatsoever other than death, Disability or termination with Cause and subject to any determination to the contrary by the Board, each Option held by the Participant will cease to be exercisable on the earlier of (i) the expiry date of the Option and (ii) 12 months after the Termination Date. For greater certainty, the Participant will be entitled to exercise the Option only to the extent such Option was by its terms exercisable on the Participant’s Termination Date. In addition, if any portion of the Option is unvested as of such Termination Date, the Participant shall also be entitled to exercise the Option to acquire the number of Shares that would have vested on the next anniversary of the date of grant of the Option multiplied by the product of which (A) the numerator is the number of calendar days during the period

commencing on the immediately prior anniversary of the date of grant and ending on the Termination Date, and (B) the denominator is 365.

- (b) If a Participant dies or becomes Disabled, and subject to any determination to the contrary by the Board, each Option held by the Participant will cease to be exercisable on the earlier of (i) the expiry date of the Option and (ii) 12 months after the Termination Date. For greater certainty, the Participant or the legal representatives of the Participant as the case may be, will be entitled to exercise the Option only to the extent such Option was by its terms exercisable on the date of death or determination of Disability. In addition, if any portion of the Option is unvested as of such Termination Date, the Participant or the legal representatives of the Participant shall also be entitled to exercise the Option to acquire that number of Shares that would have vested on the next anniversary of the date of grant of the Option multiplied by the product of which (A) the numerator is the number of calendar days during the period commencing from the immediately prior anniversary of the date of grant and ending on the date of death or determination of Disability, and (B) the denominator is 365.
- (c) Notwithstanding Section 2.6(a), if a Participant is terminated with Cause, all vested and unvested portions of Options held by that Participant will terminate immediately upon such termination and, in the case of vested portions of Options, cease to be exercisable.
- (d) Subject to Section 2.7(c) and if required in connection with Section 2.10, no Option may be exercised after its stated date of expiration.
- (e) Without limitation, and for greater certainty only, this Section 2.6 will apply regardless of whether the Participant was terminated with or without Cause and regardless of whether the Participant received compensation in respect of termination or was entitled to a period of notice of termination that would otherwise have permitted a greater portion of the Option to vest in the Participant.

## **2.7 Term, Vesting and Exercise of Options**

- (a) Unless otherwise determined by the Board, Options must expire no later than eight years after the date of grant or after such other period as may be required by any applicable regulatory authority or Stock Exchange.
- (b) Except as otherwise determined by the Board or as otherwise provided in any Option Agreement, (i) Options will vest yearly on a “straight line basis” as to one-third of the Shares under such Option on each anniversary of the date of grant (being the date upon which the Participant entered into an Option Agreement with the Corporation or the start date of employment or engagement or as otherwise specified in any Option Agreement, as applicable) for a period of three years and (ii) each vested portion of such Option will be exercisable in respect of such Shares for five years after the date upon which such portion of the Option vested. For greater certainty, the Option will expire in full five years after the last of such vesting dates.
- (c) Notwithstanding Section 2.7(b), if the expiry of an Option falls during a Black-Out Period, the expiry date of the Option shall be automatically extended to the tenth business day following the end of such Black-Out Period.
- (d) An Option will be exercisable only by delivery of a written notice substantially in the form set forth in Schedule 2.7(d) to any one of the Chief Executive Officer, Senior Executive Vice President, Chief Financial Officer or a Managing Director or any other representative

of the Corporation designated by the Board to accept such notices on its behalf, specifying the number of Shares for which such Option is exercised and accompanied by either (i) payment as described in Section 2.9(a)(i), or (ii) if permitted by the Board, irrevocable instructions to a broker to promptly deliver to the Corporation full payment of the amount necessary to pay the aggregate exercise price.

- (e) By the exercise of an Option, the Participant will be deemed to have irrevocably appointed any one of the Chief Executive Officer, Senior Executive Vice President, Chief Financial Officer or a Managing Director (or failing any of them any other representative of the Corporation designated by the Board) his attorney to effect any transfer of the Shares acquired by the Participant, if required, through an Option exercise as described in this section, on the books of the Corporation.

## 2.8 Alternate Form of Purchase

In any case in which an Option is exercisable, the Corporation may elect to purchase for cancellation the Option for an amount equal to the difference between the Fair Market Value of the underlying Shares (or any lesser amount agreed upon by the Corporation and the Participant) and the aggregate exercise price of such underlying Shares, subject to the payment to the Corporation of any applicable taxes by the Participant. However, this right may be exercised by the Corporation only with the consent of the Participant, which consent may be withheld for any reason.

## 2.9 Payment of Option Price

- (a) Subject to the following, the exercise price of each Share purchased under an Option must be paid (i) in full by bank draft or certified cheque at the time of exercise; or (ii) if permitted by the Board, in such manner and on such terms prescribed by the Board for a Cashless Exercise program for Options under the Plan.
- (b) Any Participant may elect to effect a cashless exercise of any or all of such Participant's right under an Option (a "**Cashless Exercise**"). In connection with any such Cashless Exercise, the Participant shall be entitled to receive, without any cash payment (other than the taxes required to be paid in connection with the exercise which must be paid by the Participant to the Corporation in cash at the time of exercise or as otherwise provided herein), such number of whole Shares (rounded down to the nearest whole number) obtained pursuant to the following formula:

$$x = \frac{[a(b - c)]}{b}$$

where

x = the number of whole Shares to be issued

a = the number of Shares under Option subject to the Cashless Exercise

b = the Fair Market Value of the Shares on the date of the Cashless Exercise

c = the exercise price of the Option subject to the Cashless Exercise

In connection with each Cashless Exercise, the full number of Shares issuable (item (a) in the formula set forth immediately above) shall be considered to have been issued for the purposes of the reduction in the number of Shares which may be issued under the Plan, if applicable.

- (c) The Corporation reserves the right, at any and all times, in the Corporation's sole discretion and subject to Applicable Law or the requirements of any applicable Stock Exchange, to amend or terminate any program or procedure for the exercise of Options by means of a Cashless Exercise.
- (d) Upon receipt of payment in full (or as herein provided) and subject to the terms of the Plan, including Section 3.5, the number of Shares in respect of which the Option is exercised will be duly issued as fully paid and non-assessable.

## **2.10 Right to Terminate Option, including on Change of Control, Combination, Liquidation or Dissolution of Corporation**

Notwithstanding any other provision of the Plan, if the Board at any time determines it advisable to do so in connection with any of the following events (each, a **"Proposed Transaction"**):

- (a) any Change of Control or any proposed Combination;
- (b) any proposed dissolution, liquidation or winding-up of the Corporation, either voluntarily or involuntarily;
- (c) any other proposed distribution of the assets of the Corporation among shareholders for the purpose of winding up its affairs;
- (d) any proposed merger, consolidation, share exchange, reorganization, amalgamation, arrangement, take-over bid, reverse take-over or other business combination or other transaction or series of related transactions pursuant to which all or part of the business of the Corporation is combined with that of the any other Person (a **"Combination"**);
- (e) any proposed acquisition, directly or indirectly through any one or more transactions, by any Person other than the Corporation of: (i) any of the shares of any class of shares in the capital of the Corporation; or (ii) all or substantially all of the assets of the Corporation;
- (f) any proposed long term lease or license of all or substantially all of the assets of the Corporation or of any subsidiary of the Corporation (other than a sale, transfer or license to a wholly-owned subsidiary of the Corporation);
- (g) any combination of the foregoing; or
- (h) any like proposed transaction,

the Board, having regard to its fiduciary duties and the best interests of the Corporation, will address the economic value of the rights that Participants, as a group, have in outstanding Options in whatever manner the Board deems to be reasonable in the circumstances, including any of the following:

- (i) provide that the Options are assumed, or rights equivalent to the Options are substituted, by the acquiring or succeeding corporation (or an affiliate);

- (j) upon written notice to Participants, provide that all unexercised Options (both vested and/or unvested portions thereof) will terminate immediately prior to the consummation of the Proposed Transaction unless those portions of Options which have vested are exercised by respective Participants within a specified number of days following the date of the notice;
- (k) in case of a Combination under the terms of which holders of Shares will receive cash and/or other consideration for each Share surrendered in the Combination, provide for the delivery to each Participant of the cash and/or other consideration that the Participant would have received had the Participant exercised all of the Participant's outstanding vested Options immediately prior to the Combination less the amount the Participant would have been required to pay to the Corporation on that exercise, in cash and/or in a portion of any other consideration having a fair market value equal to the amount, in exchange for the termination of all of the Participant's vested and unvested Options;
- (l) require Participants to surrender their outstanding (vested and unvested) Options in exchange for a payment, in cash, Shares or other appropriate consideration as determined by the Board, in an amount equal to the amount by which the then Fair Market Value of the Shares subject to each Participant's unexercised (vested) Options exceeds the exercise price of those Options (treating all unexercised (vested) portions of Options as being fully exercisable for purposes of this calculation);
- (m) complete a transaction or series of transactions which are intended to provide to Participants economic consequences which are substantially similar to or more favourable than those provided in Sections 2.10(i) through (l); or
- (n) complete a combination of the procedures contemplated by Sections 2.10(i) through (m), including providing on a good faith basis for certain Participants or groups of Participants to be subject to different procedures than other Participants or groups of Participants.

In the case of any Proposed Transaction, the Board may, in its discretion, advance any waiting, vesting or instalment period and exercise date.

For the purposes of this Section 2.10, if the cash and/or other consideration that the Participant is entitled to receive after deducting the amount that the Participant would have been required to pay to the Corporation on exercise of Options, if applicable, is not greater than zero, the Options shall be cancelled for no additional consideration.

## **2.11 Substitute Options upon Acquisition by the Corporation**

The Corporation may grant Options under the Plan in substitution for options held by directors, officers or employees of, or consultants to, another entity who become Eligible Persons as a result of a merger or consolidation of the other entity with the Corporation, or as a result of the acquisition by the Corporation of property or securities of the other entity. The Corporation may direct that substitute Options be granted on any terms and conditions that the Board considers appropriate in the circumstances, subject to Applicable Laws and the requirements of each applicable regulatory authority and Stock Exchange.

## **3. GENERAL**

### **3.1 Capital Adjustments**

If there is any change in the outstanding Shares by reason of a share dividend or split, subdivision, recapitalization, consolidation, combination or exchange of shares or other similar corporate change,

subject to any prior approval required of applicable regulatory authorities or Stock Exchange, the Board may make appropriate substitution or adjustment in:

- (a) the Fair Market Value of the Shares on any relevant date and/or any exercise price of unexercised Options;
- (b) the number or kind of shares or other securities or property issuable pursuant to the Plan; and
- (c) the number and kind of shares subject to unexercised Options theretofore granted and in the exercise price of those Options,

provided, however, that no substitution or adjustment will obligate the Corporation to issue or sell fractional shares.

### **3.2 Non-Exclusivity**

Subject to any required regulatory, Stock Exchange or shareholder approval and Section 1.4, nothing contained herein will prevent the Board from adopting other additional security or other compensation arrangements for the benefit of any Participant.

### **3.3 Amendment and Termination**

- (a) The Board may amend, suspend or terminate the Plan or any portion of it at any time in accordance with Applicable Law and subject to any required regulatory, applicable Stock Exchange or shareholder approval. However, except as otherwise provided in the Plan, unless consent is obtained from the affected Participant, no amendment, suspension or termination may materially impair any Options, or any rights related to Options, that were granted to that Participant prior to the amendment, suspension or termination. Any amendments to the Plan to change the maximum number of percentage of Shares issuable pursuant to Options granted under the Plan shall be deemed not to materially impair the rights of any Participant.
- (b) Without limiting the generality of the foregoing, the Board, subject to Section 3.3(c), may make the following amendments to the Plan or an Option granted under the Plan, as applicable, without obtaining approval of any Participant or shareholder of the Corporation:
  - (i) amendments to the terms and conditions of the Plan necessary to ensure that the Plan complies with Applicable Law and regulatory requirements, including the requirements of any applicable Stock Exchange, in place from time to time;
  - (ii) amendments to the provisions of the Plan respecting administration of the Plan and eligibility for participation under the Plan;
  - (iii) amendments to the provisions of the Plan respecting the terms and conditions on which Options may be granted pursuant to the Plan, including the vesting schedule;
  - (iv) the addition of, and any subsequent amendment to, any financial assistance provision;
  - (v) amendments to the Plan that are of a “housekeeping” nature;

- (vi) amendments to the provisions relating to a Change of Control; and
  - (vii) any other amendments not requiring shareholder approval under Applicable Laws or the requirements of any Stock Exchange.
- (c) Without limiting the generality of the foregoing, the Board may not, without the approval of the Corporation's shareholders, make amendments to the Plan or an Option granted under the Plan with respect to the following:
- (i) an increase to the maximum number or percentage of securities issuable under the Plan;
  - (ii) amendment provisions granting additional powers to the Board to amend the Plan or entitlements thereunder;
  - (iii) a reduction in the exercise price of an outstanding Option or other entitlements under the Plan;
  - (iv) any change to the categories of individuals eligible to be selected for grants of Options where such change may broaden or increase the participation of Non-Employee Directors under the Plan;
  - (v) an amendment to the prohibition on Transfer of Options in Section 2.4;
  - (vi) an amendment to the amendment provisions in this Section 3.3;
  - (vii) an extension to the term of Options; and
  - (viii) any changes to Insider or Non-Employee Director participation limits.
- (d) Notwithstanding the foregoing, no amendment to the Plan which, pursuant to: (i) the *Securities Act* (Ontario) and the regulations and rules promulgated thereunder; (ii) any rules and regulations of any applicable Stock Exchange or consolidated stock price reporting system on which prices for the Shares are quoted at any time; or (iii) any other Applicable Laws, rules and regulations of any jurisdiction requiring action by the shareholders, requires action by the shareholders may be made without obtaining, or being conditioned upon, shareholders' approval.
- (e) If the Plan is terminated, the provisions of the Plan and the Regulations and any administrative-guidelines and other rules adopted by the Board and in force at the time of implementation of the Plan will continue in effect as long as any Option remains outstanding. However, notwithstanding the termination of the Plan, the Board may make any amendments to the Plan or to any outstanding Option that the Board would have been entitled to make if the Plan were still in effect.

### **3.4 Compliance with Legislation**

The Corporation will not be obligated to grant any Options, issue any Shares on the exercise of an Option, make any payments or take any other action pursuant to the Plan or an Option Agreement if, in the opinion of the Board (in this Section 3.4, "Board" will not include a Committee) exercising its discretion, such action would conflict or be inconsistent with any Applicable Law or regulation of any governmental agency having jurisdiction, including, in particular, any federal, provincial or state securities laws, or the requirements of any applicable Stock Exchange, and the Board reserves the right to refuse to take such



action for so long as such conflict or inconsistency remains outstanding. The Board will make reasonable efforts to resolve or remove such conflict or inconsistency. If such conflict or inconsistency remains outstanding for more than 12 months after the date of exercise of an Option, the Board will take such steps to provide the Participant with compensation which is equitable and appropriate in the circumstances, in which case the actions taken by the Corporation in consequence of such determination will be deemed to have satisfied the Corporation's obligations that would otherwise have existed.

### **3.5 Withholding Taxes**

If the Corporation is required under the *Income Tax Act* (Canada) or any other Applicable Law to remit to any governmental authority an amount on account of tax on the value of any taxable benefit associated with the exercise or disposition of Options by a Participant, then the Participant shall, concurrently with the exercise or disposition:

- (b) pay to the Corporation, in addition to the exercise price for the Options, if applicable, sufficient cash as is determined by the Corporation to be the amount necessary to fund the required tax remittance;
- (c) authorize the Corporation, on behalf of the Participant, to sell in the market on such terms and at such time or times as the Corporation determines such portion of the Common Shares being issued upon exercise of the Options as is required to realize cash proceeds in the amount necessary to fund the required tax remittance; or
- (d) make other arrangements acceptable to the Corporation to fund the required tax remittance.

By participating in the Plan, the Participant consents to the sale described in the foregoing clause (b), if applicable, and authorizes the Corporation to effect such sale on behalf of the Participant and remit the appropriate amount to the applicable governmental authorities. The Corporation shall not be responsible for obtaining any particular price for the Shares, and the Corporation shall not be required to issue any Shares under the Plan unless the Participant has made suitable arrangements with the Corporation to fund any withholding obligation.

Without limiting the generality of the foregoing, the Corporation will have the right to deduct from payments of any kind otherwise due to the Participant any taxes of any kind required to be withheld by the Corporation as a result of the Participant's exercise or disposition of Options. Payment of withholding taxes may be made (i) by bank draft or certified cheque or (ii) through and in accordance with the terms and conditions of any Cashless Exercise program established by the Board, subject to the discretion of the Board to require payment in cash if it determines that payment by other methods is not in the best interests of the Corporation.

### **3.6 No Rights as a Shareholder**

No Participant will have any rights as a shareholder in respect of any Shares issuable upon exercise of an Option (including the right to receive dividends or other distributions therefrom or thereon), unless and until and except to the extent that such Share has been paid for and issued and a share certificate delivered upon proper exercise of the Option.

### **3.7 Right to Terminate Service**

Nothing contained in the Plan or in any Option granted hereunder will restrict the right of the Corporation to terminate the employment, consulting or other service of any employee or consultant at any time and for any reason, with or without notice.

### **3.8 Notices**

Any notice or other communication required or permitted to be given under the Plan will be in writing and will be given by prepaid first-class mail, by electronic mail or other means of electronic communication or by hand-delivery as provided below. Any notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth business day after the post-marked date, or if sent by electronic mail other means of electronic communication, will be deemed to have been received on the day of sending, or if delivered by hand will be deemed to have been received on the day on which it is delivered to the applicable address noted below either to the individual designated below or to an individual at that address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section 3.8. Notices and other communications will be addressed, if to the Corporation, to the head office of the Corporation, Attention: Chief Executive Officer and, if to a Participant, at the last address which appears on the records of the Corporation.

### **3.9 Submission to Jurisdiction**

The Corporation and each Participant irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario in respect of all matters relating to the Plan and any Option Agreement.

### **3.10 Further Assurances**

Each Participant will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all further acts, documents and things as the Corporation may reasonably require from time to time for the purpose of giving effect to the Plan and will use reasonable efforts and take all steps as may be reasonably within the Participant's power to implement to their full extent the provisions of the Plan.

### **3.11 Counterparts**

Any Option Agreement or other document contemplated under the Plan may be signed in counterparts and each counterpart will constitute an original document and all counterparts, taken together, will constitute one and the same instrument. Counterparts may be delivered by facsimile or other means of electronic communication.

**Exhibit “A”**  
**to**  
**ECN Capital Corp. Share Option Plan**  
**Special Provisions Applicable to Participants Subject to Section 409A of the United States Internal Revenue Code of 1986, as amended (“Section 409A”)**

This Exhibit sets forth special provisions of the ECN Capital Corp. Share Option Plan (the “Plan”) that apply to Participants who are U.S. Taxpayers. This Exhibit shall apply to such Participants notwithstanding any other provisions of the Plan. Terms defined elsewhere in the Plan and used herein shall have the meanings set forth in the Plan, as may be amended from time to time.

**Definitions**

For purposes of this Exhibit:

“**Fair Market Value**” means, at any date in respect of the Shares, the closing sale price of such Shares on the Stock Exchange (with the greatest volume of securities traded) on the trading day immediately preceding such date. In the event that such Shares are listed or quoted on a Stock Exchange but did not trade on such trading day, the Fair Market Value shall be the closing sale price of such Shares on the Stock Exchange on the closest preceding date on which the Shares did trade. Notwithstanding the foregoing, if there is no reported closing price that satisfies the preceding sentences or if the Shares are no longer listed or quoted on a Stock Exchange, the Fair Market Value on any day shall be determined by such methods and procedures as shall be established from time to time by the Board in its sole discretion. If any Stock Exchange, other than the Toronto Stock Exchange, requires a different formula for the calculation of “Fair Market Value”; the definition of Fair Market Value shall be amended accordingly; provided that such definition complies with the applicable requirements under Section 409A;

“**Separation From Service**” shall mean that employment or service with the Corporation and any entity that is to be treated as a single employer with the Corporation for purposes of United States Treasury Regulation Section 1.409A-1(h) terminates such that it is reasonably anticipated that no further services will be performed.

“**Specified Employee**” means a U.S. Taxpayer who meets the definition of “specified employee,” as defined in Section 409A(a)(2)(B)(i) of the Code and using the identification methodology selected by the Corporation from time to time.

**Compliance with Section 409A**

**In General.** Notwithstanding any provision of the Plan to the contrary, it is intended that any payments under the Plan either be exempt from or comply with Section 409A, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. Each payment made in respect of Options shall be deemed to be a separate payment for purposes of Section 409A. Each U.S. Taxpayer is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or for the account of such U.S. Taxpayer in connection with the Plan or any other plan maintained by the Corporation (including any taxes and penalties under Section 409A), and the Corporation shall not have any obligation to indemnify or otherwise hold such U.S. Taxpayer (or any Beneficiary) harmless from any or all of such taxes or penalties.

No U.S. Taxpayer or the creditors or beneficiaries a U.S. Taxpayer shall have the right to subject any deferred compensation (within the meaning of Section 409A) payable under the Plan to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as

permitted under Section 409A, any deferred compensation (within the meaning of Section 409A) payable to any U.S. Taxpayer or for the benefit of any U.S. Taxpayer under the Plan may not be reduced by, or offset against, any amount owing by any such U.S. Taxpayer to the Corporation.

**Extensions.** Any extension of the expiry date of an Option pursuant to Section 2.7(c) of the Plan shall be subject to the requirements of United States Treasury Regulation Section 1.409A-1(b)(5)(v)(c)(1).

**Distributions to Specified Employees.** Solely to the extent required by Section 409A, any payment in respect of Options which the Corporation has determined in good faith constitutes deferred compensation subject to Section 409A and which has become payable by reason of a Separation from Service to any Participant who is determined to be a Specified Employee at the time of such Separation from Service shall not be paid before the date which is six months after such Specified Employee's Separation from Service (or, if earlier, the date of death of such Specified Employee). Following any applicable six month delay of payment, all such delayed payments shall be made to the Specified Employee in a lump sum on the earliest possible payment date. Such amount shall be paid without interest, unless otherwise determined by the Committee, in its sole discretion, or as otherwise provided in any applicable employment agreement between the Corporation and the relevant Participant.

**Amendment of Exhibit.** Subject to Applicable Law, the Board shall retain the power and authority to amend or modify this Exhibit, the Plan or any Option Agreement to the extent the Board in its sole discretion deems necessary or advisable to comply with any guidance issued under Section 409A or to avoid the imposition of taxes or penalties under Section 409A. Such amendments may be made without the approval of any U.S. Taxpayer.

## **SCHEDULE 1.1(X)**

### **REGULATIONS UNDER THE ECN CAPITAL CORP. SHARE OPTION PLAN**

In these Regulations, unless otherwise defined herein, capitalized terms have the same meaning as set forth in the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the “Plan”).

“Year”, with respect to any Option granted under the Plan, means the twelve-month period commencing on the date of the granting of the Option or on any anniversary thereof.

Not less than 100 Shares may be purchased at any one time except where the remainder totals less than 100 Shares.

Unless otherwise approved by the Board, no Option will be granted to any person who is an officer or employee of the Corporation and who has reached the age of normal retirement as fixed from time to time by the Board.

**SCHEDULE 2.3**

**OPTION AGREEMENT**

**ECN CAPITAL CORP.  
SHARE OPTION PLAN**

Participant:

\_\_\_\_\_

(name)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(address)

Grant:

\_\_\_\_\_

Maximum Number of Common Shares subject  
to Option (the “**Shares**”)

Option Exercise Price:

\$\_\_\_\_\_ per Share

Date of Grant:

\_\_\_\_\_, 20\_\_

Vesting and Expiry Schedule: The Options to purchase Shares vest and expire  
on the dates set out below.

**Number of Shares  
subject to Option**

**Vest Date for Shares  
identified in left column**

**Expiry Date for  
Shares identified left  
column**

Expiry Date:

\_\_\_\_\_, 20\_\_

- (1) This Option Agreement is made under and is subject in all respects to the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the “**Plan**”), and the Plan and the regulations governing the Plan and made by the Board (as the same may be supplemented and amended from time to time) (the “**Regulations**”) enacted in connection therewith are deemed to be incorporated in and form part of this Option Agreement. The Participant acknowledges receipt of a copy of the Plan and the Regulations, a copy of each of which is attached to this Option Agreement, and is deemed to have notice of and to be bound by all of the terms and provisions of the Plan and the Regulations, as if the Plan and the Regulations were set forth in full herein. In the event of any inconsistency between the terms of this Option Agreement and the Regulations, the terms of this Option Agreement will prevail to the extent that it is not inconsistent with the requirements of any applicable regulatory authority or Stock Exchange. The Plan and Regulations contain provisions respecting termination and/or voiding of the Plan or the Option. Capitalized terms used in this Option Agreement and not otherwise defined will have the meanings attributed to those terms in the Plan.
- (2) The Participant acknowledges that if the Participant is terminated with Cause, all vested and unvested Options held by that Participant will terminate immediately upon such termination with Cause and, in the case of vested Options, cease to be exercisable.
- (3) This Option Agreement evidences that the Participant named above is entitled, subject to and in accordance with the Plan, to purchase up to but not more than the maximum number of Shares set out above at the Option exercise price set out above upon delivery of an exercise form as annexed to the Plan duly completed and accompanied by certified cheque or bank draft for the aggregate exercise price or, if applicable and to the extent permitted, by evidence acceptable to the Corporation of irrevocable instructions to a broker to promptly deliver to the Corporation full payment in accordance with Section 2.9(a)(ii) of the Plan of the amount necessary to pay the aggregate exercise price (a “**Cashless Exercise**”). Provided that all other requirements specified in the Plan are met, Options may be exercised by Cashless Exercises.
- (4) The Option may not be transferred in any manner other than in accordance with the Plan, and may be exercised during the lifetime of the Participant only by, or for the benefit of, the Participant. The terms of the Option will be binding upon the executors, administrators, heirs, successors, and assigns of the Participant.
- (5) The vested portion of the Option may not be exercised in respect of the relevant Shares more than five years from the vesting date of such portion of the Option and may be exercised during such period only in accordance with the terms of the Plan. For greater certainty, the Option will expire in full five years after the last vesting date, being eight years after the date of grant of the Option.
- (6) The Option evidenced by this Option Agreement may not be exercised if the issuance of Shares upon such exercise would constitute a violation of any applicable securities or other law or valid regulation or the requirements of any applicable Stock Exchange. The Participant, as a condition to his exercise of the Option, represents to the Corporation that the Shares that he acquires under the Option are being acquired by him for investment and not with a present view to distribution or resale, unless counsel for the Corporation is then of the opinion that such a representation is not required under applicable securities laws, regulations, or any other law or valid rule of any governmental agency.
- (7) The Plan and each Option will be subject to the requirement that, if at any time the Board determines that the listing, registration or qualification of the Shares subject to such Option upon any applicable Stock Exchange or under any provincial, state or federal law, or the

consent or approval of any governmental body, securities exchange, or the holders of the Shares generally, is necessary or desirable, as a condition of, or in connection with, the granting of such Option or the issue or purchase of Shares thereunder, no such Option may be granted or exercised in whole or in part unless such listing, registration, qualification, consent or approval will have been affected or obtained free of any conditions not acceptable to the Board.

- (8) As a condition to the exercise or disposition of Options, including the issuance of Shares upon exercise of the Option, the Participant: (a) authorizes the Corporation to withhold, in accordance with Applicable Law, any taxes of any kind required to be withheld by the Corporation under Applicable Law as a result of the Participant's exercise of the Option ("**Withholding Taxes**") from payments of any kind otherwise due to the Participant; (b) agrees, if requested by the Corporation, to remit to the Corporation at the time of exercise of the Option amounts necessary to pay any Withholding Taxes; (c) if applicable, authorizes the Corporation, on behalf of the Participant, to sell in the market such portion of Shares being issued upon exercise of the Options as is required to fund the Withholding Taxes; and/or (d) comply with other arrangements acceptable to the Corporation to fund the Withholding Taxes.
- (9) The Participant acknowledges and confirms that prior to executing this Option Agreement, the Corporation requested the Participant to obtain independent legal advice with respect to the Participant's rights and obligations under the Plan, the Regulations and related documents, including this Option Agreement. The Participant confirms and agrees that: (i) the Participant has executed this Option Agreement on its own volition and without any duress whatsoever from the Corporation or any other Person; and (ii) if the Participant did not obtain legal advice prior to executing this Option Agreement, the Participant will not in any proceeding relating to the enforcement of rights or obligations under the Plan, the Regulations and related documents, including this Option Agreement, raise that fact as a defence or otherwise.
- (10) Notwithstanding the foregoing, including paragraph (5) hereof, in the event of a proposed Change of Control, any Option held by any Participant that is not fully vested on the date that the Change of Control occurs shall, subject to the approval of each applicable regulatory authority or Stock Exchange and subject to the provisions of any other written agreement between the Participant and the Corporation, if applicable, vest immediately prior to the Change of Control, and all Options held by the Participant shall be immediately exercisable within a 30-day period following the Change of Control regardless of the expiry date. Upon expiration of such 30-day period, all rights of the Participant to the Option or to exercise same (to the extent not theretofore exercised) shall terminate and cease to have further force or effect whatsoever. Alternatively, the Corporation may also or instead determine in its sole discretion that all such outstanding Options may be purchased, including by the Corporation (or any of its affiliates), for an amount per Option equal to the Transaction Price (as defined below), less the applicable exercise price, as of the date such transaction is determined to have occurred or as of such other date prior to the transaction closing date as the Board may determine in its sole discretion. For purposes of this paragraph, "**Transaction Price**" means the fair market value of a Share based on the consideration payable in the applicable transaction as determined by the Board. For the purposes of this paragraph, if the cash and/or other consideration that the Participant is entitled to receive after deducting the amount that the Participant would have been required to pay to the Corporation on exercise of Options, if applicable, is not greater than zero, the Options shall be cancelled for no additional consideration.

This Option Agreement is not effective until countersigned on behalf of ECN Capital Corp. and accepted by the Participant.



Dated: \_\_\_\_\_, 20\_\_

**ECN CAPITAL CORP.**

By: \_\_\_\_\_

Accepted: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Participant

**SCHEDULE 2.4**

**NOTICE OF TRANSFER**

**To transfer an Option(s) to permitted transferees, complete and return this form along with an original Option Agreement.**

The undersigned Participant under the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the “**Plan**”) hereby irrevocably elects to transfer the Option evidenced by the attached Option Agreement to the following person(s), each of whom the Participant hereby certifies is a permitted transferee in accordance with the Regulations under the Plan:

Direction as to Registration:

\_\_\_\_\_

Name of Registered Holder

\_\_\_\_\_

\_\_\_\_\_

Address of Registered Holder(s)

The undersigned Participant hereby directs such Option(s) to be registered in the names of such permitted transferee(s). Unless they are otherwise defined herein, any defined terms used herein shall have the meaning ascribed to such terms in the Plan.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Witness to the Signature of:

\_\_\_\_\_  
Name of Participant

**SCHEDULE 2.7(D)**

**NOTICE OF EXERCISE  
ECN CAPITAL CORP.  
SHARE OPTION PLAN**

**To Exercise the Option, Complete and Return this Form**

The undersigned Participant or his or her legal representative(s) permitted under the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time (the “**Plan**”)) hereby irrevocably elects to exercise:

the Option for the number of Shares as set forth below:

- (a) Number of Options to be Exercised: \_\_\_\_\_
- (b) Option Exercise Price per Share: \_\_\_\_\_
- (c) Aggregate Purchase Price  
( (a) times (b) ): \_\_\_\_\_

and hereby tenders a certified cheque or bank draft for such aggregate exercise price or, if applicable, provides evidence satisfactory to the Corporation of irrevocable instructions to a broker to promptly deliver to the Corporation full payment in accordance with the terms and conditions of any Cashless Exercise program established by the Board and directs such Shares to be issued, registered, endorsed in blank for transfer and a share certificate therefor to be issued as directed below, all subject to and in accordance with the Plan. The Participant acknowledges that arrangements must be made by the Participant to fund any withholding taxes thereon.

\_\_\_\_\_

The Participant agrees further that such Shares are being acquired by the Participant in accordance with and subject to the terms, provisions and conditions of the Plan and the Option Agreement, to each of which the Participant hereby expressly assents. Such terms, provisions and conditions will bind and inure to the benefit of the Participant’s heirs, legal representatives, successors and assigns.



## EXHIBIT IV

### **By-Laws of ECN Capital Corp.**

#### BY-LAW NO. 1

A by-law relating generally to the  
transaction of the business and  
affairs of

### **ECN Capital Corp.**

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SECTION ONE  
INTERPRETATION

1.01            Definitions. - In the by-laws of the Corporation, unless the context otherwise requires:

“Act” means the *Business Corporations Act* (Ontario), or any statute that may be substituted therefor, as from time to time amended;

“appoint” includes “elect” and vice versa;

“articles” means the articles on which is endorsed the certificate of incorporation of the Corporation as from time to time amended or restated;

“board” means the board of directors of the Corporation and “director” means a member of the board;

“by-laws” means this by-law and all other by-laws of the Corporation from time to time in force and effect;

“Corporation” means the corporation incorporated under the Act by the said certificate endorsed on the articles and named “ECN Capital Corp.”;

“meeting of shareholders” includes an annual meeting of shareholders and a special meeting of shareholders; and “special meeting of shareholders” includes a meeting of any class or classes of shareholders and a special meeting of all shareholders entitled to vote at an annual meeting of shareholders; and

“recorded address” has the meaning set forth in section 11.08.

Save as aforesaid, words and expressions defined in the Act, including “resident Canadian” has the same meaning when used herein. Words importing the singular number include the plural and vice versa; and words importing a person include an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator, or other legal representative.

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## SECTION TWO

### BUSINESS OF THE CORPORATION

2.01 Registered Office. - The registered office of the Corporation shall be in the municipality or geographic township within Ontario initially specified in its articles and thereafter as the shareholders may from time to time determine by special resolution and at such location therein as the board may from time to time determine.

2.02 Corporate Seal. - The Corporation may, but need not have, a corporate seal and if one is adopted it shall be in a form approved from time to time by the board.

2.03 Financial Year. - Until changed by the board, the financial year of the Corporation shall end on the last day of December in each year.

2.04 Execution of Instruments. - Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by two persons, one of whom holds the office of chair of the board, managing director, president, vice-president or is a director and the other of whom is a director or holds one of the said offices or the office of secretary, treasurer, assistant secretary or assistant treasurer or any other office created by by-law or by the board. In addition, the board or the said two persons may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument requiring the same.

2.05 Banking Arrangements. - The banking business of the Corporation including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time prescribe.

2.06 Voting Rights in Other Bodies Corporate. - The signing officers of the Corporation under section 2.04 may execute and deliver proxies and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments shall be in favour of such persons as may be determined by the officers executing or arranging for the same. In addition, the board may from time to time direct the manner in which and the persons by whom any particular voting rights or class of voting rights may or shall be exercised.

2.07 Divisions. - The board may cause the business and operations of the Corporation or any part thereof to be divided into one or more divisions upon such basis, including without limitation types of business or operations, geographical territories, product lines or goods or services, as may be considered appropriate in each case. In connection with any such division the board or, subject to any direction by the board, the chief executive officer may authorize from time to time, upon such basis as may be considered appropriate in each case:

- (a) Subdivision and Consolidation - the further division of the business and operations of any such division into sub-units and the consolidation of the business and operations of any such divisions and sub-units;

- (b) Name - the designation of any such division or sub-unit by, and the carrying on of the business and operations of any such division or sub-unit under, a name other than the name of the Corporation; provided that the Corporation shall set out its name in legible characters in all places required by law; and
  - (c) Officers - the appointment of officers for any such division or sub-unit, the determination of their powers and duties, and the removal of any of such officers so appointed, provided that any such officers shall not, as such, be officers of the Corporation.
-

## SECTION THREE

### BORROWING AND SECURITY

3.01 Borrowing Power. - Without limiting the borrowing powers of the Corporation as set forth in the Act, but subject to the articles, the board may from time to time on behalf of the Corporation, without authorization of the shareholders:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, reissue, sell or pledge bonds, debentures, notes or other evidences of indebtedness or guarantee of the Corporation, whether secured or unsecured;
- (c) give a guarantee on behalf of the Corporation to secure performance of any obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation including book debts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes or other evidences of indebtedness or guarantee or any other present or future indebtedness, liability or obligation of the Corporation.

Nothing in this section limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

3.02 Delegation. - Unless the articles of the Corporation otherwise provide, the board may from time to time delegate to a director, a committee of the board, or an officer of the Corporation any or all of the powers conferred on the board by section 3.01 to such extent and in such manner as the board may determine at the time of such delegation.

## SECTION FOUR

### DIRECTORS

4.01 Number of Directors. - Until changed in accordance with the Act, the board shall consist of not fewer than the minimum number and not more than the maximum number of directors provided in the articles.

4.02 Qualification. - No person shall be qualified for election as a director if such person is less than 18 years of age, has been found under the *Substitute Decisions Act* (Ontario) or under the *Mental Health Act* (Ontario) to be incapable of managing property or who has been found to be incapable by a court in Canada or elsewhere, is not an individual, or has the status of a bankrupt. A director need not be a shareholder. No election of a person as a director shall be effective unless the person consents in writing on or within ten days after the date of the election. Subject to the Act, at least 25 per cent of the directors shall be resident Canadians, or if there are three directors, at least one director shall be a resident Canadian. At least one-third of the directors shall not be officers or employees of the Corporation or any of its affiliates.

4.03 Election and Term. - Each director named in the articles shall hold office from the date of incorporation until the first meeting of shareholders. The election of directors shall take place at each annual meeting of shareholders and all the directors then in office shall retire but, if qualified, shall be eligible for re-election. Subject to the Act, the number of directors to be elected at any such meeting shall be the number of directors determined from time to time by special resolution or, if the special resolution empowers the directors to determine the number, by resolution of the board. Where the shareholders adopt an amendment to the articles to increase the number or maximum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect the additional number of directors authorized by the amendment to take office from the effective date of the endorsement of the articles of amendment with respect thereto. The election shall be by resolution. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

4.04 Removal of Directors. - Subject to the Act, the shareholders may by ordinary resolution passed at an annual or special meeting of shareholders remove any director from office and the vacancy created by such removal may be filled by the election of any qualified individual at the same meeting, failing which it may be filled by the board.

4.05 Advance Notice of Nominations of Directors.

- (a) Nomination Procedures - Subject only to the Act, Applicable Securities Law and the articles of the Corporation, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the board may be made at any annual meeting of shareholders, or at any special meeting of shareholders if the election of directors is a matter specified in the notice of meeting,
- (i) by or at the direction of the board, including pursuant to a notice of meeting;

- (ii) by or at the direction or request of one or more shareholders pursuant to a proposal made in accordance with the provisions of the Act, or a requisition of a shareholders meeting by one or more of the shareholders made in accordance with the provisions of the Act; or
  - (iii) by any person (a “Nominating Shareholder”) who (A) at the close of business on the date of the giving of the notice provided for in this section 4.05 and on the record date for notice of such meeting, is entered in the securities register as a holder of one or more shares carrying the right to vote at such meeting or who beneficially owns shares that are entitled to be voted at such meeting and provides evidence of such beneficial ownership to the Corporation, and (B) complies with the notice procedures set forth below in this section 4.05.
- (b) Timely notice - In addition to any other applicable requirements, for a nomination to be made by a Nominating Shareholder, the Nominating Shareholder must have given timely notice thereof in proper written form to the secretary of the Corporation in accordance with this section 4.05.
- (c) Manner of timely notice - To be timely, a Nominating Shareholder’s notice must be given:
  - (i) in the case of an annual meeting (including an annual and special meeting) of shareholders, not less than 30 days prior to the date of the meeting; provided, however, that in the event that the meeting is to be held on a date that is less than 50 days after the date on which the first public announcement of the date of the meeting was made (the “Notice Date”), notice by the Nominating Shareholder shall be made not later than the close of business on the tenth day following the Notice Date; and
  - (ii) in the case of a special meeting (which is not also an annual meeting) of shareholders called for the purpose of electing directors (whether or not also called for other purposes), not later than the close of business on the fifteenth day following the Notice Date.
- (d) Proper form of notice - To be in proper written form, a Nominating Shareholder’s notice must set forth:
  - (i) as to each person whom the Nominating Shareholder proposes to nominate for election as a director, (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person for the past five years; (C) the status of the person as a resident Canadian; (D) the class or series and number of shares which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of shareholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; (E) full particulars regarding any contract, agreement, arrangement, understanding or relationship (collectively, “Arrangements”), including without limitation financial, compensation and indemnity related Arrangements, between the proposed nominee or any associate or affiliate of the proposed nominee and any Nominating Shareholder or any of its representatives; and (F) any other

information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act or any Applicable Securities Laws; and

- (ii) as to the Nominating Shareholder, (A) the number of securities of each class of voting securities of the Corporation or any of its subsidiaries beneficially owned, or controlled or directed, directly or indirectly, by such person or any other person with whom such person is acting jointly or in concert with respect to the Corporation or any of its securities, as of the record date for the meeting (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice, (B) full particulars regarding any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Shareholder has a right to vote or to direct or to control the voting of any shares of the Corporation and (C) any other information relating to such Nominating Shareholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act or any Applicable Securities Laws.

References to "Nominating Shareholder" in this section 4.05(d) shall be deemed to refer to each shareholder that nominates a person for election as a director in the case of a nomination proposal where more than one shareholder is involved in making such nomination proposal.

- (e) Other Information - The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine if such proposed nominee is eligible to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence and/or qualifications, or lack thereof, of such proposed nominee.
- (f) Notice to be updated - In addition, to be considered timely and in proper written form, a Nominating Shareholder's notice shall be promptly updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting.
- (g) Power of the chair - The chair of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.
- (h) Delivery of notice - Notwithstanding any other provision of this by-law, notice given to the secretary of the Corporation pursuant to this section 4.05 may only be given by personal delivery, facsimile transmission or e-mail (provided that the secretary of the Corporation has stipulated an e-mail address for purposes of this notice), and shall be deemed to have been given and made only at the time it is served by personal delivery, e-mail (at the address as aforesaid) or sent by facsimile transmission (provided that receipt of the confirmation of such transmission has been received) to the secretary of the Corporation at the address of the principal executive offices of the Corporation; provided that if such delivery or electronic communication is made on a day which is not a business day or later than 5:00 p.m. (Toronto time) on a day which is a business day, then

such delivery or electronic communication shall be deemed to have been made on the subsequent day that is a business day.

- (i) Increase in number of directors to be elected - Notwithstanding any provisions in this section to the contrary, in the event that the number of directors to be elected at a meeting is increased effective after the time period for which the Nominating Shareholder's notice would otherwise be due under this section, a notice with respect to nominees for the additional directorships required by this section shall be considered timely if it shall be given not later than the close of business on the tenth day following the day on which the first public announcement of such increase was made by the Corporation.
- (j) Notwithstanding the foregoing, the board may, in its sole discretion, waive any requirement in this section 4.05.
- (k) Definitions - For purposes of this section 4.05,

“Affiliate”, when used to indicate a relationship with a specific person, shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified person;

“Applicable Securities Laws” means the applicable securities legislation of each relevant province of Canada, as amended from time to time, the written rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commissions and similar regulatory authorities of each province and territory of Canada;

“Associate”, when used to indicate a relationship with a specified person, shall mean (i) any body corporate or trust of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of such body corporate or trust for the time being outstanding, (ii) any partner of that person, (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, (iv) a spouse of such specified person, (v) any person of either sex with whom such specified person is living in conjugal relationship outside marriage or (vi) any relative of such specified person or of a person mentioned in clauses (iv) or (v) of this definition if that relative has the same residence as the specified person;

“beneficially owns” or “beneficially owned” means, in connection with the ownership of shares in the capital of the Corporation by a person, (i) any such shares as to which such person or any of such person's Affiliates or Associates owns at law or in equity, or has the right to acquire or become the owner at law or in equity, where such right is exercisable immediately or after the passage of time and whether or not on condition or the happening of any contingency or the making of any payment, upon the exercise of any conversion right, exchange right or purchase right attaching to any securities, or pursuant to any agreement, arrangement, pledge or understanding whether or not in writing; (ii) any such shares as to which such person or any of such person's Affiliates or Associates



has the right to vote, or the right to direct the voting, where such right is exercisable immediately or after the passage of time and whether or not on condition or the happening of any contingency or the making of any payment, pursuant to any agreement, arrangement, pledge or understanding whether or not in writing; (iii) any such shares which are beneficially owned, directly or indirectly, by a Counterparty (or any of such Counterparty's Affiliates or Associates) under any Derivatives Contract (without regard to any short or similar position under the same or any other Derivatives Contract) to which such person or any of such person's Affiliates or Associates is a Receiving Party; provided, however that the number of shares that a person beneficially owns pursuant to this clause (iii) in connection with a particular Derivatives Contract shall not exceed the number of Notional Securities with respect to such Derivatives Contract; provided, further, that the number of securities owned beneficially by each Counterparty (including their respective Affiliates and Associates) under a Derivatives Contract shall for purposes of this clause be deemed to include all securities that are owned beneficially, directly or indirectly, by any other Counterparty (or any of such other Counterparty's Affiliates or Associates) under any Derivatives Contract to which such first Counterparty (or any of such first Counterparty's Affiliates or Associates) is a Receiving Party and this proviso shall be applied to successive Counterparties as appropriate; and (iv) any such shares which are owned beneficially within the meaning of this definition by any other person with whom such person is acting jointly or in concert with respect to the Corporation or any of its securities;

"close of business" means 5:00 p.m. (Toronto time) on a business day in Ontario, Canada;

"Derivatives Contract" shall mean a contract between two parties (the **"Receiving Party"** and the **"Counterparty"**) that is designed to expose the Receiving Party to economic benefits and risks that correspond substantially to the ownership by the Receiving Party of a number of shares in the capital of the Corporation or securities convertible into such shares specified or referenced in such contract (the number corresponding to such economic benefits and risks, the **"Notional Securities"**), regardless of whether obligations under such contract are required or permitted to be settled through the delivery of cash, shares in the capital of the Corporation or securities convertible into such shares or other property, without regard to any short position under the same or any other Derivatives Contract. For the avoidance of doubt, interests in broad-based index options, broad-based index futures and broad-based publicly traded market baskets of stocks approved for trading by the appropriate governmental authority shall not be deemed to be Derivatives Contracts; and

"public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Corporation under its profile on the System for Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com).

4.06 Vacation of Office. - A director ceases to hold office on death, on removal from office by the shareholders, on ceasing to be qualified for election as a director, on receipt of a written resignation by the Corporation, or, if a time is specified in such resignation, at the time so specified, whichever is

later. Until the first meeting of shareholders, the resignation of a director named in the articles shall not be effective unless at the time the resignation is to become effective a successor has been elected.

4.07 Vacancies. - Subject to the Act, a quorum of the board may appoint a qualified individual to fill a vacancy in the board.

4.08 Action by the Board. - The board shall manage or supervise the management of the business and affairs of the Corporation. The powers of the board may be exercised at a meeting (subject to section 4.08) at which a quorum is present or by resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of the board. Where there is a vacancy in the board, the remaining directors may exercise all the powers of the board so long as a quorum remains in office.

4.09 Meeting by Telephone. - If all the directors of the Corporation consent thereto generally or if all the directors of the Corporation present at or participating in the meeting consent, a director may participate in a meeting of the board or of a committee of the board by means of such telephone, electronic or other communications facilities as permit all persons participating in the meeting to communicate with each other, simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the board and of committees of the board.

4.10 Place of Meetings. - Meetings of the board may be held at any place within or outside Ontario and in any financial year of the Corporation a majority of the meetings need not be held in Canada.

4.11 Calling of Meetings. - Meetings of the board shall be held from time to time at such time and at such place as the board, the chair of the board, the managing director, the president or any two directors may determine.

4.12 Notice of Meeting. - Notice of the time and place of each meeting of the board shall be given in the manner provided in Section Eleven to each director not less than 48 hours before the time when the meeting is to be held. No notice of a meeting shall be necessary if all the directors in office are present or if those absent waive notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting except where the Act requires such purpose or business or the general nature thereof to be specified.

4.13 First Meeting of New Board. - Provided a quorum of directors is present, each newly elected board may without notice hold its first meeting immediately following the meeting of shareholders at which such board is elected.

4.14 Adjourned Meeting. - Notice of an adjourned meeting of the board is not required if the time and place of the adjourned meeting is announced at the original meeting.

4.15 Regular Meetings. - The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

4.16 Chair. - The chair of any meeting of the board shall be the first mentioned of such of the following officers as have been appointed and who is a director and is present at the meeting: chair of the board, managing director or president. If no such officer is present, the directors present shall choose one of their number to be chair.

4.17 Quorum. - Subject to section 4.18, the quorum for the transaction of business at any meeting of the board shall be two-fifths of the number of directors or minimum number of directors, as the case may be, or such greater number of directors as the board may from time to time determine. If the Corporation has fewer than three directors, all the directors shall be present to constitute a quorum.

4.18 Votes to Govern. - At all meetings of the board every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the chair of the meeting shall not be entitled to a second or casting vote.

4.19 Conflict of Interest. - A director who is a party to, or who is a director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Corporation shall disclose to the Corporation the nature and extent of that interest at the time and in the manner provided by the Act. Such a director shall not attend any part of a meeting of directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the same except as provided by the Act. If no quorum exists for the purpose of voting on such a resolution only because a director is not permitted to be present at the meeting, the remaining directors shall be deemed to constitute a quorum for the purposes of voting on the resolution. Where all of the directors are required to make a disclosure under this section, the contract or transaction may only be approved by the shareholders.

4.20 Remuneration and Expenses. - The directors shall be paid such remuneration for their services as the board may from time to time determine. The directors shall also be entitled to be reimbursed for travelling and other expenses properly incurred by them in attending meetings of the board or any committee thereof. Nothing herein contained shall preclude any director from serving the Corporation in any other capacity and receiving remuneration therefor.

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## SECTION FIVE

### COMMITTEES

5.01 Committees of the Board. - The board may appoint from their number one or more committees of the board, however designated, and delegate to any such committee any of the powers of the board except those which pertain to items which, under the Act, a committee of the board has no authority to exercise.

5.02 Transaction of Business. - The powers of a committee of the board may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at any place in or outside Ontario.

5.03 Audit Committee. - The board shall select annually from among their number an audit committee to be composed of not fewer than 3 directors of whom a majority shall not be officers or employees of the Corporation or any of its affiliates. The audit committee shall have the powers and duties provided in the Act.

5.04 Advisory Bodies. - The board may from time to time appoint such advisory bodies as it may deem advisable.

5.05 Procedure. - Unless otherwise determined by the board, each committee and advisory body shall have power to fix its quorum at not less than a majority of its members, to elect its chair and to regulate its procedure.

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## SECTION SIX

### OFFICERS

6.01 Appointment. - The board may from time to time appoint a president, one or more vice-presidents (to which title may be added words indicating seniority or function), a secretary, a treasurer and such other officers as the board may determine, including one or more assistants to any of the officers so appointed. One person may hold more than one office. The board may specify the duties of and, in accordance with this by-law and subject to the Act, delegate to such officers powers to manage the business and affairs of the Corporation. Subject to sections 6.02 and 6.03, an officer may but need not be a director.

6.02 Chair of the Board. - The board may from time to time also appoint a chair of the board who shall be a director. If appointed, the board may assign to the Chair any of the powers and duties that are by any provisions of this by-law assigned to the managing director or to the president. The Chair shall have such other powers and duties as the board may specify.

6.03 Managing Director. - The board may from time to time also appoint from its number a managing director. If appointed, the managing director shall be the chief executive officer and, subject to the authority of the board, shall have general supervision of the business and affairs of the Corporation and such other powers and duties as the board may specify. During the absence or disability of the president, or if no president has been appointed, the managing director shall also have the powers and duties of that office.

6.04 President. - The president shall be the chief operating officer and, subject to the authority of the board, shall have general supervision of the business of the Corporation and such other powers and duties as the board may specify. During the absence or disability of the managing director, or if no managing director has been appointed, the president shall also have the powers and duties of that office.

6.05 Secretary. - Unless otherwise determined by the board, the secretary shall be the secretary of all meetings of the board, shareholders and committees of the board that he attends. The secretary shall enter or cause to be entered in records kept for that purpose minutes of all proceedings at meetings of the board, shareholders and committees of the board, whether or not in attendance at such meetings. The secretary shall give or cause to be given, as and when instructed, all notices to shareholders, directors, officers, auditors and members of committees of the board. The secretary shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, records and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose, and have such other powers and duties as otherwise may be specified.

6.06 Treasurer. - The treasurer shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation. The treasurer shall render to the board whenever required an account of all transactions as treasurer and of the financial position of the Corporation and shall have such other powers and duties as otherwise may be specified.

6.07 Powers and Duties of Officers. - The powers and duties of all officers shall be such as the terms of their engagement call for or as the board or (except for those whose powers and duties are to be specified only by the board) the chief executive officer may specify. The board and (except as aforesaid) the chief executive officer may, from time to time and subject to the provisions of the Act,

vary, add to or limit the powers and duties of any officer. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the board or the chief executive officer otherwise directs.

6.08 Term of Office. - The board, in its discretion, may remove any officer of the Corporation. Otherwise each officer appointed by the board shall hold office until his successor is appointed or until the officer resigns.

6.09 Agents and Attorneys. - The Corporation, by or under the authority of the board, shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers (including the power to subdelegate) of management, administration or otherwise as may be thought fit.

6.10 Conflict of Interest. - An officer shall disclose any interest in a material contract or transaction or proposed material contract or transaction with the Corporation in accordance with section 4.18.

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## SECTION SEVEN

### PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

7.01 Limitation of Liability. - All directors and officers of the Corporation in exercising their powers and discharging their duties to the Corporation shall act honestly and in good faith with a view to the best interests of the Corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no director or officer shall be liable for the acts, omissions, failures, neglects or defaults of any other director, officer or employee, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the moneys, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on the part of such director or officer, or for any other loss, damage or misfortune which shall happen in the execution of the duties of office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

7.02 Indemnity.

(1) Subject to the Act and to section 7.02(2), the Corporation shall:

- (a) indemnify any individual who is or was a director or officer of the Corporation and any individual who acts or acted at the Corporation's request as a director or officer (or any individual acting in a similar capacity) of another entity, against all costs, charges and expenses, including, without limitation, an amount paid to settle an action or satisfy a judgment, reasonably incurred by any such individual in respect of any civil, criminal, administrative, investigative or other proceeding in which such individual is involved because of that association with the Corporation or other entity; and
- (b) advance moneys to a director, officer or other individual for the costs, charges, and expenses of a proceeding referred to in section 7.02(1)(a). The individual shall repay the moneys if such individual does not fulfil the conditions of section 7.02(2).

(2) The Corporation shall not indemnify an individual under section 7.02(1) unless such individual:

- (a) acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which such individual acted as a director or officer (or in a similar capacity) at the Corporation's request; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that such individual's conduct was lawful.

(3) The Corporation shall also indemnify any individuals referred to in section 7.02(1)(a) in such other circumstances as the Act or law permits or requires. Nothing in this by-law shall limit the right of any individual entitled to indemnity to claim indemnity apart from the provisions of this by-law.

7.03 Insurance. - Subject to the Act, the Corporation may purchase and maintain such insurance for the benefit of any individual referred to in section 7.02 hereof as the board may from time to time determine.

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## SECTION EIGHT

### SHARES

8.01 Allotment of Shares. - Subject to the Act and the articles, the board may from time to time allot or grant options to purchase the whole or any part of the authorized and unissued shares of the Corporation at such times and to such persons and for such consideration as the board shall determine, provided that no share shall be issued until it is fully paid as provided by the Act.

8.02 Commissions. - The board may from time to time authorize the Corporation to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase shares of the Corporation, whether from the Corporation or from any other person, or procuring or agreeing to procure purchasers for any such shares.

8.03 Registration of Transfers. - Subject to the Act, no transfer of a share shall be registered in a securities register except upon compliance with the reasonable requirements of the Corporation and its transfer agents and with such restrictions on issue, transfer or ownership as are authorized by the articles.

8.04 Non-recognition of Trusts. - Subject to the Act, the Corporation may treat the registered holder of any share as the person exclusively entitled to vote, to receive notices, to receive any dividend or other payment in respect of the share, and otherwise to exercise all the rights and powers of an owner of the share.

8.05 Share Certificates. - Every holder of one or more shares of the Corporation shall be entitled, at the holder's option, to a share certificate, or to a non-transferable written certificate of acknowledgement of such right to obtain a share certificate, stating the number and class or series of shares held by such holder as shown on the securities register. Such certificates shall be in such form as the board may from time to time approve. Any such certificate shall be signed in accordance with section 2.04 and need not be under the corporate seal. Notwithstanding the foregoing, unless the board otherwise determines, certificates in respect of which a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent has been appointed shall not be valid unless countersigned by or on behalf of such registrar, transfer agent, branch transfer agent or issuing or other authenticating agent. The signature of one of the signing officers under section 2.04 (or, in the case of a certificate which is not valid unless countersigned by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent, the signatures of both signing officers under section 2.04) may be printed or otherwise mechanically reproduced thereon. Every such printed or mechanically reproduced signature shall for all purposes be deemed to be the signature of the officer whose signature it reproduces and shall be binding upon the Corporation. A certificate executed as aforesaid shall be valid notwithstanding that one or both of the officers whose printed or mechanically reproduced signature appears thereon no longer holds office at the date of issue of the certificate.

8.06 Replacement of Share Certificates. - The board or any officer or agent designated by the board may direct the issue of a new share or other such certificate in lieu of and upon cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such reasonable fee and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the board may from time to time prescribe, whether generally or in any particular case.

8.07 Joint Shareholders. - If two or more persons are registered as joint holders of any share, the Corporation shall not be bound to issue more than one certificate in respect thereof, and delivery of such certificate to one of such persons shall be sufficient delivery to all of them. Any one of such persons may give effectual receipts for the certificate issued in respect thereof or for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such share.

8.08 Deceased Shareholders. - In the event of the death of a holder, or of one of the joint holders, of any share, the Corporation shall not be required to make any entry in the securities register in respect thereof or to make any dividend or other payments in respect thereof except upon production of all such documents as may be required by law and upon compliance with the reasonable requirements of the Corporation and its transfer agents.

8.09 Transfer Agents and Registrars. - The Corporation may from time to time, in respect of each class of securities issued by it, appoint a trustee, transfer or other agent to keep the securities register and the register of transfers and a registrar, trustee or agent to maintain a record of issued security certificates and may appoint one or more persons or agents to keep branch registers, and, subject to the Act, one person may be appointed to keep the securities register, register of transfers and the records of issued security certificates. Such appointment may be terminated at any time by the board.

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## SECTION NINE

### DIVIDENDS AND RIGHTS

9.01 Dividends. - Subject to the Act and the articles, the board may from time to time declare dividends payable to the shareholders according to their respective rights and interests in the Corporation. Dividends may be paid in money or property or by issuing fully paid shares of the Corporation or options or rights to acquire fully paid shares of the Corporation. Any dividend unclaimed after a period of 6 years from the date on which the same has been declared to be payable shall be forfeited and shall revert to the Corporation.

9.02 Dividend Cheques. - A dividend payable in money shall be paid by cheque to the order of each registered holder of shares of the class or series in respect of which it has been declared and mailed by prepaid ordinary mail to such registered holder at the holder's recorded address, unless such holder otherwise directs. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and mailed to them at their recorded address. The mailing of such cheque as aforesaid, unless the same is not paid on due presentation, shall satisfy and discharge the liability for the dividend to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold. In the event of non-receipt of any dividend cheque by the person to whom it is sent as aforesaid, the Corporation shall issue to such person a replacement cheque for a like amount on such terms as to indemnity, reimbursement of expenses and evidence of non-receipt and of title as the board may from time to time prescribe, whether generally or in any particular case.

9.03 Record Date for Dividends and Rights. - The board may fix in advance a date, preceding by not more than 50 days the date for the payment of any dividend or the date for the issue of any warrant or other evidence of the right to subscribe for securities of the Corporation, as a record date for the determination of the persons entitled to receive payment of such dividend or to exercise the right to subscribe for such securities, and notice of any such record date shall be given not less than 7 days before such record date in the manner provided by the Act. If no record date is so fixed, the record date for the determination of the persons entitled to receive payment of any dividend or to exercise the right to subscribe for securities of the Corporation shall be at the close of business on the day on which the resolution relating to such dividend or right to subscribe is passed by the board.

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## SECTION TEN

### MEETINGS OF SHAREHOLDERS

10.01 Annual Meetings. - The annual meeting of shareholders shall be held at such time in each year and, subject to section 10.03, at such place as the board, the chair of the board, the managing director or the president may from time to time determine, for the purpose of considering the financial statements and reports required by the Act to be placed before the annual meeting, electing directors, appointing auditors and for the transaction of such other business as may properly be brought before the meeting.

10.02 Special Meetings. - The board, the chair of the board, the managing director or the president shall have power to call a special meeting of shareholders at any time.

10.03 Meetings by Electronic Means. - A meeting of the shareholders may be held by telephonic or electronic means and a shareholder who, through those means, votes at the meeting or establishes a communications link to the meeting shall be deemed for the purposes of the Act to be present at the meeting.

10.04 Place of Meetings. - Subject to the articles, meetings of shareholders of the Corporation shall be held at such place in or outside Ontario as the directors determine or, in the absence of such a determination, at the place where the registered office of the Corporation is located. A meeting held under Section 10.03 shall be deemed to be held at the place where the registered office of the Corporation is located.

10.05 Notice of Meetings. - Notice of the time and place of each meeting of shareholders shall be given in the manner provided in Section Eleven not less than 21 nor more than 50 days before the date of the meeting to each director, to the auditor, and to each shareholder who at the close of business on the record date for notice is entered in the securities register as the holder of one or more shares carrying the right to vote at the meeting. Notice of a meeting of shareholders called for any purpose other than consideration of the minutes of an earlier meeting, financial statements and auditor's report, election of directors and reappointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the shareholder to form a reasoned judgment thereon and shall state the text of any special resolution or by-law to be submitted to the meeting.

10.06 List of Shareholders Entitled to Notice. - For every meeting of shareholders, the Corporation shall prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order and showing the number of shares held by each shareholder entitled to vote at the meeting. If a record date for the meeting is fixed pursuant to section 10.07, the shareholders listed shall be those registered at the close of business on such record date. If no record date is fixed, the shareholders listed shall be those registered at the close of business on the day immediately preceding the day on which notice of the meeting is given or, where no such notice is given, on the day on which the meeting is held. The list shall be available for examination by any shareholder during usual business hours at the registered office of the Corporation or at the place where the central securities register is maintained and at the meeting for which the list was prepared. Where a separate list of shareholders has not been prepared, the names of persons appearing in the securities register at the requisite time as the holder of one or more shares carrying the right to vote at such meeting shall be deemed to be a list of shareholders.

10.07 Record Date for Notice. - The board may fix in advance a date, preceding the date of any meeting of shareholders by not more than 60 days and not less than 30 days, as a record date for the determination of the shareholders entitled to notice of the meeting, and notice of any such record date shall be given not less than seven days before such record date, by newspaper advertisement in the manner provided in the Act and by written notice to each stock exchange in Canada on which the shares of the Corporation are listed for trading. If no such record date is so fixed, the record date for the determination of the shareholders entitled to receive notice of the meeting shall be at the close of business on the day immediately preceding the day on which the notice is given or, if no notice is given, shall be the day on which the meeting is held.

10.08 Meetings Without Notice. - A meeting of shareholders may be held without notice at any time and place permitted by the Act (a) if all the shareholders entitled to vote thereat are present in person or duly represented or if those not present or represented waive notice of or otherwise consent to such meeting being held, and (b) if the auditors and the directors are present or waive notice of or otherwise consent to such meeting being held; so long as such shareholders, auditors or directors present are not attending for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. At such a meeting any business may be transacted which the Corporation at a meeting of shareholders may transact.

10.09 Chair, Secretary and Scrutineers. - The chair of any meeting of shareholders shall be the first mentioned of such of the following officers as have been appointed and who is present at the meeting: managing director, president, chair of the board, or a vice-president who is a shareholder. If no such officer is present within 15 minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chair. If the secretary of the Corporation is absent, the chair shall appoint some person, who need not be a shareholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be shareholders, may be appointed by a resolution or by the chair with the consent of the meeting.

10.10 Persons Entitled to be Present. - The only persons entitled to be present at a meeting of shareholders shall be those entitled to vote thereat, the directors and auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the articles or by-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

10.11 Quorum. - A quorum for the transaction of business at any meeting of shareholders shall be two persons present in person, each being a shareholder entitled to vote thereat or a duly appointed proxyholder or representative for a shareholder so entitled, irrespective of the number of shares held by such persons. If a quorum is present at the opening of any meeting of shareholders, the shareholder or shareholders present or represented may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the time appointed for the meeting or within a reasonable time thereafter as the shareholders may determine, the shareholders present or represented may adjourn the meeting to a fixed time and place but may not transact any other business.

10.12 Right to Vote. - Every person named in the list referred to in section 10.06 shall be entitled to vote the shares shown thereon opposite such person's name at the meeting to which such list relates.

10.13 Proxyholders and Representatives. - Every shareholder entitled to vote at a meeting of shareholders may appoint a proxyholder, or one or more alternate proxyholders, as nominee of such shareholder to attend and act at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy must be signed in writing or by electronic signature by the shareholder or an attorney who is authorized by a document that is signed in writing or by electronic signature or, if the shareholder is a body corporate, by an officer or attorney of the body corporate duly authorized and shall conform with the requirements of the Act. Alternatively, every such shareholder which is a body corporate or association may authorize by resolution of its directors or governing body an individual to represent it at a meeting of shareholders of the Corporation and such individual may exercise on the shareholder's behalf all the powers it could exercise if it were an individual shareholder. The authority of such an individual shall be established by depositing with the Corporation a certified copy of such resolution, or in such other manner as may be satisfactory to the secretary of the Corporation or the chair of the meeting. Any such proxyholder or representative need not be a shareholder. A proxy ceases to be valid one year from its date.

10.14 Time for Deposit of Proxies. - The board may fix a time not exceeding 48 hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at the meeting must be deposited with the Corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting. A proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Corporation or an agent thereof specified in such notice or if, no such time having been specified in such notice, it has been received by the secretary of the Corporation or by the chair of the meeting or any adjournment thereof prior to the time of voting.

10.15 Joint Shareholders. - If two or more persons hold shares jointly, any one of them present in person or duly represented at a meeting of shareholders may, in the absence of the other or others, vote the shares; but if two or more of those persons are present in person or represented and vote, they shall vote as one the shares jointly held by them.

10.16 Votes to Govern. - At any meeting of shareholders every question shall, unless otherwise required by the articles or by-laws or by law, be determined by a majority of the votes cast on the question. In case of an equality of votes either upon a show of hands or upon a poll, the chair of the meeting shall not be entitled to a second or casting vote.

10.17 Show of Hands. - Subject to the Act, any question at a meeting of shareholders shall be decided by a show of hands, unless a ballot thereon is required or demanded as hereinafter provided, and upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the chair of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the shareholders upon the said question.

10.18 Ballots. - On any question proposed for consideration at a meeting of shareholders, and whether or not a show of hands has been taken thereon, the chair may require a ballot or any person who is present and entitled to vote on such question at the meeting may demand a ballot. A ballot so required or demanded shall be taken in such manner as the chair shall direct. A requirement or demand for a ballot

may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken each person present shall be entitled, in respect of the shares which such person is entitled to vote at the meeting upon the question, to that number of votes provided by the Act or the articles, and the result of the ballot so taken shall be the decision of the shareholders upon the said question.

10.19 Adjournment. - The chair at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place. If a meeting of shareholders is adjourned for less than 30 days, it shall not be necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. Subject to the Act, if a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

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## SECTION ELEVEN

### NOTICES

11.01 Method of Giving Notices. - Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the regulations thereunder, the articles, the by-laws or otherwise to a shareholder, director, officer, auditor or member of a committee of the board shall be sufficiently given if delivered personally to the person to whom it is to be given, if mailed to such person at the person's recorded address by prepaid mail, or if transmitted by telephone facsimile or other electronic means in accordance with the *Electronic Commerce Act* (Ontario). A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered by dispatch. A notice so delivered shall be deemed to have been received when it is delivered personally, a notice so mailed shall be deemed to have been received on the fifth day after it is deposited in a post office or public letter box, and a notice so transmitted shall be deemed to have been received on the day it is transmitted. The secretary may change or cause to be changed the recorded address of any shareholder, director, officer, auditor or member of a committee of the board in accordance with any information believed by the secretary to be reliable.

11.02 Notice to Joint Shareholders. - If two or more persons are registered as joint holders of any share, any notice may be addressed to all such joint holders, but notice addressed to one of such persons shall be sufficient notice to all of them.

11.03 Computation of Time. - In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the day of giving the notice shall be excluded and the day of the meeting or other event shall be excluded.

11.04 Undelivered Notices. - If any notice given to a shareholder pursuant to section 11.01 is returned on three consecutive occasions because the shareholder cannot be found, the Corporation shall not be required to give any further notices to such shareholder until informed in writing by the shareholder of a new address.

11.05 Omissions and Errors. - The accidental omission to give any notice to any shareholder, director, officer, auditor or member of a committee of the board or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

11.06 Persons Entitled by Death or Operation of Law. - Every person who, by operation of law, transfer, death of a shareholder or any other means whatsoever, shall become entitled to any share, shall be bound by every notice in respect of such share which shall have been duly given to the shareholder from whom such person derives title to such share prior to the name and address of such person being entered on the securities register (whether such notice was given before or after the happening of the event upon which such person became so entitled) and prior to such person furnishing to the Corporation the proof of authority or evidence of entitlement prescribed by the Act.

11.07 Waiver of Notice. - Any shareholder, proxyholder or other person entitled to attend a meeting of shareholders, director, officer, auditor or member of a committee of the board may at any time



waive any notice, or waive or abridge the time for any notice, required to be given to him under the Act, the regulations thereunder, the articles, the by-laws or otherwise, and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing and may be sent by electronic means in accordance with the *Electronic Commerce Act* (Ontario), except a waiver of notice of a meeting of shareholders or of the board or a committee of the board which may be given in any manner.

11.08            Interpretation. - In this by-law, “recorded address” means in the case of a shareholder the address as recorded in the securities register; and in the case of joint shareholders the address appearing in the securities register in respect of such joint holding or the first address so appearing if there are more than one; in the case of an officer, auditor or member of a committee of the board, the latest address as recorded in the records of the Corporation; and in the case of a director, the latest address as shown in the records of the corporation or in the most recent notice filed under the *Corporations Information Act* (Ontario), whichever is the more current.

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SECTION TWELVE

EFFECTIVE DATE AND REPEAL

12.01 Effective Date. - This by-law shall come into force when made by the board in accordance with the Act.

12.02 Repeal. - All previous by-laws of the Corporation are repealed as of the coming into force of this by-law. Such repeal shall not affect the previous operation of any by-law so repealed or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under, or the validity of any contract or agreement made pursuant to, or the validity of any articles (as defined in the Act) or predecessor charter documents of the Corporation obtained pursuant to, any such by-law prior to its repeal. All officers and persons acting under any by-law so repealed shall continue to act as if appointed under the provisions of this by-law and all resolutions of the shareholders or the board or a committee of the board with continuing effect passed under any repealed by-law shall continue to be good and valid except to the extent inconsistent with this by-law and until amended or repealed.

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The foregoing by-law was made by the directors of the Corporation on the \_\_\_\_ day of July, 2016, and was confirmed without variation by the shareholders of the Corporation on the \_\_\_\_ day of \_\_\_\_\_, 2016.

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Secretary

## EXHIBIT V

### Subsequent Amendment to the Articles of Element Financial Corporation

The Articles of Element Financial Corporation (the “**Corporation**”) are amended as follows in accordance with the provisions of the plan of arrangement involving the Corporation, its shareholders and Spinco under section 182 of the *Business Corporations Act* (Ontario) (the “**Plan of Arrangement**”):

- (i) to decrease the authorized capital of the Corporation by cancelling all the Special Shares (referred to as “Element Butterfly Shares” in the Plan of Arrangement), whether issued or unissued;
- (ii) to decrease the authorized capital of the Corporation by cancelling all the Class A Common Shares, whether issued or unissued;
- (iii) to delete section 7 of the Articles of the Corporation in its entirety and replace it with the following to give effect to the foregoing: “The Corporation is authorized to issue (i) an unlimited number of common shares without nominal or par value; and (ii) an unlimited number of preferred shares, issuable in series.”;
- (iv) to change the name of the Corporation from “**Element Financial Corporation**” to “**Element Fleet Management Corp.**”; and
- (v) to delete Schedule 1 annexed to the Articles of the Corporation in its entirety and replace it with the following Schedule 1:

#### “Schedule 1

#### ARTICLE 1 INTERPRETATION

- 1.01 References to “Act”: In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, “Act” means the Business Corporations Act (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

#### ARTICLE 2 COMMON SHARES

The rights, privileges, restrictions and conditions attaching to the common shares are as follows:

The holders of the Common Shares shall be entitled:

- (a) to vote at all meetings of shareholders of the Corporation except meetings at which only holders of a specified class of shares are entitled to vote. The holders of Common Shares

are entitled to one vote for each one Common Share held on all polls taken at such meetings.

- (b) to receive, subject to the rights of the holders of another class of shares, any dividend declared by the Corporation; and
- (c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

### **ARTICLE 3 PREFERRED SHARES**

The rights, privileges, restrictions and conditions attaching to the preferred shares are as follows:

- 3.01 One or More Series. The preferred shares may at any time and from time to time be issued in one or more series.
- 3.02 Terms of Each Series. Subject to the Act, the directors may fix, before the issue thereof, the number of preferred shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-up of the Corporation, any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of the series.
- 3.03 Ranking of Preferred Shares. The preferred shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the common shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the preferred shares of any series is not paid in full, the preferred shares of such series shall participate rateably with the preferred shares of every other series in respect of all such dividends and amounts.

**APPENDIX B  
IAC PLAN OF ARRANGEMENT**

**PLAN OF ARRANGEMENT UNDER SECTION 182  
OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)**

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms will have the respective meanings set out below and grammatical variations of such terms will have the corresponding meanings:

“**Affiliate**” means, when describing a relationship between two Persons, that either one of them is under the direct or indirect control of the other, or each of them is directly or indirectly controlled by the same Person;

“**Arrangement**” means the arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in this Plan of Arrangement, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement, this Plan of Arrangement or at the direction of the Court;

“**Arrangement Agreement**” means the arrangement agreement dated July 25, 2016 among Element Financial Corporation, Spinco, 2510204 Ontario Inc. and IAC relating to, among other things, the Arrangement, as it may be amended, modified or supplemented from time to time in accordance with its terms;

“**Arrangement Resolution**” means the special resolution of the Shareholders approving this Plan of Arrangement as required by the OBCA and the Interim Order;

“**Board**” or “**Board of Directors**” means the Board of Directors of Element Financial Corporation;

“**Business Day**” means a day, other than a Saturday, Sunday or statutory or civic holiday in Ontario, when banks are generally open for the transaction of business in Toronto, Ontario;

“**Certificate of Arrangement**” means the Certificate of Arrangement to be issued by the OBCA Director under the OBCA giving effect to the Arrangement;

“**Class A Exchange Ratio**” means in respect of each IAC Class A Share and IAC Funding Class B Share, the fraction equal to (A)/(B), where:

- (A) is a fraction equal to (i) the IAC Net Assets as of the close of business on the second Business Day immediately preceding the Effective Date, divided by (ii) the aggregate number of IAC Class A Shares and IAC Funding Class B Shares issued and outstanding immediately prior to the Effective Time (other than IAC Class A Shares for which Shareholders have validly exercised rights of redemption in respect of the Arrangement); and
- (B) is a fraction equal to (i) the aggregate fair market value of Spinco on the effective date of the Element Plan of Arrangement (as defined in the Arrangement Agreement), as

determined by the Board, divided by (ii) the aggregate number of Spinco Common Shares issued and outstanding immediately prior to the Effective Time;

**“Class B Exchange Ratio”** means in respect of each IAC Founder Class B Share, the fraction equal to (A)/(B), where:

- (A) is a fraction equal to (i)(A) the sum of (i) \$4,500,000 and (ii) 6% of the IAC Net Assets as of the close of business on the second Business Day immediately preceding the Effective Date divided by (ii) the aggregate number of IAC Founder Class B Shares issued and outstanding immediately prior to the Effective Time; and
- (B) is a fraction equal to (i) the aggregate fair market value of Spinco on the on the effective date of the Element Plan of Arrangement (as defined in the Arrangement Agreement), as determined by the Board, divided by (ii) the aggregate number of Spinco Common Shares issued and outstanding immediately prior to the Effective Time;

**“Court”** means the Ontario Superior Court of Justice;

**“Depositary”** means the depositary appointed pursuant to the Arrangement Agreement to act as depositary for the IAC Shares in relation to the Arrangement.

**“Dissent Rights”** has the meaning ascribed thereto in Section 3.1 of this Plan of Arrangement;

**“Dissenting Shareholder”** means a Shareholder who dissents in respect of the Arrangement in strict compliance with the Dissent Rights and who has not withdrawn such exercise of Dissent Rights prior to the Effective Time;

**“Effective Date”** means the effective date of the Arrangement, being the date shown on the Certificate of Arrangement;

**“Effective Time”** means 12:10 a.m. (Eastern Time) on the Effective Date; provided if the Effective Date occurs on the Element Effective Date (as defined in the Arrangement Agreement), the “Effective Time” shall be 9:30 a.m. (Eastern Time).

**“EIC”** means Element Investment Corp., a wholly owned Subsidiary of Spinco;

**“Encumbrances”** means mortgages, charges, pledges, liens, hypothecs, security interests, encumbrances, adverse claims and rights of third parties to acquire or restrict the use of property;

**“Final Order”** means the final order of the Court to be made in connection with approval of the Arrangement, as such order may be varied or amended by the Court at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or amended on appeal;

**“Governmental Authority”** means any (a) multinational, federal, national, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry or agency, domestic or foreign, (b) any subdivision, agent, commission, board, or authority of any of the foregoing, (c) any quasi-governmental or private body exercising any regulatory, self-regulatory, expropriation or taxing authority under or for the account of any of the foregoing, or (d) any stock exchange;

**“IAC”** means INFOR Acquisition Corp., an OBCA corporation.

“**IAC Class A Shares**” means the existing Class A Restricted Voting Shares in the capital of IAC;

“**IAC Class B Shares**” means the existing Class B Shares in the capital of IAC;

“**IAC Founder Class B Shares**” means IAC Class B Shares acquired at a purchase price of \$0.008 per share prior to the initial public offering of IAC;

“**IAC Funding Class B Shares**” means IAC Class B Shares acquired at a purchase price of \$10.00 per share in connection with the initial public offering of IAC;

“**IAC Net Assets**” means an amount, determined in accordance with the Arrangement Agreement, equal to all IAC assets (including all funds from the initial public offering of IAC held in escrow), less the sum of (a) all liabilities of IAC to and including the Effective Date (including all escrowed underwriters’ commissions related to such initial public offering and all accrued or estimated fees and expenses in connection with the Arrangement or otherwise), and (b) the aggregate amount of escrowed funds to be paid in respect of Class A IAC Shares for which Shareholders have validly exercised rights of redemption in respect of the Arrangement;

“**IAC Shares**” means the IAC Class A Shares and the IAC Class B Shares;

“**IAC Warrants**” means the warrants issued by IAC entitling each holder thereof to purchase one IAC Class A Share in accordance with the terms and conditions of such warrants;

“**Interim Order**” means the interim order of the Court to be issued under section 182 of the OBCA pursuant to the application by IAC providing, among other things, for declarations and directions with respect to the Arrangement and the Meeting, as such order may be varied or amended at any time prior to the Meeting;

“**Meeting**” means the special meeting of Shareholders, including any adjournment(s) or postponement(s) thereof, to be convened as provided in the Interim Order to consider and to vote on Arrangement Resolution and such other matters as may properly come before the meeting;

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended;

“**OBCA Director**” means the Director appointed pursuant to section 278 of the OBCA;

“**Participating Shareholder**” means a Shareholder, other than a Dissenting Shareholder and Redeeming Shareholder;

“**Person**” means any individual, partnership, association, body corporate, trust, trustee, executor, administrator, legal representative, Governmental Authority or other entity;

“**Plan of Arrangement**” means this plan of arrangement, as amended or supplemented from time to time in accordance with the terms hereof;

“**Redeeming Shareholder**” means a Shareholder who has elected to redeem its IAC Class A Shares in respect of the Arrangement in strict compliance with the redemption rights provided in the constating documents of IAC;

“**Shareholders**” means the registered holders of IAC Shares at the applicable time;

“**Spinco**” means ECN Capital Corp., an OBCA corporation;

“**Spinco Common Shares**” means the common shares in the capital of Spinco;

“**Subsidiary**” means, in respect of a specified Person, a second Person that is controlled, directly or indirectly, by the specified Person, and includes a Subsidiary of the second Person;

“**Tax Act**” means the *Income Tax Act* (Canada), as amended, including the regulations promulgated thereunder;

“**Transfer Agent**” means the transfer agent for the IAC Shares or the Spinco Common Shares, as applicable; and

“**Warrant Agreement**” means the warrant agency agreement dated May 27, 2015 between IAC and Equity Financial Trust Company.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Plan of Arrangement into Articles, Sections, and other portions and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number and/or a letter refer to the specified Article or Section of this Plan of Arrangement. The terms “hereof”, “herein” and “hereunder” and similar expressions refer to this Plan of Arrangement and not to any particular Article, Section or other portion hereof.

## **1.3 Rules of Construction**

In this Plan of Arrangement, unless the context otherwise requires, (a) words importing the singular number include the plural and *vice versa*, (b) words importing any gender include all genders, and (c) “include”, “includes” and “including” will be deemed to be followed by the words “without limitation”.

## **1.4 Currency**

Unless otherwise stated, all references in this Plan of Arrangement to sums of money are expressed in lawful money of Canada and “\$” refers to Canadian dollars.

## **1.5 Date for Any Action**

If the date on which any action is required or permitted to be taken hereunder by a Person is not a Business Day, such action will be required or permitted to be taken on the next succeeding day which is a Business Day.

## **1.6 References to Dates, Statutes, etc.**

- (a) In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively.
- (b) In this Plan of Arrangement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute, regulation, direction or instrument is to that statute, regulation, direction or instrument as



now enacted or as the same may from time to time be amended, re-enacted or replaced, and in the case of a reference to a statute, includes any regulations, rules, policies or directions made thereunder. Any reference in this Plan of Arrangement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with its terms.

### **1.7 Time**

Time will be of the essence in every matter or action contemplated hereunder. All times expressed herein are Toronto, Ontario time unless otherwise stipulated herein.

### **1.8 Exhibits**

The following Exhibits are attached to this Plan of Arrangement and form part hereof:

Exhibit I – Terms and Conditions of Shares of Spinco

## **ARTICLE 2 THE ARRANGEMENT**

### **2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

### **2.2 Binding Effect**

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on: (i) IAC; (ii) Spinco; (iii) all Shareholders (including those described in Section 3.1) and all beneficial owners of IAC Shares; and (iv) all holders of IAC Warrants.

### **2.3 Effective Time**

Commencing at the Effective Time, the following events or transactions will occur and will be deemed to occur in the following sequence, at one minute intervals, without any further act, authorization or formality:

- (a) the IAC Shares held by Dissenting Shareholders, who duly exercise their Dissent Rights and who are ultimately entitled to be paid fair value for those IAC Shares, will be transferred to Spinco and such Dissenting Shareholders will cease to have any rights as Shareholders other than the right to be paid the fair value for their IAC Shares by Spinco;
- (b) the IAC Shares held by Redeeming Shareholders, who duly exercise their redemption rights in accordance with the constating documents of IAC, will be redeemed and cancelled and such IAC Shares will cease to be outstanding, and such Redeeming Shareholders will cease to have any rights as Shareholders other than the right to be paid the redemption amount for their IAC Shares in accordance with the escrow agreement dated May 27, 2015 between IAC, Equity Financial Trust Company, CIBC World Markets Inc., BMO Nesbitt Burns Inc. and Deutsche Bank Securities Inc.

- (c) each issued and outstanding IAC Class A Share and IAC Funding Class B Share held by a Participating Shareholder (other than IAC Class A Shares or IAC Funding Class B Shares, if any, held by Spinco or any of its Affiliates) will be transferred to Spinco (free and clear of any Encumbrances) in exchange for that portion of a fully paid and non-assessable Spinco Common Share equal to the Class A Exchange Ratio;
- (d) each issued and outstanding IAC Founder Class B Share held by a Participating Shareholder (other than IAC Founder Class B Shares held by Spinco or any of its Affiliates or beneficially owned by Richard Venn) shall be transferred to Spinco (free and clear of any Encumbrances) in exchange for that portion of a fully paid and non-assessable Spinco Common Share equal to the Class B Exchange Ratio;
- (e) all IAC Founder Class B Shares beneficially owned by Richard Venn shall be transferred to Spinco (free and clear of any Encumbrances) for aggregate consideration equal to that number of fully paid and non-assessable Spinco Common Shares equal to (i) \$1,908.08, divided by (ii) a fraction equal to (A) the aggregate fair market value of Spinco on the effective date of the Element Plan of Arrangement (as defined in the Arrangement Agreement), as determined by the Board, divided by (B) the aggregate number of Spinco Common Shares issued and outstanding immediately prior to the Effective Time;
- (f) all IAC Shares acquired by Spinco pursuant to Section 2.3(a), Section 2.3(c), Section 2.3(d) and Section 2.3(e) will be transferred to EIC (free and clear of any Encumbrances) in exchange for 100 fully paid and non-assessable common shares of EIC;
- (g) the supplemental agreement to the Warrant Agreement, dated as of the Effective Date, among Spinco, IAC and Equity Financial Trust Company, will become effective and pursuant to such supplemental agreement, among other things, the IAC Warrants shall be assumed by Spinco;
- (h) EIC will resolve by special resolution to reduce the stated capital in respect of each class of shares of IAC to \$1.00 without any distribution to the shareholder of IAC, in accordance with section 34 of the OBCA; and
- (i) EIC will resolve to voluntarily dissolve IAC in accordance with Part XVI of the OBCA and subsection 88(1) of the Tax Act, and in connection therewith:
  - (i) all of the rights, title and interest of IAC in and to all of its property, assets and business of every kind and nature, real and personal, both tangible and intangible, and movable and immovable, wherever situate shall be transferred and assigned to EIC; and
  - (ii) EIC shall assume and become liable to pay, satisfy, discharge and observe, perform and fulfill all of the liabilities and obligations of IAC.

## **2.4 IAC Warrants**

In connection with this Plan of Arrangement, Spinco, IAC and the warrant agent thereunder shall enter into a supplemental agreement pursuant to Article 8 of the Warrant Agreement, providing for, among other things, the assumption by Spinco, as the “Successor Corporation” (as defined in the Warrant Agreement) of the due and punctual observance and performance of all the covenants and obligations of IAC under the Warrant Agreement. In accordance with the terms of the Warrant Agreement, the terms of

the IAC Warrants shall be adjusted to provide that, upon exercise of an IAC Warrant, Spinco Common Shares shall be issuable in lieu of IAC Shares based on the Class A Exchange Ratio.

## **2.5 Registers of Holders**

- (a) Upon the transfer of the IAC Shares held by Dissenting Shareholders pursuant to Section 2.3(a), the name of each Dissenting Shareholder will be removed from the register of holders of IAC Shares.
- (b) Upon the exchange of the IAC Shares pursuant to Section 2.3(c), Section 2.3(d) and Section 2.3(e), the name of each Participating Shareholder will be deemed to be removed from the register of holders of IAC Shares and will be deemed to be added to the registers of holders of Spinco Common Shares as the holder of the number of Spinco Shares issued to such Participating Shareholder.

## **2.6 Arrangement Effectiveness**

The Arrangement will become finally and conclusively binding and effective as at the Effective Time.

## **2.7 Deemed Fully Paid and Non-Assessable Shares**

All Spinco Common Shares issued pursuant hereto will be deemed to be or have been validly issued and outstanding as fully paid and non-assessable shares for all purposes of the OBCA.

## **2.8 Supplementary Actions**

Notwithstanding that the transaction and events set out in Section 2.3 will occur, and shall be deemed to occur, in the order therein set out without any other act, authorization or formality, each of Spinco and IAC will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may be required to further document or evidence any of the transactions or events set out in Section 2.3, including any resolution of directors authorizing the issue, transfer or purchase for cancellation of shares, any share transfer powers evidencing the transfer of shares and any receipt therefore, any promissory notes and receipts therefore and any necessary additions to, or deletions from, share registers.

# **ARTICLE 3 RIGHTS OF DISSENT**

## **3.1 Rights of Dissent**

- (a) Pursuant to the Interim Order, Shareholders may exercise rights of dissent with respect to their IAC Shares pursuant to and in the manner set forth in section 185 of the OBCA as modified by the Interim Order, the Final Order and this Article 3 (“**Dissent Rights**”) in connection with the Arrangement provided that, notwithstanding section 185 of the OBCA, the written notice setting forth such a Shareholder’s objection to the Arrangement and exercise of Dissent Rights must be received by IAC not later than 5:00 p.m. (Eastern Time) on the second Business Day immediately preceding the date of the Meeting or any date to which the Meeting may be adjourned or postponed and provided further that Dissenting Shareholders who duly exercise their Dissent Rights and who:

- (i) are ultimately entitled to be paid fair value for their IAC Shares, will be deemed to have transferred their IAC Shares to Spinco as of the Effective Time as set out in Section 2.3(a) and will be entitled to be paid the fair value of such IAC Shares, determined as of the close of business on the Business Day immediately preceding the date on which the Arrangement Resolution is adopted, by Spinco and will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights; or
- (ii) are ultimately not entitled, for any reason, to be paid fair value for such IAC Shares will be deemed to have participated in the Arrangement as of and from the Effective Time on the same basis as a Participating Shareholder and shall be entitled to receive only the consideration contemplated in Section 2.3 that such holder would have received pursuant to the Arrangement if such holder had not exercised Dissent Rights.

### **3.2 Recognition of Dissenting Shareholders**

From and after the Effective Time, neither Spinco nor IAC, or any other Person, will be required to recognize a Dissenting Shareholder as a holder of IAC Shares or as a holder of any securities of any of Spinco or IAC or any of their respective Subsidiaries and, subject to Section 3.1(a)(ii), at the Effective Time, the names of the Dissenting Shareholders will be deleted from the register of holders of IAC Shares previously maintained or caused to be maintained by IAC in accordance with Section 2.6(a).

### **3.3 Dissent Right Availability**

A Shareholder will not be entitled to exercise Dissent Rights with respect to IAC Shares if such holder votes (or instructs, or is deemed by submission of any incomplete proxy to have instructed, his, her or its proxyholder to vote) in favour of the Arrangement Resolution or if such holder is a Redeeming Shareholder. In addition to any other restrictions under section 185 of the OBCA and for greater certainty, holders of IAC Warrants shall not be entitled to exercise Dissent Rights.

### **3.4 Withholding Taxes**

All payments made to a Dissenting Shareholder pursuant to this Article 3 will be subject to, and paid net of, all applicable withholding taxes.

## **ARTICLE 4 CERTIFICATES AND PAYMENTS**

### **4.1 Entitlement to Share Certificates**

Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented one or more IAC Shares that were ultimately acquired under the Plan of Arrangement in exchange for one or more Spinco Shares, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the OBCA and the by-laws of IAC and such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded down to the nearest whole number) of Spinco Common Shares for which such holder's IAC Shares were ultimately acquired (together with any dividends or distributions with respect thereto pursuant to Section

4.2 and any cash in lieu of fractional Spinco Common Shares pursuant to Section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of IAC Shares that is not registered in the transfer records of IAC, a certificate representing the proper number of Spinco Common Shares may be issued to the transferee if the certificate representing such IAC Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.1, each certificate which immediately prior to the Effective Time represented IAC Shares that were acquired pursuant to this Plan of Arrangement shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (a) the certificate representing Spinco Common Shares as contemplated by this Section 4.1, and (b) a cash payment in lieu of any fractional shares as contemplated by Section 4.3, and (c) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to Spinco Common Shares as contemplated by Section 4.2.

#### **4.2 Distributions with Respect to Unsurrendered Certificates**

No dividends or other distributions declared or made after the Effective Time with respect to Spinco Common Shares with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding IAC Shares, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 4.3, unless and until the holder of record of such certificate shall surrender such certificate in accordance with Section 4.1. Subject to Applicable Law, at the time of such surrender of any such certificate, there shall be paid to the holder of record of the certificates representing whole IAC Shares, without interest, (a) the amount of any cash payable in lieu of a fractional share to which such holder is entitled pursuant to Section 4.3, (b) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole Spinco Common Share and (c) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and a payment date subsequent to surrender payable with respect to such whole Spinco Common Share.

#### **4.3 No Fractional Shares**

No certificates or scrip representing fractional Spinco Common Shares shall be issued upon the surrender for exchange of certificates pursuant to Section 4.1 and no dividend, stock split or other change in the capital structure of Spinco shall relate to any such fractional security and such fractional interests shall not entitle the owner thereof to exercise any rights as a security holder of Spinco. The number of Spinco Common Shares to be issued to any Person pursuant to this Plan of Arrangement shall be rounded down to the nearest whole Spinco Common Share. In calculating such fractional interests, all Spinco Common Shares registered in the name of or beneficially held by a Spinco shareholder or its nominee shall be aggregated. Spinco will pay, to each Person who would otherwise have received a certificate representing a fractional Spinco Common Share, an amount determined by reference to the volume weighted average price of Spinco Common Shares on the Toronto Stock Exchange for the five trading days immediately preceding the second Business Day prior to the Effective Date or, if the Spinco Common Shares have not traded on the Toronto Stock Exchange for such period, on the basis determined by the board of directors of Spinco.

#### **4.4 Lost Certificates**

If any certificate representing, immediately prior to the Effective Time, one or more IAC Shares has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and the giving by such Person of a bond satisfactory to Spinco in such sum as Spinco may determine against any claim that may be made against Spinco with respect to the

certificate alleged to have been lost, stolen or destroyed, Spinco (or its Transfer Agent) will make such distribution or delivery in respect of the IAC Shares represented by such lost, stolen or destroyed certificate as determined in accordance with Section 4.1.

#### **4.5 Withholding Rights**

Spinco and IAC will be entitled to deduct and withhold from amounts payable under this Plan of Arrangement to any Person, such amounts as Spinco or IAC is required or permitted to deduct and withhold with respect to such payment under the Tax Act or any provision of any applicable federal, provincial, territorial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts will be treated for all purposes hereof as having been paid to the Person, in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority.

### **ARTICLE 5 AMENDMENTS**

#### **5.1 Amendments to Plan of Arrangement**

- (a) Subject to the provisions of the Interim Order, any amendment, modification or supplement to this Plan of Arrangement may be proposed by Spinco at any time prior to or at the Meeting with or without any other prior notice or communication and, if so proposed and accepted by the Shareholders voting at the Meeting, will become part of this Plan of Arrangement for all purposes.
- (b) This Plan of Arrangement may be amended, modified or supplemented unilaterally by Spinco, after the Meeting, provided that each such amendment, modification or supplement is approved by the Court and communicated to any Person(s) in the manner required by the Court.
- (c) Any amendment, modification or supplement to this Plan of Arrangement which is approved or directed by the Court following the Meeting will be effective only if it is consented to by Spinco and, if required by the Court, is consented to by or communicated to the Shareholders in the manner directed by the Court.
- (d) Notwithstanding Section 5.1(b), any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order unilaterally by Spinco, provided that it concerns a matter which, in the reasonable opinion of Spinco, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any holder of Spinco Common Shares.

### **ARTICLE 6 FURTHER ASSURANCES**

#### **6.1 Further Assurances**

Notwithstanding that the transactions and events set out herein will occur and will be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be

required by either of them in order further to document or evidence any of the transactions or events set out herein.

## **ARTICLE 7 TERMINATION**

### **7.1 Termination**

Notwithstanding any prior approvals by the Court or by Shareholders, the board of directors of IAC may decide not to proceed with the Arrangement and to revoke the Arrangement Resolution at any time prior to the issuance of the Certificate of Arrangement, without further approval of the Court or the Shareholders.

## EXHIBIT I

### Terms and Conditions of the Shares of Spinco

#### ARTICLE 1 INTERPRETATION

- 1.01 References to “Act”: In this schedule, as from time to time amended, unless there is something in the context inconsistent herewith, “Act” means the Business Corporations Act (Ontario), or its successor, as amended from time to time.
- 1.02 Headings, Gender, Number: This schedule as from time to time amended, shall be read without regard to paragraph headings, which are included for ease of reference only, and with all changes in gender and number required by the context.

#### ARTICLE 2 COMMON SHARES

The rights, privileges, restrictions and conditions attaching to the common shares are as follows:

- 2.01 The holders of the Common Shares shall be entitled:
- (a) to vote at all meetings of shareholders of the Corporation except meetings at which only holders of a specified class of shares are entitled to vote. The holders of Common Shares are entitled to one vote for each one Common Share held on all polls taken at such meetings.
  - (b) to receive, subject to the rights of the holders of another class of shares, any dividend declared by the Corporation; and
  - (c) to receive, subject to the rights of the holders of another class of shares, the remaining property of the Corporation on the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

#### ARTICLE 3 PREFERRED SHARES

The rights, privileges, restrictions and conditions attaching to the preferred shares are as follows:

- 3.01 One or More Series. The preferred shares may at any time and from time to time be issued in one or more series.
- 3.02 Terms of Each Series. Subject to the Act, the directors may fix, before the issue thereof, the number of preferred shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-



up of the Corporation, any sinking fund or other provisions, the whole to be subject to the issue of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of the series.

3.03

Ranking of Preferred Shares. The preferred shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the common shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the preferred shares of any series is not paid in full, the preferred shares of such series shall participate rateably with the preferred shares of every other series in respect of all such dividends and amounts.”

**APPENDIX E**  
**ELEMENT ARRANGEMENT FAIRNESS OPINION**

**July 21, 2016**

The Board of Directors  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1

To the Board of Directors:

BMO Nesbitt Burns Inc. (“BMO Capital Markets” or “we” or “us”) understands that Element Financial Corporation (“Element” or the “Company”) proposes to enter into an arrangement agreement to be dated July 25, 2016 (the “Arrangement Agreement”) pursuant to which, among other things, the Company will be reorganized by way of a plan of arrangement under the *Business Corporations Act* (Ontario) (the “Element Arrangement”) into two separate public companies, Element Fleet Management Corp. (“Element Fleet Management”), which would be comprised of Element’s existing fleet management business, and ECN Capital Corp. (“ECN Capital”), which would be a newly created commercial finance company comprised of Element’s existing commercial and vendor, rail and aircraft finance businesses. Pursuant to the Element Arrangement, holders of Element common shares (the “Shareholders”) will receive, in exchange for each Element common share held, one common share of Element Fleet Management and one common share of ECN Capital (the “Consideration”). Immediately after giving effect to the Element Arrangement, participating Shareholders will hold all of the outstanding shares of Element Fleet Management and of ECN Capital. The terms and conditions of the Element Arrangement will be summarized in the Company’s management information circular (the “Circular”) to be made available to the Shareholders in connection with a special meeting of the Shareholders to be held on September 20, 2016 (or any adjournment or postponement thereof) to consider and, if deemed advisable, approve, among other matters, the Element Arrangement. We have been retained to provide financial advice to the Company with respect to the Element Arrangement, including our opinion (the “Opinion”) to the board of directors of the Company (the “Board of Directors”) as to the fairness from a financial point of view of the Consideration to be received by the Shareholders pursuant to the Element Arrangement. Pursuant to the Arrangement Agreement, it is also proposed that, following completion of the Element Arrangement, ECN Capital will acquire all of the issued and outstanding shares of INFOR Acquisition Corp. (“IAC”) (other than IAC shares held by ECN Capital or its affiliates) in exchange for shares of ECN Capital (the “IAC Acquisition”). The IAC Acquisition is a separate transaction from the Element Arrangement, and no opinion is being provided with respect to the IAC Acquisition or the consideration provided thereunder. For the purposes of the Opinion, we have excluded the impact, if any, that the IAC Acquisition, whether completed or not, may have on ECN Capital, including its outstanding common shares.

#### ENGAGEMENT OF BMO CAPITAL MARKETS

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The Company initially contacted BMO Capital Markets regarding a potential advisory assignment in October 2015. BMO Capital Markets was formally engaged by the Company pursuant to an agreement effective as of November 1, 2015 (the “Engagement Agreement”). Under the terms of the Engagement Agreement, BMO Capital Markets has agreed to provide the Company and the Board of Directors with various advisory services in connection with the Element Arrangement including, among other things, the provision of the Opinion.

BMO Capital Markets will receive certain fees for our advisory services under the Engagement Agreement, including the rendering of the Opinion, which are contingent upon the successful completion of the Element Arrangement. The Company has also agreed to reimburse us for our reasonable out-of-pocket expenses and to indemnify us against certain liabilities that might arise out of our engagement.

## CREDENTIALS OF BMO CAPITAL MARKETS

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BMO Capital Markets is one of North America's largest investment banking firms, with operations in all facets of corporate and government finance, mergers and acquisitions, equity and fixed income sales and trading, investment research and investment management. BMO Capital Markets has been a financial advisor in a significant number of transactions throughout North America involving public and private companies in various industry sectors, and has extensive experience in preparing fairness opinions.

The Opinion represents the opinion of BMO Capital Markets, the form and content of which have been approved for release by a committee of our officers who are collectively experienced in merger and acquisition, divestiture, restructuring, valuation, fairness opinion and capital markets matters.

## INDEPENDENCE OF BMO CAPITAL MARKETS

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Neither BMO Capital Markets, nor any of our affiliates, is an insider, associate or affiliate (as those terms are defined in the *Securities Act* (Ontario) or the rules made thereunder) of the Company, or any of its respective associates or affiliates (collectively, the "Interested Parties").

BMO Capital Markets has provided the following financial advisory services and has participated in the following financings involving the Interested Parties within the past two years: (i) acting as financial advisor to the Company and the Board of Directors pursuant to the Engagement Agreement; (ii) acting as co-lead arranger, co-bookrunner and administrative agent for the Company in connection with underwriting of senior credit facilities for Element Fleet Management and ECN Capital in connection with the Element Arrangement; (iii) acting as financial advisor to the Company in connection with its acquisition of GE Capital's fleet operations in the United States, Mexico, Australia and New Zealand in August 2015; (iv) acting as co-lead arranger, co-bookrunner and administrative agent for the Company in connection with the underwritten increase and extension to the Company's senior credit facilities in August 2015; (v) acting as co-bookrunner on each of a C\$2.035 billion bought deal offering of common shares via subscription receipts and a C\$173 million offering of preferred shares, and acting as sole bookrunner on a C\$575 million bought deal offering of extendible convertible unsecured debentures, each in May 2015; (vi) acting as financial advisor to the Company in connection with its acquisition of PHH Corporation's North American fleet operations in July 2014; (vii) acting as co-lead arranger, co-bookrunner and administrative agent in connection with the underwriting of senior secured credit facilities in June 2014; (viii) acting as co-bookrunner on a C\$949 million offering of common shares via subscription receipts, a C\$345 million offering of extendible convertible unsecured subordinated debentures, and a C\$133 million offering of preferred shares, each in June 2015; (ix) providing securitization commitments of US\$100 million with respect to Chesapeake Funding II LLC Series 2015-1 U.S. fleet securitization program in December 2015 and C\$525 million with respect to Element Fleet Lease Receivables LP Series 2014-1 Canadian fleet securitization program in December 2015; (x) acting as financial advisor and agent, and providing a US\$300 million securitization commitment with respect to the Element Funding U.S., LLC U.S. commercial and vendor finance securitization program in May 2016; (xi) providing cash management services to the Company; (xii) providing foreign exchange, interest rate and equity compensation hedging services to the Company; and (xiii) providing other banking services. Other than as listed above, BMO Capital Markets has not been engaged to provide any financial advisory services nor has it participated in any financings involving the Interested Parties within the past two years.

Other than as set forth above, there are no understandings, agreements or commitments between BMO Capital Markets and any of the Interested Parties with respect to future business dealings. BMO Capital Markets may, in the future, in the ordinary course of business, provide financial advisory, investment banking, or other financial services to one or more of the Interested Parties from time to time.

BMO Capital Markets and certain of our affiliates act as traders and dealers, both as principal and agent, in major financial markets and, as such, may have had and may in the future have positions in the securities of one or more of the Interested Parties and, from time to time, may have executed or may execute transactions on behalf of one or more Interested Parties for which BMO Capital Markets or such affiliates received or may receive compensation. As investment dealers, BMO Capital Markets and certain of our affiliates conduct research on securities and may, in the ordinary course of business,

provide research reports and investment advice to clients on investment matters, including with respect to one or more of the Interested Parties or the Element Arrangement. In addition, Bank of Montreal (“BMO”), of which BMO Capital Markets is a wholly-owned subsidiary, or one or more affiliates of BMO, may provide banking or other financial services to one or more of the Interested Parties in the ordinary course of business.

## SCOPE OF REVIEW

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In connection with rendering the Opinion, we have reviewed and relied upon, or carried out, among other things, the following:

1. a draft of the Arrangement Agreement dated July 20, 2016;
2. a draft of the Circular dated July 15, 2016;
3. draft unaudited pro forma summary financial statements of the Company for the quarter ended March 31, 2016 giving effect to the Element Arrangement on a pro forma basis;
4. draft carve-out combined financial statements of ECN Capital for the years ended December 31, 2013, 2014 and 2015 and as at December 31, 2014 and 2015;
5. draft unaudited carve-out combined financial statements of ECN Capital for the quarters ended March 31, 2015 and 2016 and as at March 31, 2015 and 2016;
6. certain publicly available information relating to the business, operations, financial condition and trading history of the Company and other selected public companies we considered relevant;
7. certain internal financial, operating, corporate and other information prepared or provided by or on behalf of the Company relating to the business, operations and financial condition of the Company, Element Fleet Management and ECN Capital;
8. internal management forecasts, projections, estimates and budgets for the Company, Element Fleet Management and ECN Capital prepared or provided by or on behalf of management of the Company;
9. discussions with management of the Company relating to: (i) the Company’s current business, strategy, plan, financial condition and prospects; and (ii) the business, strategy, plans, prospects, target pro forma capital structures and ability to secure financing for Element Fleet Management and ECN Capital;
10. various reports published by equity research analysts, industry sources and credit rating agencies we considered relevant;
11. a letter of representation as to certain factual matters and the completeness and accuracy of certain information upon which the Opinion is based, addressed to us and dated as of the date hereof, provided by senior officers of the Company; and
12. such other information, investigations, analyses and discussions as we considered necessary or appropriate in the circumstances.

BMO Capital Markets has not, to the best of its knowledge, been denied access by the Company to any information under the Company’s control requested by BMO Capital Markets.

## ASSUMPTIONS AND LIMITATIONS

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We have relied upon and assumed the completeness, accuracy and fair presentation of all financial and other information, data, advice, opinions, representations and other material obtained by us from public sources or provided to us by or on behalf of the Company or otherwise obtained by us in connection with our engagement (the “Information”). The Opinion is conditional upon such completeness, accuracy and fair presentation. We have not been requested to, and have not assumed any obligation to, independently verify the completeness, accuracy or fair presentation of any such Information. We have assumed that forecasts, projections, estimates and budgets provided to us and used in our analyses were reasonably prepared on bases reflecting the best currently available assumptions, estimates and judgments of management of the Company, having regard to the Company’s, Element Fleet Management’s and ECN Capital’s business, plans, financial condition and prospects. BMO Capital Markets is providing the Opinion based on the assumption that the Element Arrangement is expected to qualify as a “butterfly reorganization” under paragraph 55(3)(b) of the *Income Tax Act* (Canada) and, accordingly, the Element Arrangement is expected to occur on a tax-deferred basis for both the Company and ECN Capital for Canadian federal income tax purposes, and BMO Capital Markets has assumed that the Element Arrangement is not expected to result in any material adverse tax consequences for Shareholders (other than such holders who exercise their dissent rights in respect of the Element Arrangement) or to any of the Company/Element Fleet Management, ECN Capital or their respective subsidiaries.

Senior officers of the Company have represented to BMO Capital Markets in a letter of representation delivered as of the date hereof, among other things, that: (i) the Information provided to BMO Capital Markets orally by, or in the presence of, an officer or employee of, the Company, or in writing by the Company or any of its subsidiaries (as defined in National Instrument 45-106 – *Prospectus Exemptions*) or any of its or their representatives in connection with our engagement was, at the date the Information was provided to BMO Capital Markets, and is, as of the date hereof, complete, true and correct in all material respects, and did not and does not contain a misrepresentation (as defined in the *Securities Act* (Ontario)); and (ii) since the dates on which the Information was provided to BMO Capital Markets, except as disclosed in writing to BMO Capital Markets, there has been no material change, financial or otherwise, in the financial condition, assets, liabilities (contingent or otherwise), business, operations or prospects of the Company or any of its subsidiaries, and no change has occurred in the Information or any part thereof which would have or which could reasonably be expected to have a material effect on the Opinion.

In preparing the Opinion, we have assumed that the executed Arrangement Agreement and the Circular will not differ in any material respect from the drafts that we reviewed, and that the Element Arrangement will be consummated in accordance with the terms and conditions of the Arrangement Agreement without waiver of, or amendment to, any term or condition that is in any way material to our analyses.

The Opinion is rendered on the basis of securities markets, economic, financial and general business conditions prevailing as of the date hereof and the condition and prospects, financial and otherwise, of the Company, Element Fleet Management and ECN Capital as they are reflected in the Information and as they have been represented to BMO Capital Markets in discussions with management of the Company and its representatives. In our analyses and in preparing the Opinion, BMO Capital Markets made numerous judgments and assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond our control or that of any party involved in the Element Arrangement.

The Opinion is provided to the Board of Directors for its exclusive use only in considering the Element Arrangement and may not be used or relied upon by any other person or for any other purpose without our prior written consent. The Opinion does not constitute a recommendation as to how any Shareholder should vote or act on any matter relating to the Element Arrangement. Except for the inclusion of the Opinion in its entirety and a summary thereof (in a form acceptable to us) in the Circular, the Opinion is not to be reproduced, disseminated, quoted from or referred to (in whole or in part) without our prior written consent.

We have not been asked to prepare and have not prepared a formal valuation or appraisal of the securities or assets of the Company or of any of its affiliates or of Element Fleet Management or ECN Capital or their respective securities or assets, and the Opinion should not be construed as such. The Opinion is not, and should not be construed as, advice as to the price at which the securities of the Company, Element Fleet Management or ECN Capital may trade at any time. BMO Capital Markets was not engaged to review any legal, tax or regulatory aspects of the Element Arrangement and the Opinion does not address any such matters. We have relied upon, without independent verification, the assessment by the Company and its legal and tax advisors with respect to such matters. In addition, the Opinion does not address the relative merits of the Element Arrangement as compared to any strategic alternatives that may be available to the Company.

The Opinion is rendered as of the date hereof and BMO Capital Markets disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting the Opinion which may come or be brought to the attention of BMO Capital Markets after the date hereof. Without limiting the foregoing, if we learn that any of the information we relied upon in preparing the Opinion was inaccurate, incomplete or misleading in any material respect, BMO Capital Markets reserves the right to change or withdraw the Opinion.

#### CONCLUSION

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Based upon and subject to the foregoing, BMO Capital Markets is of the opinion that, as of the date hereof, the Consideration to be received by the Shareholders pursuant to the Element Arrangement is fair, from a financial point of view, to the Shareholders.

Yours truly,

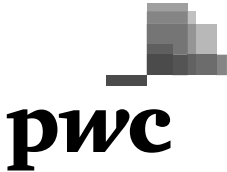
*BMO Nesbitt Burns Inc.*

**BMO Nesbitt Burns Inc.**

**APPENDIX F**

**IAC ARRANGEMENT FAIRNESS OPINION**





## **Private and Confidential**

July 25, 2016

Board of Directors  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, Ontario M5J 2S1

**Subject: Fairness Opinion in Respect of the Proposed Transaction involving the Acquisition of the Outstanding Class A Shares and Class B Shares of INFOR Acquisition Corp**

## **INTRODUCTION**

PricewaterhouseCoopers LLP (“PwC”) understands that Element Financial Corporation (“Element”) is planning to spin out its Commercial Finance business into a newly created entity ECN Capital Corp. (“ECN”) by way of a court-approved statutory plan of arrangement (the “Element Arrangement”).

In a separate transaction, ECN plans to acquire all of the outstanding Class A shares and Class B shares (together the “Shares”) of INFOR Acquisition Corp. (“IAC”) by way of a separate court-approved statutory plan of arrangement (the “IAC Arrangement” and/or the “Proposed Transaction”). Under the Proposed Transaction, pursuant to the rules of the Toronto Stock Exchange (“TSX”) and IAC’s governing documents, ECN’s acquisition of the Shares constitutes a “qualifying acquisition” for IAC. The purchase price for the Shares (the “Purchase Price”) shall be satisfied by the issuance of common shares of ECN.

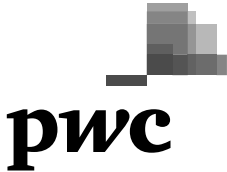
## **ENGAGEMENT**

The Board of Directors of Element (the “Board”) have engaged us as professional advisors experienced in business and security valuations to provide a fairness opinion (“Fairness Opinion”) as to whether the Proposed Transaction is fair, from a financial point of view, to Element shareholders.

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*PricewaterhouseCoopers LLP  
PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario, Canada M5J 0B2  
T: +1 416 863 1133, F: +1 416 365 8215, www.pwc.com/ca*

“PwC” refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.



Our Fairness Opinion does not represent a formal valuation of Element, IAC, nor is it a recommendation as to whether to proceed with the Proposed Transaction. In addition, the Fairness Opinion is not an opinion on the Element Arrangement.

Our Fairness Opinion is for the sole use of the Board and will be one factor, among others, that the Board will consider in determining whether to pursue the Proposed Transaction. Except for the inclusion of our Fairness Opinion in its entirety and a summary thereof (in a form that is acceptable to us) in Element management's information circular (the "Circular"), our Fairness Opinion is not to be reproduced, disseminated, quoted from or referred to (in whole or in part) without our prior written consent. Our Fairness Opinion may not be relied upon by any other party. Any recipient of the Fairness Opinion acknowledges the restrictions in its use and circulation. We do not accept any losses from unauthorized use of our Fairness Opinion.

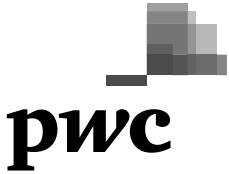
The terms of our engagement provide that PwC is to be paid a fee for our Fairness Opinion. In addition, PwC is to be reimbursed for reasonable expenses and to be indemnified in certain circumstances.

All references to currency in the Fairness Opinion are in Canadian dollars ("\$"), unless otherwise stated.

#### **CREDENTIALS OF PWC LLP**

The firms of the PricewaterhouseCoopers global network ([www.pwc.com](http://www.pwc.com)) provide industry-focused assurance, tax and advisory services to build public trust and enhance value for clients and their stakeholders. More than 180,000 people in 158 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice. In Canada, PwC ([www.pwc.com/ca](http://www.pwc.com/ca)) has more than 6,500 partners and staff in offices across the country. Unless otherwise indicated, "PwC" refers to PricewaterhouseCoopers LLP, Canada, an Ontario limited liability partnership.

Our Canadian business valuation group was formed in 1970 and has been at the centre of business and security valuation activity since that time. Experienced professional personnel are located from coast to coast as part of the Valuations, Modelling and Disputes practice. Our professionals were leaders in forming The Canadian Institute of Chartered Business Valuators ("CICBV") and continue to be actively involved at the CICBV.



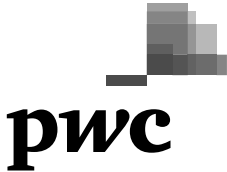
PwC has broad experience in completing and defending, when necessary, assignments involving the valuation of all types of entities and business interests for various purposes, including transactions subject to public scrutiny, the sale or purchase of an entity or assets by related parties, assistance in resolving shareholders' disputes, tax-based corporate reorganizations, estate planning and merger and acquisition activity.

PwC confirms that, to the best of its knowledge, after all due and reasonable inquiry, PwC has disclosed to you all material facts, which could reasonably be considered to be relevant to PwC qualifications and independence for the purposes of the fairness opinion engagement. Based on the foregoing, and after reasonable inquiry, we confirm that we are independent for the purposes of the Fairness Opinion.

### **SCOPE OF REVIEW**

In preparing the Fairness Opinion, PwC has reviewed and, where applicable, relied upon, among other information, the following:

1. Arrangement agreement among Element, IAC and other parties dated July 25, 2016 (collectively herein referred to as the "Agreement").
2. Draft management information circular with respect to a proposed plan of arrangement involving Element Financial Corporation, ECN Capital Corp., 2510204 Ontario Inc. and INFOR Acquisition Inc., dated July 25, 2016 (the "Draft Circular").
3. Publicly available information related to INFOR Acquisition Corp.
4. Element and IAC management-prepared analysis with respect to the Proposed Transaction and exchange ratio calculations set out in the Agreement.
5. Discussions with representatives of Element, IAC, and Element's financial advisors with respect to the Proposed Transaction.
6. Market research into underwriting fees and observed discounts on secondary treasury share offerings.



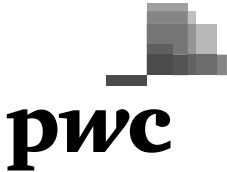
7. Information obtained from Element management and public sources with respect to the business of ECN, including its operations, financial results to March 31, 2016, market position, budgets, forecasts and future outlook.
8. Research including implied trading multiples, market transactions and cost of capital for somewhat comparable publicly traded companies, as well as, industry conditions.
9. Representations contained in certificates addressed to us from Element management as to the completeness and accuracy of the information provided and upon which the Fairness Opinion is based.

## **LIMITATIONS AND ASSUMPTIONS**

### **Limitations**

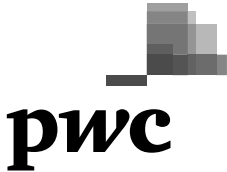
The Fairness Opinion is subject to the following limitations, restrictions and qualifications, any changes to which could have a significant impact on PwC's assessment of the fairness of the Proposed Transaction to Element shareholders.

1. PwC has relied upon the completeness, accuracy and fair presentation of all the financial information, data, advice, opinions or representations obtained by it from public sources, Element, IAC, as well as other parties (collectively, the "Information"), some of which is detailed under the "Scope of Review" section above. The Fairness Opinion is conditional upon such completeness, accuracy and fair presentation of the Information. PwC has not verified independently the completeness, accuracy and fair presentation of the Information.
2. With respect to the financial analysis and details provided to us and relied upon in our analysis, we have assumed that they have been prepared on a reasonable basis reflecting current best assumptions, estimates and judgments of Element and IAC.
3. The Fairness Opinion has been prepared on the basis of economic, financial and general business conditions existing on or about the current date. Future conditions may change and are beyond the control of PwC or any party involved in the Proposed Transaction.
4. In preparing the Fairness Opinion, PwC has relied upon written letters of representation from Element stating that, among other things, (i) they have read our Fairness Opinion and are not aware of any errors, omissions or misrepresentations of facts, which might



have an impact on our conclusion therein; (ii) to the best of their knowledge, all of the Information provided orally or in writing to PwC by Element is complete, true and correct in all material respects and does not contain any untrue statement of a material fact in respect of the Proposed Transaction; (iii) unless disclosed to PwC in writing, the Information does not omit any material fact in respect of the Proposed Transaction; and (iv) since the Information was provided to PwC, unless disclosed to PwC in writing, no material changes have occurred in the Information, or in factors surrounding the Proposed Transaction which would have, or which would reasonably be expected to have, a material effect on the Fairness Opinion.

5. The Fairness Opinion is given as of the date hereof, and PwC reserves the right to change, modify or withdraw the Fairness Opinion if PwC is made aware of any information that was relied upon in preparing the Fairness Opinion to be inaccurate, incomplete or misleading in any material respect. The Fairness Opinion is given as of the date hereof and PwC is under no obligation to advise any person of any change or matter brought to its attention after such date, which would affect the Fairness Opinion and PwC has no obligation to update or revise the Fairness Opinion as a result of future events although PwC reserves the right to update, revise or withdraw the Fairness Opinion. In addition, pursuant to our letter of engagement, our liability under this assignment is limited, and Element have agreed to indemnify us under certain circumstances.
6. The Fairness Opinion must be read in its entirety by the reader, as selecting and relying on only specific portions of the analyses or factors considered by PwC could be misleading. Our Fairness Opinion is based on the Proposed Transaction alone, and not any activities prior to or subsequent to the Proposed Transaction.
7. PwC's Fairness Opinion is limited to the fairness of the Proposed Transaction from a financial point of view to Element shareholders and not the strategic merits of the Proposed Transaction. The Fairness Opinion does not provide assurance that the best possible option for the Proposed Transaction was obtained. It represents an impartial expert judgment, not a statement of facts.
8. The Fairness Opinion is prepared for the Board as one factor, among others, that the Board will consider in determining whether to pursue the Proposed Transaction. The Fairness Opinion is not to be construed as a recommendation whether to proceed with the Proposed Transaction.

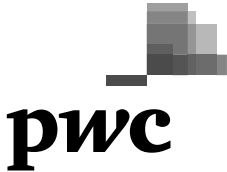


9. In preparing our Fairness Opinion, we have considered the views of Element and IAC and those contained in the Information regarding future events of IAC and ECN, and the industry and economies in which they operate, which, by their nature, cannot be fully substantiated and will likely not occur exactly as forecast. By its nature, the budgeted and forecast information received will not occur as projected and unanticipated events and circumstances may occur that could materially alter our analyses and conclusions. We have not undertaken any review of whether the future oriented data provided comply with existing standards, such as those issued by the Chartered Professional Accountants of Canada (“CPA Canada”).
10. In preparing the Fairness Opinion, we have not exposed IAC, ECN or their assets to the market to determine if a potential purchaser would be prepared to entertain a value for IAC or ECN, other than that implied in the Proposed Transaction. We have not been asked to solicit expressions of interest from or negotiate with any parties concerning potential alternatives to the Proposed Transaction and we have not done so.
11. Nothing contained herein is to be construed as a legal interpretation, an opinion on any contract or document, or a recommendation to invest or divest.
12. The individuals that prepared the Fairness Opinion did so to the best of their knowledge, acting independently and objectively.
13. PwC compensation is not contingent on an action or event resulting from the Proposed Transaction and/or Fairness Opinion.
14. The Fairness Opinion has been prepared in conformity with the Practice Standards of the Canadian Institute of Chartered Business Valuators.

### **Assumptions**

The Fairness Opinion is based on several assumptions including the following, amongst others. Any changes in which could have a significant impact on our conclusion as stated in this Fairness Opinion.

1. The Proposed Transaction will be completed substantially on the terms as described herein and consistent with the Agreement.

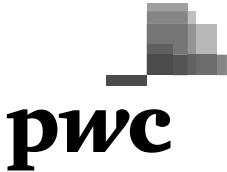


2. Any assumed liabilities under the Proposed Transaction will be in the ordinary course of business, or as set out in the Agreement, and will not have a material adverse impact on the Purchase Price.
3. The information and assumptions reflected in the Element and IAC management-prepared analysis reflect the best estimates of each respective management.
4. Unless otherwise disclosed to PwC, there are no significant positive or negative tax impacts as a result of the Proposed Transaction to ECN or IAC.
5. Unless otherwise disclosed to PwC, there are no known material positive or negative contingencies.
6. In preparing the Fairness Opinion, numerous assumptions have been included with respect to industry performance, general business and economic conditions and other matters, which are beyond the control of PwC or any party involved in the Proposed Transaction.

### **FAIRNESS APPROACH**

In preparing the Fairness Opinion, PwC has been guided by techniques and assumptions that it considered appropriate and necessary in the circumstances. In carrying out our work, we have among other things, considered the following:

1. Considered the Proposed Transaction as set out in the Agreement and Draft Circular, and held discussions with Element, IAC, and Element's financial advisors to obtain a better understanding of the transaction rationale, and principal terms and conditions.
2. Obtained and held discussions with Element and IAC regarding their management-prepared analysis of the exchange ratios for all relevant share classes in order to understand the methodology, components, assumptions and formula.
3. Performed relative value analysis of IAC and ECN giving consideration to the nature of the businesses and operating characteristics discussed in more detail below.
4. Conducted market research and discussions with industry participants including underwriting fees and observed discounts on secondary treasury share offerings.



The valuation approaches considered in our relative value analysis, and accordingly the exchange ratio set out in the Agreement, are as follows:

1. ECN – a combination of market based and income approaches, including price/book, price/earnings and discounted cash flow analysis (“DCF”) methods for the business segments within ECN to arrive at an overall indication of fair market value.
2. IAC – a net asset approach based on the underlying assets and liabilities in order to determine net asset value / fair market value.

The results of our relative value analysis (up to the Fairness Opinion date) supports the exchange ratio formula in the Agreement. We understand that the Board will determine fair market value closer to the effective date of the Proposed Transaction.

Where relevant, we have given consideration to the concept of fair market value, which is defined as “the highest price, expressed in terms or cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms-length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

## **FAIRNESS CONSIDERATIONS**

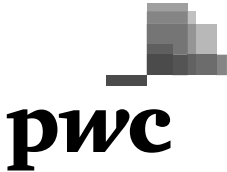
In considering the fairness, from a financial point of view, of the Proposed Transaction to Element shareholders, we considered other various factors related to the Proposed Transaction, the most important of which are discussed below.

### **1. Exchange ratio on fully paid class A and B shares**

The exchange ratio applicable to the fully paid Class A and B shares of IAC utilizes the net asset value of IAC as defined in the Agreement which is consistent with its underlying fair market value due to its principal asset being cash and short term securities. The valuation of ECN utilized in the exchange ratio is based on the aggregate fair market value of ECN as determined by Element’s Board of Directors. The exchange ratio utilizes values of ECN and IAC that are en bloc values before considering any minority discount. After the Proposed Transaction, IAC shareholders will be minority shareholders of ECN, whereas ECN will own 100% of IAC. These valuation bases and approaches appear reasonable in the circumstances.

### **2. Exchange ratio on Class B founder shares**





The payments to the holders of Class B founder shares, via their exchange ratio formula, are akin to commissions paid on the cost of raising capital, the premium for which is supported by our research into underwriting fees and discounts applicable to recent secondary treasury common share equity offerings and Element's historical experience.

### **3. Immediate access to funding**

The Proposed Transaction provides immediate and certain access to equity capital that may not otherwise be readily available to ECN on similar terms given the uncertainties with respect to the trading activity of ECN post Element Arrangement and future capital market conditions. This equity capital will help ECN execute on its strategic growth plans.

### **4. IAC expertise**

As part of the Proposed Transaction, two members of IAC's current Board of Directors (William Holland and Neil Selfe) will become members of the ECN Board of Directors, lending their financial services and capital markets expertise to the business.

### **5. Additional Potential Liquidity**

The outstanding Class A warrants of IAC will convert to warrants of ECN. These warrants potentially represent access to additional liquidity at no additional cost.

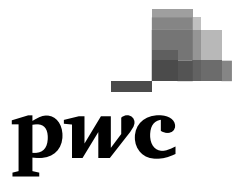
### **6. Tax Considerations**

It is important that the Proposed Transaction occurs at a value consistent with the Element Arrangement to preserve the positive tax attributes of the Element Arrangement.

## **FAIRNESS CONCLUSION**

Based upon and subject to the foregoing, including the scope of review, limitations and assumptions, PwC is of the opinion that, at the date hereof, the IAC Arrangement is fair, from a financial point of view, to Element shareholders.

Yours truly,



*PricewaterhouseCoopers LLP*

PricewaterhouseCoopers LLP

## APPENDIX G

### SECTION 185 OF THE *BUSINESS CORPORATIONS ACT (ONTARIO)*

#### Rights of dissenting shareholders

185. (1) Subject to subsection (3) and to sections 186 and 248, if a corporation resolves to,
- (a) amend its articles under section 168 to add, remove or change restrictions on the issue, transfer or ownership of shares of a class or series of the shares of the corporation;
  - (b) amend its articles under section 168 to add, remove or change any restriction upon the business or businesses that the corporation may carry on or upon the powers that the corporation may exercise;
  - (c) amalgamate with another corporation under sections 175 and 176;
  - (d) be continued under the laws of another jurisdiction under section 181; or
  - (e) sell, lease or exchange all or substantially all its property under subsection 184 (3), a holder of shares of any class or series entitled to vote on the resolution may dissent. R.S.O. 1990, c. B.16, s. 185 (1).

#### Idem

(2) If a corporation resolves to amend its articles in a manner referred to in subsection 170 (1), a holder of shares of any class or series entitled to vote on the amendment under section 168 or 170 may dissent, except in respect of an amendment referred to in,

- (a) clause 170 (1) (a), (b) or (e) where the articles provide that the holders of shares of such class or series are not entitled to dissent; or
- (b) subsection 170 (5) or (6). R.S.O. 1990, c. B.16, s. 185 (2). One class of shares

(2.1) The right to dissent described in subsection (2) applies even if there is only one class of shares. 2006, c. 34, Sched. B, s. 35.

#### Exception

(3) A shareholder of a corporation incorporated before the 29th day of July, 1983 is not entitled to dissent under this section in respect of an amendment of the articles of the corporation to the extent that the amendment,

- (a) amends the express terms of any provision of the articles of the corporation to conform to the terms of the provision as deemed to be amended by section 277; or
- (b) deletes from the articles of the corporation all of the objects of the corporation set out in its articles, provided that the deletion is made by the 29th day of July, 1986. R.S.O. 1990, c. B.16, s. 185 (3).

#### Shareholder's right to be paid fair value

(4) In addition to any other right the shareholder may have, but subject to subsection (30), a shareholder who complies with this section is entitled, when the action approved by the resolution from which the shareholder dissents becomes effective, to be paid by the corporation the fair value of the

shares held by the shareholder in respect of which the shareholder dissents, determined as of the close of business on the day before the resolution was adopted. R.S.O. 1990, c. B.16, s. 185 (4).

### **No partial dissent**

(5) A dissenting shareholder may only claim under this section with respect to all the shares of a class held by the dissenting shareholder on behalf of any one beneficial owner and registered in the name of the dissenting shareholder. R.S.O. 1990, c. B.16, s. 185 (5).

### **Objection**

(6) A dissenting shareholder shall send to the corporation, at or before any meeting of shareholders at which a resolution referred to in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the corporation did not give notice to the shareholder of the purpose of the meeting or of the shareholder's right to dissent. R.S.O. 1990, c. B.16, s. 185 (6).

### **Idem**

(7) The execution or exercise of a proxy does not constitute a written objection for purposes of subsection (6). R.S.O. 1990, c. B.16, s. 185 (7).

### **Notice of adoption of resolution**

(8) The corporation shall, within ten days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (6) notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn the objection. R.S.O. 1990, c. B.16, s. 185 (8).

### **Idem**

(9) A notice sent under subsection (8) shall set out the rights of the dissenting shareholder and the procedures to be followed to exercise those rights. R.S.O. 1990, c. B.16, s. 185 (9).

### **Demand for payment of fair value**

(10) A dissenting shareholder entitled to receive notice under subsection (8) shall, within twenty days after receiving such notice, or, if the shareholder does not receive such notice, within twenty days after learning that the resolution has been adopted, send to the corporation a written notice containing,

- (a) the shareholder's name and address;
- (b) the number and class of shares in respect of which the shareholder dissents; and
- (c) a demand for payment of the fair value of such shares. R.S.O. 1990, c. B.16, s. 185 (10).

### **Certificates to be sent in**

(11) Not later than the thirtieth day after the sending of a notice under subsection (10), a dissenting shareholder shall send the certificates, if any, representing the shares in respect of which the shareholder dissents to the corporation or its transfer agent. R.S.O. 1990, c. B.16, s. 185 (11); 2011, c. 1, Sched. 2, s. 1 (9).

### **Idem**

(12) A dissenting shareholder who fails to comply with subsections (6), (10) and (11) has no right to make a claim under this section. R.S.O. 1990, c. B.16, s. 185 (12).

### **Endorsement on certificate**

(13) A corporation or its transfer agent shall endorse on any share certificate received under subsection (11) a notice that the holder is a dissenting shareholder under this section and shall return forthwith the share certificates to the dissenting shareholder. R.S.O. 1990, c. B.16, s. 185 (13).

### **Rights of dissenting shareholder**

(14) On sending a notice under subsection (10), a dissenting shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of the shares as determined under this section except where,

- (a) the dissenting shareholder withdraws notice before the corporation makes an offer under subsection (15);
- (b) the corporation fails to make an offer in accordance with subsection (15) and the dissenting shareholder withdraws notice; or
- (c) the directors revoke a resolution to amend the articles under subsection 168 (3), terminate an amalgamation agreement under subsection 176 (5) or an application for continuance under subsection 181 (5), or abandon a sale, lease or exchange under subsection 184 (8),

in which case the dissenting shareholder's rights are reinstated as of the date the dissenting shareholder sent the notice referred to in subsection (10) R.S.O. 1990, c. B.16, s. 185 (14); 2011, c. 1, Sched. 2, s.

### **Same**

(14.1) A dissenting shareholder whose rights are reinstated under subsection (14) is entitled, upon presentation and surrender to the corporation or its transfer agent of any share certificate that has been endorsed in accordance with subsection (13),

- (a) to be issued, without payment of any fee, a new certificate representing the same number, class and series of shares as the certificate so surrendered; or
- (b) if a resolution is passed by the directors under subsection 54 (2) with respect to that class and series of shares,
  - (i) to be issued the same number, class and series of uncertificated shares as represented by the certificate so surrendered, and
  - (ii) to be sent the notice referred to in subsection 54 (3). 2011, c. 1, Sched. 2, s. 1 (11). Same

(14.2) A dissenting shareholder whose rights are reinstated under subsection (14) and who held uncertificated shares at the time of sending a notice to the corporation under subsection (10) is entitled,

- (a) to be issued the same number, class and series of uncertificated shares as those held by the dissenting shareholder at the time of sending the notice under subsection (10); and
- (b) to be sent the notice referred to in subsection 54 (3). 2011, c. 1, Sched. 2, s. 1 (11).

**Offer to pay**

(15) A corporation shall, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the corporation received the notice referred to in subsection (10), send to each dissenting shareholder who has sent such notice,

- (a) a written offer to pay for the dissenting shareholder's shares in an amount considered by the directors of the corporation to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or
- (b) if subsection (30) applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares. R.S.O. 1990, c. B.16, s. 185 (15).

**Idem**

(16) Every offer made under subsection (15) for shares of the same class or series shall be on the same terms. R.S.O. 1990, c. B.16, s. 185 (16).

**Idem**

(17) Subject to subsection (30), a corporation shall pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (15) has been accepted, but any such offer lapses if the corporation does not receive an acceptance thereof within thirty days after the offer has been made. R.S.O. 1990, c. B.16, s. 185 (17).

**Application to court to fix fair value**

(18) Where a corporation fails to make an offer under subsection (15) or if a dissenting shareholder fails to accept an offer, the corporation may, within fifty days after the action approved by the resolution is effective or within such further period as the court may allow, apply to the court to fix a fair value for the shares of any dissenting shareholder. R.S.O. 1990, c. B.16, s. 185 (18).

**Idem**

(19) If a corporation fails to apply to the court under subsection (18), a dissenting shareholder may apply to the court for the same purpose within a further period of twenty days or within such further period as the court may allow. R.S.O. 1990, c. B.16, s. 185 (19).

**Idem**

(20) A dissenting shareholder is not required to give security for costs in an application made under subsection (18) or (19). R.S.O. 1990, c. B.16, s. 185 (20).

**Costs**

(21) If a corporation fails to comply with subsection (15), then the costs of a shareholder application under subsection (19) are to be borne by the corporation unless the court otherwise orders. R.S.O. 1990, c. B.16, s. 185 (21).

**Notice to shareholders**

(22) Before making application to the court under subsection (18) or not later than seven days after receiving notice of an application to the court under subsection (19), as the case may be, a corporation shall give notice to each dissenting shareholder who, at the date upon which the notice is given,

- (a) has sent to the corporation the notice referred to in subsection (10); and
- (b) has not accepted an offer made by the corporation under subsection (15), if such an offer was made,

of the date, place and consequences of the application and of the dissenting shareholder's right to appear and be heard in person or by counsel, and a similar notice shall be given to each dissenting shareholder who, after the date of such first mentioned notice and before termination of the proceedings commenced by the application, satisfies the conditions set out in clauses (a) and (b) within three days after the dissenting shareholder satisfies such conditions. R.S.O. 1990, c. B.16, s. 185 (22).

### **Parties joined**

(23) All dissenting shareholders who satisfy the conditions set out in clauses (22)(a) and (b) shall be deemed to be joined as parties to an application under subsection (18) or (19) on the later of the date upon which the application is brought and the date upon which they satisfy the conditions, and shall be bound by the decision rendered by the court in the proceedings commenced by the application. R.S.O. 1990, c. B.16, s. 185 (23).

### **Idem**

(24) Upon an application to the court under subsection (18) or (19), the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court shall fix a fair value for the shares of all dissenting shareholders. R.S.O. 1990, c. B.16, s. 185 (24).

### **Appraisers**

(25) The court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders. R.S.O. 1990, c. B.16, s. 185 (25).

### **Final order**

(26) The final order of the court in the proceedings commenced by an application under subsection (18) or (19) shall be rendered against the corporation and in favour of each dissenting shareholder who, whether before or after the date of the order, complies with the conditions set out in clauses (22) (a) and (b). R.S.O. 1990, c. B.16, s. 185 (26).

### **Interest**

(27) The court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment. R.S.O. 1990, c. B.16, s. 185 (27).

### **Where corporation unable to pay**

(28) Where subsection (30) applies, the corporation shall, within ten days after the pronouncement of an order under subsection (26), notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares. R.S.O. 1990, c. B.16, s. 185 (28).

### **Idem**

(29) Where subsection (30) applies, a dissenting shareholder, by written notice sent to the corporation within thirty days after receiving a notice under subsection (28), may,

- (a) withdraw a notice of dissent, in which case the corporation is deemed to consent to the withdrawal and the shareholder's full rights are reinstated; or
- (b) retain a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders. R.S.O. 1990, c. B.16, s. 185 (29).

### **Idem**

(30) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities. R.S.O. 1990, c. B.16, s. 185 (30).

### **Court order**

(31) Upon application by a corporation that proposes to take any of the actions referred to in subsection (1) or (2), the court may, if satisfied that the proposed action is not in all the circumstances one that should give rise to the rights arising under subsection (4), by order declare that those rights will not arise upon the taking of the proposed action, and the order may be subject to compliance upon such terms and conditions as the court thinks fit and, if the corporation is an offering corporation, notice of any such application and a copy of any order made by the court upon such application shall be served upon the Commission. 1994, c. 27, s. 71 (24).

### **Commission may appear**

(32) The Commission may appoint counsel to assist the court upon the hearing of an application under subsection (31), if the corporation is an offering corporation. 1994, c. 27, s. 71 (24).



**APPENDIX H**  
**INTERIM ORDER**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) THURSDAY, THE 28<sup>TH</sup>  
JUSTICE H. J. WILTON - SIBOL ) DAY OF JULY, 2016

*HJW-S*

**IN THE MATTER OF BUSINESS CORPORATIONS ACT  
(ONTARIO), R.S.O. 1990, CHAP. B.16, SECTION 182, AS  
AMENDED**

**AND IN THE MATTER OF AN APPLICATION BY  
ELEMENT FINANCIAL CORPORATION RELATING TO A  
PROPOSED ARRANGEMENT**



**INTERIM ORDER**

THIS MOTION, made by the Applicant, Element Financial Corporation (“**Element**”) for an interim order for advice and directions pursuant to section 182 of the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B.16, as amended (the “**OBCA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application dated July 26, 2016, and the affidavit of Michel Béland sworn July 26, 2016 (the “**Affidavit**”), including the Plan of Arrangement, which is attached to the Arrangement Agreement as Appendix D to the draft Element Management Information Circular (the “**Circular**”), which is attached as Exhibit “A” to the Affidavit, and on hearing the submissions of the lawyers for Element,

**Definitions**

1. THIS COURT ORDERS that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Circular or otherwise as specifically defined herein.

**The Meeting**

2. THIS COURT ORDERS that Element is permitted to call, hold and conduct a special meeting (the “**Meeting**”) of the holders (the “**Shareholders**”) of common shares (the

“Shares”) in the capital of Element, to be held at the offices of Blake, Cassels & Graydon LLP, Suite 4000, Commerce Court West, 199 Bay Street, Toronto, at 9:00 a.m. (Toronto time) on September 20, 2016, in order for the Shareholders to consider and, if determined advisable, pass a special resolution authorizing, adopting, approving, with or without variation, the Arrangement and the Plan of Arrangement (collectively, the “**Arrangement Resolution**”).

3. THIS COURT ORDERS that the Meeting shall be called, held and conducted in accordance with the OBCA, the notice of meeting of Shareholders, which accompanies the Circular (the “**Notice of Meeting**”) and the articles and by-laws of Element, subject to what may be provided hereafter and subject to further order of this Court.

4. THIS COURT ORDERS that the record date (the “**Record Date**”) for determination of the Shareholders entitled to notice of, and to vote at, the Meeting shall be July 29, 2016.

5. THIS COURT ORDERS that the only persons entitled to attend or speak at the Meeting shall be:

- (a) the Shareholders or their respective proxyholders;
- (b) the officers, directors, auditors and advisors of Element; and
- (c) other persons who may receive the permission of the Chair of the Meeting.

6. THIS COURT ORDERS that Element may transact such other business at the Meeting as is contemplated in the Circular, or as may otherwise properly be before the Meeting.

#### **Quorum**

7. THIS COURT ORDERS that the Chair of the Meeting shall be determined by Element and that the quorum at the Meeting shall be two persons present at the opening of the Meeting who are entitled to vote thereat either as Shareholders or proxyholders.

### **Amendments to the Arrangement and Plan of Arrangement**

8. THIS COURT ORDERS that Element is authorized to make, subject to the terms of the Arrangement Agreement, and paragraph 9, below, such amendments, modifications or supplements to the Arrangement and the Plan of Arrangement as it may determine without any additional notice to the Shareholders, or others entitled to receive notice under paragraphs 12 and 13 hereof, and the Arrangement and Plan of Arrangement, as so amended, modified or supplemented shall be the Arrangement and Plan of Arrangement to be submitted to the Shareholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications or supplements may be made following the Meeting, but shall be subject to review and, if appropriate, further direction by this Honourable Court at the hearing for the final approval of the Arrangement.

9. THIS COURT ORDERS that, if any amendments, modifications or supplements to the Arrangement or Plan of Arrangement as referred to in paragraph 8, above, would, if disclosed, reasonably be expected to affect a Shareholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed, subject to further order of this Honourable Court, by press release, newspaper advertisement, prepaid ordinary mail, or by the method most reasonably practicable in the circumstances, as Element may determine.

### **Amendments to the Information Circular**

10. THIS COURT ORDERS that Element is authorized to make such amendments, revisions and/or supplements to the draft Circular as it may determine and the Circular, as so amended, revised and/or supplemented, shall be the Circular to be distributed in accordance with paragraphs 12 and 13.

### **Adjournments and Postponements**

11. THIS COURT ORDERS that Element, if it deems advisable and subject to the terms of the Arrangement Agreement, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Shareholders respecting the adjournment or postponement, and

notice of any such adjournment or postponement shall be given by such method as Element may determine is appropriate in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

### **Notice of Meeting**

12. THIS COURT ORDERS that, in order to effect notice of the Meeting, Element shall send notice and access materials ("**Notice and Access Materials**") in accordance with National Instrument 51-102 – *Continuous Disclosure Obligations* and National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NI 54-101**") advising of availability of access to the Circular (including the Notice of Application and this Interim Order), the Notice of Meeting, the form of proxy and the letter of transmittal, along with such amendments or additional documents as Element may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "**Meeting Materials**"), to the following:

- (a) the registered Shareholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:
  - (i) by pre-paid ordinary or first class mail at the addresses of the Shareholders as they appear on the books and records of Element, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the Secretary of Element;
  - (ii) by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i), above; or
  - (iii) by facsimile or electronic transmission to any Shareholder, who is identified to the satisfaction of Element, who requests such transmission in writing and, if required by Element, who is prepared to pay the charges for such transmission;

- (b) non-registered Shareholders by providing sufficient copies of the Notice and Access Materials to intermediaries and registered nominees in a timely manner, in accordance with NI 54-101; and
- (c) the respective directors and auditors of Element by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by facsimile or electronic transmission, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

13. THIS COURT ORDERS that, in the event that Element elects to distribute the Notice and Access Materials, Element is hereby directed to distribute the Notice and Access Materials advising of availability of access to the Circular (including the Notice of Application, and this Interim Order), and any other communications or documents determined by Element to be necessary or desirable (collectively, the “**Court Materials**”) to holders of options (“**Options**”) to purchase Shares (“**Optionholders**”), to holders of Deferred Share Units (“**DSUs**”) and to holders of Performance Share Units (“**PSUs**”) by any method permitted for notice to Shareholders as set forth in paragraphs 12(a) or 12(b), above, concurrently with the distribution described in paragraph 12 of this Interim Order. Distribution to such persons shall be to their addresses as they appear on the books and records of Element or its registrar and transfer agent at the close of business on the Record Date.

14. THIS COURT ORDERS that accidental failure or omission by Element to give notice of the meeting or to distribute the Notice and Access Materials to any person entitled by the Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of Element, or the non-receipt of such notice shall, subject to further order of this Honourable Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such failure or omission is brought to the attention of Element, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

15. THIS COURT ORDERS that Element is hereby authorized to make such amendments, revisions or supplements to the Meeting Materials and Court Materials as Element may determine in accordance with the terms of the Arrangement Agreement ("**Additional Information**"), and that notice of such Additional Information may, subject to paragraph 9, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable in the circumstances, as Element may determine.

16. THIS COURT ORDERS that distribution of the Notice and Access Materials pursuant to paragraphs 12 and 13 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 12 and 13 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Notice and Access Materials, Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 9, above.

#### **Solicitation and Revocation of Proxies**

17. THIS COURT ORDERS that Element is authorized to use the proxies substantially in the form of the drafts accompanying the Circular, with such amendments and additional information as Element may determine are necessary or desirable, subject to the terms of the Arrangement Agreement. Element is authorized, at its expense, to solicit proxies, directly or through its officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as it may determine. Element may waive generally, in its discretion, the time limits set out in the Circular for the deposit or revocation of proxies by Shareholders, if Element deems it advisable to do so.

18. THIS COURT ORDERS that Shareholders shall be entitled to revoke their proxies in accordance with section 110(4) of the OBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s. 110(4)(a) of the OBCA: (a) must be deposited at the registered office of Element as set out in

the Circular; and (b) any such instruments must be received by Element not later than 5:00 p.m. (Eastern Time) on September 16, 2016, or, if the Meeting is adjourned or postponed, not later than 5:00 p.m. (Eastern Time) on the day which is two business days preceding the date of the adjourned or postponed Meeting, or with the Chair of the Meeting on the day of, and prior to the start of, the Meeting or any adjournment thereof.

### **Voting**

19. THIS COURT ORDERS that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be those Shareholders who hold Shares as of the close of business on the Record Date. Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

20. THIS COURT ORDERS that votes shall be taken at the Meeting on the basis of one vote per Share and that in order for the Plan of Arrangement to be implemented, subject to further Order of this Honourable Court, the Arrangement Resolution must be passed, with or without variation, at the Meeting by an affirmative vote of at least two-thirds (66 2/3%) of the votes cast by Shareholders who vote in respect thereof, in person or by proxy, at the Meeting. Such votes shall be sufficient to authorize Element to do all such acts and things as may be necessary or desirable to give effect to the Arrangement and the Plan of Arrangement on a basis consistent with what is provided for in the Circular without the necessity of any further approval by the Shareholders, Optionholders, holders of DSUs or holders of PSUs, subject only to final approval of the Arrangement by this Court.

21. THIS COURT ORDERS that in respect of matters properly brought before the Meeting pertaining to items of business affecting Element (other than in respect of the Arrangement Resolution), each Shareholder is entitled to one vote for each Share held.

### **Dissent Rights**

22. THIS COURT ORDERS that each registered Shareholder shall be entitled to exercise Dissent Rights in connection with the Arrangement Resolution in accordance with section 185



of the OBCA (except as the procedures of that section are varied by this Interim Order and the Plan of Arrangement) provided that, notwithstanding subsection 185(6) of the OBCA, any Shareholder who wishes to dissent must, as a condition precedent thereto, provide written objection to the Arrangement Resolution to Element, in the form required by section 185 of the OBCA and the Arrangement Agreement, which written objection must be received by Element not later than 5:00 p.m. (Eastern Time) on the second business day immediately preceding the Meeting or any adjournment(s) or postponement(s) thereof, and must otherwise strictly comply with the requirements of the OBCA. For purposes of these proceedings, the "court" referred to in section 185 of the OBCA means this Honourable Court.

23. THIS COURT ORDERS that Element shall be required to offer to pay fair value as of the day prior to approval of the Arrangement Resolution for Shares held by registered Shareholders who duly exercise Dissent Rights, and to pay the amount to which such registered Shareholders may be entitled pursuant to the terms of the Arrangement Agreement.

24. THIS COURT ORDERS that any registered Shareholder who duly exercises such Dissent Rights set out in paragraph 22 above and who:

- (a) is ultimately determined by this Honourable Court to be entitled to be paid fair value for his, her or its Shares, shall be deemed to have transferred those Shares as of the Effective Time, without any further act or formality and free and clear of all liens, claims, encumbrances, charges, adverse interests or security interests, to Element for cancellation pursuant to the Plan of Arrangement in consideration of a cash payment from Element equal to such fair value; or
- (b) is for any reason ultimately determined by this Honourable Court not to be entitled to be paid fair value for his, her or its Shares pursuant to the exercise of the Dissent Right, shall be deemed to have participated in the Arrangement as of and from the Effective Time on the same basis and at the same time as any non-dissenting Shareholder;

but in no case shall Element or any other person be required to recognize such Shareholders as holders of common shares of Element at or after the date upon which the Arrangement becomes effective and the names of such Shareholders shall be deleted from Element's register of holders of common shares at that time.

**Hearing of Application for Approval of the Arrangement**

25. THIS COURT ORDERS that upon approval by the Shareholders of the Plan of Arrangement in the manner set forth in this Interim Order, Element may apply to this Court for final approval of the Arrangement.

26. THIS COURT ORDERS that distribution of the Notice of Application and the Interim Order in the Circular, when sent in accordance with paragraphs 12 and 13 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 27.

27. THIS COURT ORDERS that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for Element as soon as reasonably practicable, and, in any event, no less than five (5) days before the hearing of this Application at the following address:

BLAKE, CASSELS & GRAYDON LLP  
Barristers and Solicitors  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, ON M5L 1A9

Attn: R.S.M. Woods and Ryan A. Morris  
Lawyers for Element Financial Corporation

28. THIS COURT ORDERS that, subject to further order of this Honourable Court, the only persons entitled to appear and be heard at the hearing of the within application shall be:

- (a) Element; and

- (b) any person who has filed a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the *Rules of Civil Procedure*.

29. THIS COURT ORDERS that any materials to be filed by Element in support of the within Application for final approval of the Arrangement may be filed up to one day prior to the hearing of the Application without further order of this Honourable Court.

30. THIS COURT ORDERS that in the event the within Application for final approval does not proceed on the date set forth in the Notice of Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 27 shall be entitled to be given notice of the adjourned date.

#### **Precedence**

31. THIS COURT ORDERS that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the Shares, Options, DSUs, PSUs, or the articles or by-laws of Element, this Interim Order shall govern.

#### **Extra-Territorial Assistance**

32. THIS COURT seeks and requests the aid and recognition of any court or any judicial, regulatory, or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Honourable Court in carrying out the terms of this Interim Order.

**Variance**

33. THIS COURT ORDERS that Element shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Honourable Court may direct.

W. Ken - dnt 5

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:  
JUL 28 2016

PER / PAR: 

**IN THE MATTER OF BUSINESS CORPORATIONS ACT (ONTARIO), R.S.O. 1990, CHAP. B.16, SECTION 182, AS AMENDED**  
**AND IN THE MATTER OF AN APPLICATION BY ELEMENT FINANCIAL CORPORATION RELATING TO A PROPOSED ARRANGEMENT**

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

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**INTERIM ORDER**

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**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street, Ste. 4000  
Commerce Court West  
Toronto, Ontario M5L 1A9

**R.S.M. Woods LSUC#: 30169I**  
Tel: (416) 863-3876

**Ryan A. Morris LSUC#: 50831C**  
Tel: (416) 863-2176  
Fax: (416) 863-2653

Lawyers for the Applicant,  
Element Financial Corporation

**APPENDIX I**  
**NOTICE OF APPLICATION**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**



**IN THE MATTER OF *BUSINESS CORPORATIONS ACT*  
(ONTARIO), R.S.O. 1990, CHAP. B.16, SECTION 182, AS  
AMENDED**

**AND IN THE MATTER OF AN APPLICATION BY  
ELEMENT FINANCIAL CORPORATION RELATING TO A  
PROPOSED ARRANGEMENT**

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing on September 21, 2016 at 10:00 a.m., at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.


**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer, or where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU**

**WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**DATE:** <sup>26 ✓</sup>  
July 25, 2016

Issued by:   
(Registry Officer) **C. Irwin**  
Registrar

Address of local office:

330 University Avenue  
7<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1R7

- TO:** All Holders of Common Shares in the capital of Element Financial Corporation  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1
- AND TO:** All Holders of Options to Purchase Common Shares in the capital of Element  
Financial Corporation  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1
- AND TO:** All Holders of Deferred Share Units of Element Financial Corporation  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1
- AND TO:** All Holders of Share Units of Element Financial Corporation  
Element Financial Corporation  
161 Bay Street, Suite 3600  
Toronto, ON M5J 2S1
- AND TO:** All Directors of Element Financial Corporation
- AND TO:** The Auditor for Element Financial Corporation



## APPLICATION

1. Element Financial Corporation ("**Element**") makes application for:
  - (a) an order pursuant to section 182 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "**OBCA**") approving a Plan of Arrangement (the "**Arrangement**") as described in the Element Management Information Circular (the "**Circular**") which Circular will be attached as an exhibit to the affidavit to be filed in support of this Application, and which will result in, among other things, the reorganization of Element into Element Fleet Management Inc. ("**EFM**") and ECN Capital Corp. ("**ECN Capital**");
  - (b) an interim order for the advice and directions of this Court pursuant to subsection 182(5) of the OBCA with respect to the Arrangement and this Application (the "**Interim Order**");
  - (c) an order abridging the time for the service and filing or dispensing with service of the Notice of Application and Application Record, if necessary; and
  - (d) such further and other relief as this Court may deem just.
  
2. The grounds for the Application are:
  - (a) Element is a corporation incorporated and subsisting under the provisions of the OBCA, the common shares of which are listed on the Toronto Stock Exchange (the "**Shares**");
  - (b) through the Arrangement, Element plans to reorganize itself into two publicly-traded companies: EFM, which will focus on Element's existing fleet leasing and management business; and ECN Capital, which will focus on commercial finance in the commercial and vendor, rail and aircraft sectors;

- (d) the Arrangement will result in:
- (i) holders of Shares (the “**Shareholders**”) holding all of the publicly-traded common shares in the capital of Element Fleet Management (“**EFM Shares**”) and all of the publicly-traded common shares in the capital of ECN Capital (“**ECN Capital Shares**”);
  - (ii) all options to purchase Shares (“**Options**”) being exchanged for options to purchase EFM Shares and options to purchase ECN Capital Shares, with substantially the same terms as the Options for which they were exchanged;
  - (iii) holders of Element Deferred Share Units (“**DSUs**”) having the number of their outstanding DSUs adjusted pursuant to the terms of the Element DSU Plan such that the aggregate fair market value of their DSUs is unchanged by the transaction contemplated by the Arrangement;
  - (iv) holders of DSUs who leave the Board or depart as employees receiving cash for their DSUs, following the adjustment referred to above, in accordance with the terms of the Element DSU Plan;
  - (v) holders of Element Share Units (“**PSUs**”) having the number of their outstanding PSUs adjusted pursuant to the terms of the Element PSU Plan to reflect the effect of the Arrangement such that the PSUs are treated similarly to Shares;
  - (vi) Element continuing to operate its fleet management business as Element Fleet Management; and
  - (vii) Element’s commercial finance business being held and operated by ECN Capital;
- (e) Following the completion of the Arrangement, in a separate transaction, ECN Capital will acquire all of the shares of INFOR Acquisition Corp. in exchange for

ECN Capital Shares in order to provide ECN Capital with immediate access to funding to assist in identifying and executing acquisitions to enhance its business;

- (f) the Arrangement is an “arrangement” within the meaning of subsection 182(1) of the OBCA;
- (g) all statutory requirements for an arrangement under the OBCA either have been fulfilled or will be fulfilled by the date of the return of this Application;
- (h) the directions set out and the approvals required pursuant to any Interim Order this court may grant have been followed and obtained, or will be followed and obtained by the return date of this Application;
- (i) the Arrangement is put forward in good faith;
- (j) the Arrangement is fair and reasonable and it is appropriate for this Court to approve the Arrangement;
- (k) section 182 of the OBCA;
- (l) rules 3.02(1), 14.05(2), 16.04(1), 16.08, 17.02, 37 and 38 of the *Rules of Civil Procedure*; and
- (m) such further and other grounds as counsel may advise and this Court may permit.

3. The following documentary evidence will be used at the hearing of the Application:

- (a) such Interim Order as may be granted by this Court;
- (b) the affidavit of Michel Béland, to be sworn, and the exhibits thereto;
- (c) such further affidavit(s) on behalf of Element, reporting as to the compliance with any Interim Order of this Court and as to the result of any meetings ordered by any Interim Order of this Court; and
- (d) such further and other material as counsel may advise and this Court may permit.

4. The Notice of Application will be sent to all registered holders of the Shares, and to such holders of Options, DSUs and PSUs who otherwise will not receive a copy of the Notice of Application as a registered holder of Shares, at the address of each holder as shown on the books and records of Element as at the close of business on the Record Date, or as this Court may direct in the Interim Order, pursuant to rule 17.02(n) of the *Rules of Civil Procedure* in the case of those holders whose addresses, as they appear on the books and records of Element, are outside Ontario.

**DATE:** July <sup>26</sup> 25, 2016

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

**R.S.M. Woods LSUC#: 30169I**  
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Tel: (416) 863-2176  
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Lawyers for the Applicant,  
Element Financial Corporation

CV-16-11470-00CL

Court File No:

IN THE MATTER OF *BUSINESS CORPORATIONS ACT (ONTARIO)*, R.S.O. 1990, CHAP. B.16, SECTION 182, AS AMENDED

AND IN THE MATTER OF AN APPLICATION BY ELEMENT FINANCIAL CORPORATION RELATING TO A PROPOSED ARRANGEMENT

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**NOTICE OF APPLICATION**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario  
M5L 1A9

**R.S.M. Woods LSUC#: 301691**  
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**Ryan A. Morris LSUC#: 50831C**  
Tel: (416) 863-2176  
Fax: (416) 863-2653

Lawyers for the Applicant,  
Element Financial Corporation

**APPENDIX J**  
**ELEMENT FLEET PRO FORMA FINANCIAL STATEMENTS**

Pro Forma Consolidated Financial Statements

**Element Financial Corporation**

Unaudited

Statement of Financial Position as at March 31, 2016

Statement of Operations the three-month period ended

March 31, 2016

Element Financial Corporation

**PRO FORMA CONSOLIDATED STATEMENT OF FINANCIAL POSITION**

[In thousands of Canadian dollars]

As at March 31, 2016

Unaudited

	Element Financial Corporation	Deduct ECN Capital Corp. carve-out	[a]	[b]	[c]	[d]	Pro forma consolidated
	\$	\$	\$	\$	\$	\$	\$
	<i>Add/(Deduct) Pro Forma Adjustments [note 2]</i>						
<b>ASSETS</b>							
Cash	50,168	—	—	—	—	—	50,168
Restricted funds	795,015	189,252	—	—	—	—	605,763
Finance receivables	16,526,084	3,104,034	—	—	185,047	—	13,607,097
Equipment under operating leases	3,906,906	2,551,178	—	—	—	—	1,355,728
Investment in managed fund	144,830	—	—	—	—	—	144,830
Accounts receivable and other assets	131,666	44,045	—	—	—	—	87,621
Notes receivable	49,258	26,813	—	—	—	—	22,445
Derivative financial instruments	7,787	716	—	—	—	—	7,071
Property, equipment and leasehold improvements	53,072	713	—	—	—	—	52,359
Deferred tax assets	166,053	21,235	—	—	—	—	144,818
Intangible assets	923,786	23,406	—	—	—	—	900,380
Goodwill	1,178,894	7,857	—	—	—	—	1,171,037
	<b>23,933,519</b>	<b>5,969,249</b>	<b>—</b>	<b>—</b>	<b>185,047</b>	<b>—</b>	<b>18,149,317</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>							
<b>Liabilities</b>							
Accounts payable and accrued liabilities	516,418	49,311	20,000	—	—	—	487,107
Derivative financial instruments	68,161	22,122	—	—	—	—	46,039
Secured borrowings	17,025,064	4,383,876	—	—	185,047	—	12,826,235
Convertible debentures	841,312	—	—	—	—	—	841,312
Deferred tax liabilities	80,985	11,939	—	—	—	—	69,046
<b>Total liabilities</b>	<b>18,531,940</b>	<b>4,467,248</b>	<b>20,000</b>	<b>—</b>	<b>185,047</b>	<b>—</b>	<b>14,269,739</b>
<b>SHAREHOLDERS' EQUITY</b>							
Common shareholder's equity	4,867,923	—	(20,000)	—	—	(1,502,001)	3,345,922
Preferred share capital	533,656	—	—	—	—	—	533,656
	—	1,502,001	—	—	—	1,502,001	—
<b>Total shareholder's equity</b>	<b>5,401,579</b>	<b>1,502,001</b>	<b>(20,000)</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>3,879,578</b>
	<b>23,933,519</b>	<b>5,969,249</b>	<b>—</b>	<b>—</b>	<b>185,047</b>	<b>—</b>	<b>18,149,317</b>

See accompanying notes



**Element Financial Corporation**

**PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS**

[In thousands of Canadian dollars]

Three-month period ended March 31, 2016

Unaudited

	Element Financial Corporation	Deduct ECN Capital Corp. carve-out	[c]	Pro forma consolidated
	\$	\$	\$	\$
	<i>Adjustments</i>			
<b>NET FINANCIAL INCOME</b>				
Interest income	223,216	49,472	255	173,999
Rental revenue, net	73,774	44,541	—	29,233
	296,990	94,013	203,232	203,232
Interest expense	124,341	40,403	255	84,193
Net interest income before provision for credit losses	172,649	53,610	—	119,039
Provision for credit losses	3,221	3,861	—	(640)
Net interest income	169,428	49,749	—	119,679
Other revenue items	140,332	6,175	—	134,157
Net financial income	309,760	55,924	—	253,836
<b>OPERATING EXPENSES</b>				
Salaries, wages and benefits	71,677	8,056	—	63,621
General and administrative expenses	55,183	7,193	—	47,990
Amortization of convertible debenture synthetic discount	3,003	—	—	3,003
Share-based compensation	9,883	2,070	—	7,813
	139,746	17,319	—	122,427
<b>BUSINESS ACQUISITION COSTS</b>				
Amortization of intangible assets from acquisitions	16,776	650	—	16,126
Transaction and integration costs	31,369	—	—	31,369
	48,145	650	—	47,495
Income before income taxes	121,869	37,955	—	83,914
Provision for income taxes	20,600	8,892	—	11,708
<b>Net income for the period</b>	101,269	29,063	—	72,206
<b>Earnings (loss) per share</b>				
Basic	0.24			0.19
Fully diluted	0.24			0.18
<b>Weighted average shares outstanding</b>				
Basic [note 3]	386,134,550			386,134,550
Fully diluted [note 3]	390,552,940			390,552,940

See accompanying notes

## **Element Financial Corporation**

# **NOTES TO PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS**

[In thousands of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

### **1. BASIS OF PRESENTATION**

On February 16, 2016, the Board of Directors of Element Financial Corporation ["Element"] approved a plan to separate Element into two publicly traded companies. The plan involves the separation of the Commercial and Vendor, Finance, Rail Finance, and Aviation Finance verticals from the existing corporate structure into ECN Capital Corp. ["ECN Capital"], a newly created publicly traded company. The Fleet Management vertical will be renamed Element Fleet Management Corp. ["Element Fleet"] and will continue to operate within the existing corporate structure.

The proposed separation of Element into ECN Capital and Element Fleet [the "Arrangement"] would be implemented through a court approved plan of arrangement and is subject to regulatory, court and shareholder approvals. Element shareholders would receive one ECN Capital common share for each Element common share held.

The unaudited pro forma consolidated statement of operations for the three-month period ended March 31, 2016 has been prepared from the Element unaudited Consolidated Financial Statements for the period ended March 31, 2016, as well as the ECN Capital unaudited Carve-out Combined Financial Statements for the period ended March 31, 2016 which are both included or incorporated by reference in this Circular. The ECN Capital Carve-out Combined Financial Statements were derived from the accounting records of Element on a carve-out basis and therefore include allocated costs, which may not be representative of the costs that may be incurred in the future as an independent, publicly-traded company.

These unaudited Pro Forma Consolidated Financial Statements should be read in conjunction with the Element Consolidated Financial Statements for the year ended December 31, 2015 and the related Management Discussion and Analysis.

These unaudited Pro Forma Consolidated Financial Statements are for illustrative and information purposes only and may not be indicative of the operating results or financial condition that actually would have been achieved if the Arrangement had been in effect on the dates indicated or of the results that may be obtained in the future. In addition to the pro forma adjustments to the historical carve-out combined financial statements, various other factors may have an effect on the financial condition and results of operations after the completion of the Arrangement.

The unaudited pro forma consolidated statement of financial position as at March 31, 2016 gives effect to the Arrangement as if it had occurred as at March 31, 2016. The unaudited pro forma consolidated statement of operations for the period ended March 31, 2016 give effect to the Arrangement as if it had occurred on January 1, 2016.

## Element Financial Corporation

### NOTES TO PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

[In thousands of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

#### 2. PRO FORMA ADJUSTMENTS

The pro forma adjustments contained in these unaudited pro forma consolidated financial statements reflect estimates and assumptions by management of Element based on currently available information.

- [a] The adjustment to increase accounts payable by \$20,000 to accrue for Element's share of the estimated transaction costs incurred to complete the Arrangement. No adjustment has been made to the pro forma consolidated statements of operations for this additional expense because it is considered to be non-recurring.
- [b] ECN Capital's secured borrowings balance at March 31, 2016 includes \$1,504,501 that represents its proportionate share of Element's term senior credit facility. Element has retained the legal obligations associated with this term facility and the facility is expected to remain with Element as part of the Arrangement. ECN Capital is expected to settle the allocated portion with proceeds from its own debt financings and Element expects to use these procedures to reduce the outstanding balance on the term facility. The net impact of these anticipated events, after deducting ECN Capital Finance carve-out balances, is nil.
- [c] The adjustment to reflect a secured borrowing relationship between Element and ECN Capital, whereby ECN Capital's rail finance vertical issued asset-backed notes in March 31, 2016 of which Element held \$185,047 as at March 31, 2016. As part of the Arrangement, Element is expected to retain the investment in the asset-backed notes while ECN Capital is expected to retain the related obligation. There is a related adjustment to interest expense and interest income for the period from issuance to March 31, 2016 of \$255.
- [d] The amount of Element's net investment in ECN Capital, which was recorded in ECN Capital as net investment in its Carve-Out Combined Financial Statements is reclassified to shareholder's equity.

#### 3. EARNINGS (LOSS) PER SHARE

The pro forma basic and diluted earnings per common share is calculated using the same weighted average number of pre-arrangement Element basic and diluted common shares outstanding as at March 31, 2016.

## APPENDIX K

### ELEMENT FLEET FOLLOWING THE ELEMENT ARRANGEMENT

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## NOTICE TO READERS

Unless otherwise indicated, the disclosure in this Appendix K has been prepared assuming that the Element Arrangement has become effective. In particular, unless otherwise indicated, the disclosure in respect of the business and assets of Element contained in this Appendix K is presented on the assumption that the Element Arrangement has become effective and the assets and liabilities related to the Commercial Finance Business of Element have been transferred to ECN Capital prior to the date in respect of which such disclosure relates. References to “Element’s Assets” in this Appendix K are to such assets as held by Element Fleet upon the Element Arrangement becoming effective. Element Fleet’s *pro forma* consolidated financial statements as at and for the three months ended March 31, 2016, which are included in Appendix J to this Management Information Circular, have, unless otherwise indicated, been derived from the historical consolidated financial statements of Element for each of the relevant periods. Information included in this Appendix K derived from the Element Fleet Pro Forma Financial Statements is presented on a carve-out basis from such historical consolidated financial statements of Element for the relevant period. Where indicated, information presented on a *pro forma* basis has been derived from the Element Fleet Pro Forma Financial Statements. Unless otherwise defined herein, all capitalized terms used in this Appendix K have the meanings given to such terms in the “*Glossary of Terms*” in this Management Information Circular. Unless the context otherwise permits, indicates or requires, all references in this Appendix K to “Element”, “Element Fleet” “we”, “our”, “us” and similar expressions are references to Element Fleet and the Fleet Management Business carried on by it following completion of the Element Arrangement. Please see “*Element Prior to the Element Arrangement*” in this Management Information Circular for information regarding Element prior to the Element Arrangement having become effective.

This Appendix K contains only certain information regarding Element Fleet as it will exist following completion of the Element Arrangement. For additional information, readers are encouraged to read this Management Information Circular in its entirety, including, without limitation, the information contained under the heading “*Element Fleet Following the Element Arrangement*” and the documents referred to in, and the information contained under, the heading “*Element Prior to the Element Arrangement – Documents Incorporated by Reference*” in this Management Information Circular.

Unless otherwise specified, all dollar amounts are expressed in Canadian dollars and all references to “\$” are to Canadian dollars. References to “US\$” are to United States dollars. Unless otherwise indicated, all financial statements and information included in, or incorporated by reference into, this Appendix K were prepared in accordance with the IFRS as adopted by the International Accounting Standards Board.

This Appendix K includes select non-IFRS measures to analyze performance. Non-IFRS measures used by Element Fleet to analyze performance include adjusted operating income before taxes, total finance assets, total assets, total debt and shareholders’ equity. Element Fleet believes that these non-IFRS financial measures provide meaningful supplemental information regarding its performance and may be useful to investors because they allow for greater transparency with respect to key metrics used by management in its financial and operational decision making. Non-IFRS measures do not have standardized meanings and are unlikely to be comparable to any similar measures presented by other companies. Management uses both IFRS and Non-IFRS Measures to monitor and assess the operating performance of Element Fleet’s operations. For a description of why these measures are presented, see the section entitled “*IFRS to Non-IFRS Measures*” in the management discussion and analysis filed in connection with the Element Annual Financial Statements incorporated by reference in this Management Information Circular.

Element Fleet’s *pro forma* consolidated financial statements as at and for the three months ended March 31, 2016, assume the completion of the Element Arrangement, and are included in Appendix J to this Management Information Circular. The Element Fleet Pro Forma Financial Statements included in Appendix J hereto should be read in conjunction with the Element Interim Financial Statements and the Element Annual Financial Statements and the related management’s discussion and analysis, each of which is incorporated by reference in this Management Information Circular.

## FORWARD-LOOKING INFORMATION

This Appendix K includes and incorporates statements that are prospective in nature that constitute forward-looking information and/or forward-looking statements within the meaning of applicable securities laws (collectively, “**forward-looking statements**”). Forward-looking statements include, but are not limited to, statements concerning the completion and proposed terms of, and matters relating to, the Element Arrangement and the expected timing related thereto, the tax treatment of the Element Arrangement, the expected operations, financial results, integration savings and condition of Element Fleet following the Element Arrangement, Element Fleet’s corporate and governance structure, the future acquisition and disposition opportunities for Element Fleet, Element Fleet’s future objectives and strategies to achieve those objectives, the future prospects of Element Fleet as an independent company, the continued listing of Element Fleet on the TSX, the estimated cash flow, capitalization and adequacy thereof of Element Fleet following the Element Arrangement, the expected benefits of the Element Arrangement to Shareholders and Element, the anticipated effects of the Element Arrangement, including the increased ability to pursue investment grade credit ratings and cost-of-capital advantages, any changes to Element Fleet’s dividend policy or any future dividend payments, the estimated costs of the Element Arrangement, the satisfaction of the conditions to consummate the Element Arrangement, the expected terms of the Separation Agreement, Transition Services Agreement and other intercompany arrangements, as well as other statements with respect to management’s beliefs, plans, estimates and intentions, and similar statements concerning anticipated future events, results, circumstances, performance or expectations that are not historical facts. Forward-looking statements generally can be identified by the use of forward-looking terminology such as “outlook”, “objective”, “may”, “will”, “expect”, “intend”, “estimate”, “anticipate”, “believe”, “should”, “plans” or “continue”, or similar expressions suggesting future outcomes or events.

Readers are cautioned not to place undue reliance on forward-looking statements, as there can be no assurance that the future circumstances, outcomes or results anticipated or implied by such forward-looking statements will occur or that plans, intentions or expectations upon which the forward-looking statements are based will occur. By their nature, forward-looking statements involve known and unknown risks and uncertainties and other factors that could cause actual results to differ materially from those contemplated by such statements. Factors that could cause such differences include, but are not limited to: the potential benefits of the Element Arrangement not being realized; the potential for the combined trading prices of Element Fleet Common Shares and ECN Capital Common Shares after the Element Arrangement being less than the trading price of Element Common Shares immediately prior to the Element Arrangement; the potential inability or unwillingness of current Element Shareholders to hold Element Fleet Common Shares and/or ECN Capital Common Shares following the Element Arrangement; Element’s ability to delay or amend the implementation of the Element Arrangement or to proceed with the Element Arrangement even if certain consents and approvals are not obtained on a timely basis; obtaining approvals and consents, or satisfying other requirements necessary or desirable to permit or facilitate completion of the Element Arrangement; future factors that may arise making it inadvisable to proceed with, or advisable to delay, the Element Arrangement; indemnity obligations that Element Fleet and ECN Capital will owe to each other following the Element Arrangement; the reduced diversity of Element Fleet and ECN Capital as separate companies; the costs related to the Element Arrangement that must be paid even if the Element Arrangement is not completed; the risk that Element Fleet or ECN Capital may default in its obligations under the Separation Agreement, Transition Services Agreement and/or ancillary agreements; general business and economic uncertainties and adverse market conditions; risks related to Element Fleet’s status as an independent public company following the Element Arrangement; and risks related to the achievement of Element Fleet’s business objectives. For a further description of these and other factors that could cause actual results to differ materially from the forward-looking statements included in or incorporated into this Appendix K, see the risk factors discussed under “*Risk Factors*” in this Management Information Circular as well as the risk factors included in Element’s annual information form and management’s discussion and analysis for the year ended December 31, 2015 and as described from time to time in the reports and disclosure documents filed by Element Fleet with the Canadian securities regulatory agencies and commissions. This list is not exhaustive of the factors that may impact Element Fleet’s forward-looking statements. These and other factors should be considered carefully and readers should not place undue reliance on Element Fleet’s

forward-looking statements. As a result of the foregoing and other factors, there can be no assurance that actual results will be consistent with these forward-looking statements.

**All forward-looking statements included in and incorporated into this Appendix K are qualified by these cautionary statements. The forward-looking statements contained herein are made as of the date of this Management Information Circular and except as required by applicable law, Element Fleet undertakes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.**

**Readers are cautioned that the actual results achieved will vary from the information provided herein and that such variations may be material. Consequently, there are no representations by Element Fleet that actual results achieved will be the same in whole or in part as those set out in the forward-looking statements. Reference should also be made to the section entitled “*Forward-Looking Information*” in this Management Information Circular.**

## **GENERAL DEVELOPMENT OF THE BUSINESS**

Element's Fleet Management Business provides vehicle fleet leasing and fleet management solutions and related service programs to international companies, including fuel and maintenance service cards, remarketing, maintenance management and accident services. Element has strengthened its business in existing markets and acquired numerous businesses within existing and new markets, greatly expanding its geographic scope, services and talent so that today it has a presence globally with operations in the United States, Canada, Mexico, Australia and New Zealand. Following the Element Arrangement, Element Fleet will be the largest publicly traded fleet management services company in the world.

Element's Fleet Management Business was established following the completion of the acquisition of TLSI Holdings Inc., the holding company of TLS Fleet Management (“**TLSI**”), on June 29, 2012. At the time of this acquisition, TLSI was Canada's fourth largest fleet leasing company (originally established in 1980) and provided Element with a portfolio of more than \$430.0 million of lease assets. The TLSI acquisition accelerated Element's growth through the addition of its established origination platform and the creation of cross-selling opportunities for Element's existing clients. Element's extensive familiarity with the Fleet Management Business, gained through senior management's prior involvement with Newcourt Fleet Management, assisted Element in integrating the Fleet Management Business.

On June 28, 2013, Element completed the acquisition of the Canadian fleet portfolio and operational resources from General Electric Capital Corporation (“**GE Capital**”) for net cash consideration of \$559.2 million. At the time of the acquisition, the GE Capital portfolio provided Element with a portfolio of more than \$480.0 million of lease and loan assets in addition to Element's then existing portfolio. In addition, Element entered into a strategic alliance agreement with GE Capital Fleet Services.

On July 7, 2014, Element acquired PHH Corporation's fleet management services and assumed the existing securitization financing programs for the business, for a purchase price of approximately US\$1.4 billion. Element also assumed, subject to certain conditions, certain financing programs and securitizations of PHH Corporation related to the fleet business. The acquisition added more than US\$4.6 billion in assets, doubling the size of Element's asset base at the time. Following the acquisition, Element began the process of the full integration of the newly acquired business with that of its legacy fleet management vertical, TLSI. As a result of the integration process, Element's fleet management vertical operated on a single lease and vehicle management platform, providing Element's customer base with a single fully integrated, state of the art solution and product offering throughout North America.

The acquisitions of GE Capital's Canadian fleet portfolio and PHH Corporation's fleet management services business provided Element with a fleet leasing and management presence in both the United States and Canada, enabling it to better serve customers operating on a North America-wide basis, using a single technology platform, and access to PHH Arval's global referral alliance with counterparties worldwide.

On August 15, 2015, Element announced the completion of the disentanglement of the PHH fleet management operations and termination of its transition services agreement with PHH Corporation, and the successful integration of the acquisition and the consolidation of all its fleet operations into a single platform.

Element subsequently acquired GE Capital's fleet management operations in the United States (closed on August 31, 2015), and Mexico, Australia and New Zealand (closed on September 30, 2015), for a purchase price of approximately \$8.9 billion. This acquisition provided Element with an expanded and leading fleet leasing and management presence in the United States, and a new presence in Mexico, Australia and New Zealand. The acquisition was transformational in nature, size and complexity and added more than US\$7.8 billion in assets, increasing the size of Element's asset base by almost 50%, positioned Element as North America's premier fleet management provider, with an integrated North American fleet offering.

The acquisitions of GE Capital's fleet portfolio in the United States, Canada, Mexico, Australia and New Zealand and PHH Corporation's fleet management services business, together with the enhanced global alliance with Arval, enabled Element to better serve customers globally and provided Element with a leading fleet leasing and management presence globally.

On February 16, 2016, Element announced that its Board of Directors had unanimously approved, in principle, the reorganization of Element into two separate publicly-traded companies that Element believes will be better able to pursue independent strategies and opportunities for growth and ultimately enhance long-term value for Shareholders. If implemented, the reorganization would result in Element (which would be renamed "Element Fleet Management Corp.") continuing as a fleet management company focused on generating revenue and earnings based on the continued service to Element's existing fleet business. The reorganization would also result in the creation of a new commercial finance company (to be named ECN Capital Corp.) with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which would transition into an asset management business. On July 25, 2016, Element announced that ECN Capital will acquire all of the shares of IAC (that it does not already own) in exchange for shares of ECN Capital. The acquisition of IAC is a separate transaction to the Spin-Out Transaction, and is expected to close after completion of the Spin-Out Transaction. See "*The Element Arrangement*" and "*The IAC Arrangement*" in this Management Information Circular.

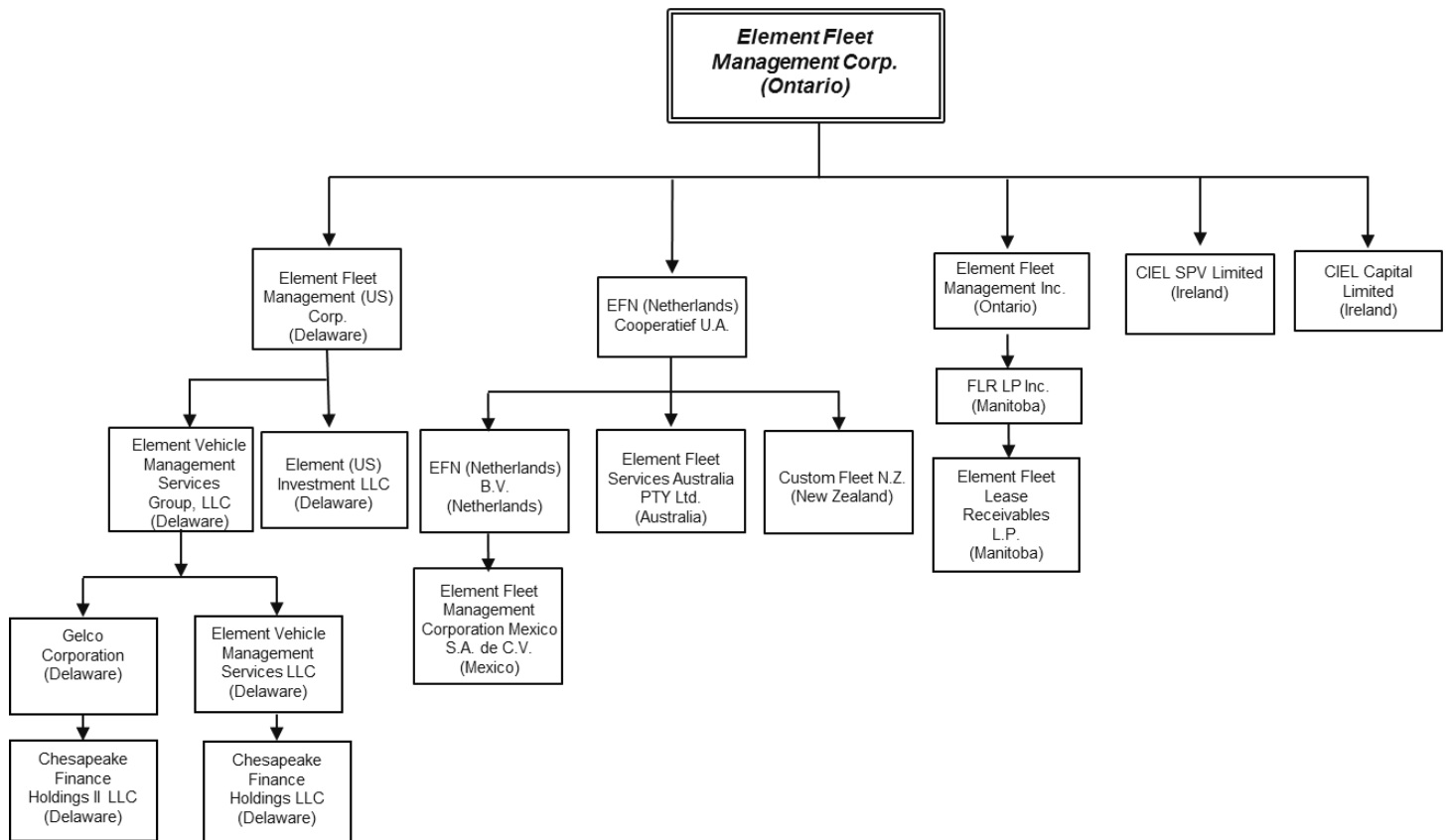
As discussed in the Notice to Readers of this Appendix K, the disclosure of Element's business and assets is presented below on the assumption that the Element Arrangement has been completed and the assets and liabilities related to the Commercial Finance Business of Element have been transferred to ECN Capital prior to the date in respect of which such disclosure relates.

## **CORPORATE STRUCTURE**

Element was incorporated on May 11, 2007 under the *Business Corporations Act* (Ontario). The head and registered office of Element is located at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1. As part of the Element Arrangement, Element will change its name from "Element Financial Corporation" to "Element Fleet Management Corp."



The organizational chart below indicates the proposed inter-corporate relationships of Element Fleet and its material subsidiaries, including their jurisdiction of incorporation in parentheses, after giving effect to the Element Arrangement. All such subsidiaries will be wholly-owned by Element Fleet.



The assets and revenues of all of the unnamed subsidiaries of Element Fleet that are presently anticipated to exist as of the Element Effective Date did not exceed 10% of Element’s Assets or have revenues exceeding 10% of the total consolidated revenues attributable to Element’s Assets as at and for the year ended December 31, 2015. In the aggregate, such subsidiaries did not account for 20% of Element’s Assets or total consolidated revenues attributable to Element’s Assets as at and for the year ended December 31, 2015.

### DESCRIPTION OF THE BUSINESS

Following completion of the Element Arrangement, Element Fleet, together with certain subsidiaries, will be known as “Element Fleet Management Corp.,” and the Element Fleet Common Shares will continue to trade on the TSX under the trading symbol “EFN”. Element Fleet’s Fleet Management Business includes, among other things, an approximately \$18.0 billion portfolio of fleet assets, with approximately 77 percent of its asset portfolio being based in the United States. Element Fleet’s Fleet Management Business is a business with stable growth, a strong credit quality and recurring high margin fee income that is expected to drive revenue and earnings.

Element Fleet is the world’s largest publicly traded fleet management services company and has a leading market position in North America, Australia and New Zealand. Through its global alliance with Arval, Element Fleet has access to provide comprehensive fleet management services to businesses across 47 countries.

Element Fleet provides vehicle fleet leasing and fleet management solutions and related service programs to international companies in a wide variety of industries. It offers a broad range of services across many asset types, including cars and light duty vehicles, material handling equipment and medium and heavy trucks. Element Fleet's scalable platform provides innovative end-to-end services and technology to businesses.

Element Fleet's value proposition is to combine strong and robust funding sources with exceptional service, technology and consulting, to deliver value to its customers with increased fleet productivity, mitigated risk, optimized value and ultimately a reduced "total cost of ownership". Element Fleet helps organizations achieve their overall goals through expertise, industry knowledge and tools to provide strategic consulting insights to optimize an organization's fleet. Its innovative technology tools are designed to help simplify the complexity of fleet management, promote productivity and capture pertinent data.

Element Fleet serves the fleet management market through a variety of service offerings, including:

- *Acquisition* – providing acquisition experts and consultants that assist in determining a strategic approach to fleet acquisition such as developing optimal replacement plans and vehicle remarketing strategies, evaluating models and manufacturers that best align with a business's fleet performance goals and delivering a streamlined process to simplify vehicle ordering;
- *Financing* – providing customized fleet financing and fleet leasing programs, such as operating leases, capital leases and sale/leaseback, to reduce depreciation costs, maximize cash flow and overall fleet profitability;
- *Title, Licensing and Registration* – ensuring that vehicles are titled, registered, and insured by handling the labor-intensive administrative responsibilities;
- *Telematics* – providing an end-to-end telematics service that: (i) helps increase driver productivity via fleet tracking; (ii) improves driver safety by identifying and tracking individuals who require guidance or remedial action for excessive speed, seat belt use and unauthorized use; and (iii) reduces fleet operating costs by actively monitoring fleet fueling expenses, reducing vehicle maintenance costs through diagnostic trouble code monitoring, and reducing mileage driven to improve lifecycle costs;
- *Risk and Safety* – providing a comprehensive approach to fleet risk management by integrating consultative expertise with driver training programs and other safety services and offers a customizable program to help identify risky drivers, provide targeted training for at-risk drivers and manage accidents;
- *Accident Management* – providing comprehensive accident services to reduce fleet risk and to repair vehicles quickly with minimal business interruption and minimal costs;
- *Tolls, Violations and Compliance* – providing the administrative responsibilities of processing tolls and violations and ensuring compliance with regulations;
- *Fuel Services* – providing fuel cards for drivers with access to thousands of fuel stations across the United States and Canada, while supplying fleet managers with built-in controls, security, fuel transaction data and cost savings;
- *Managed Maintenance* – providing a network of authorized facilities, call centres and proactive preventative maintenance notifications, as well as expert specialists who assess repair necessity;

- *Usage and Expense Tracking* – providing support tools and web-based reporting that streamline tax-related administrative processes to help organizations comply with tax regulations;
- *Rental Services* – providing management of the rental process for renting extra equipment or other assets, ranging from forklifts to storage trailers, and coordinating delivery and pickup;
- *Remarketing* – providing experts to assist in selling used fleet vehicles by handling the entire sales process, from pickup, transport and reconditioning to target price establishment and transfer of ownership, helping to reduce fleet depreciation expense; and
- *Outsourcing* – providing an outsourced solution for clients seeking a vehicle program managed by a team at Element Fleet, where customized options range from call centre staffing to day-to-day administration and service issues to ongoing program monitoring and assessment.

Element Fleet continues to focus on increasing its technology service offerings and currently over approximately 56% of its revenue is derived from service and fee revenue with the rest from financings. Element Fleet has a diversified, high quality, long-tenured base of commercial customers and its high levels of renewal and satisfaction yield long-term relationships. This leads to recurring revenue streams from both clients and customers.

Following the Element Arrangement, Element Fleet will become a more focused independent business driven by an experienced management team. Element Fleet intends to expand cross-selling efforts for its service programs, obtain new fleet management customers and increase origination volumes with existing fleet management customers. Element Fleet will pursue organic growth opportunities driven by fee business and integration savings. In addition, Element Fleet anticipates that after the Spin-Out Transaction it will be able to pursue increased investment grade credit ratings to benefit from the associated cost-of-capital advantages enjoyed by other fleet companies.

Element Fleet will continue to consider a number of acquisition, investment and disposition opportunities to achieve its business and growth strategies. While Element Fleet is regularly engaged in discussions regarding possible acquisition opportunities, Element Fleet has not entered into any definitive agreement for an acquisition. Element Fleet will continue to pursue discussions regarding possible acquisitions, enter into negotiations with respect to such potential acquisitions and actively pursue other acquisition opportunities that present themselves or become available.

Element Fleet has an experienced executive management team with seasoned executives having an average of approximately 15 years of Element Fleet experience and 17 years in the industry. Bradley Nullmeyer will lead Element Fleet and Steven Hudson will continue to serve on the board of directors of Element Fleet. Element Fleet utilizes its management team's extensive experience in the fleet management and equipment financing industry to maintain and expand its relationships. See "*Directors and Executive Officers*" in this Appendix K.

### **Funding Model**

The funding strategy for the various equipment finance assets originated by Element Fleet is determined by the nature of the underlying equipment finance assets and execution efficiency. Element Fleet's primary sources of funding are: (i) cash flows from operating activities; (ii) securitizations, (iii) syndications; (iv) the Senior Fleet Credit Facility; (v) revolving secured borrowings; and (vi) equity.

Various factors influence the funding decision, including the size, duration and character of the underlying equipment finance assets, and any limitations imposed by the funding sources, including in some cases obligor and asset-based concentration limits. Element Fleet's equipment finance assets generally have shorter durations, smaller asset sizes and are suited to revolving funding structures and securitization programs. An important liquidity measure for Element Fleet is its ability to maintain diversified funding

sources to support its operations. Element Fleet also ensures match funding on both a duration and interest rate basis for its secured funding arrangements.

## **Funding Arrangements**

### *Senior Fleet Credit Facility*

Element Fleet has received an underwriters' commitment for the establishment of a separate senior credit facility in conjunction with the Element Arrangement. The Element Fleet underwriters' commitment contemplates that, in conjunction with the asset transfer from Element, the Existing Credit Agreement (see "*Element Fleet Following the Element Arrangement - Capital Structure and Market for Securities – Credit Facilities*" in this Management Information Circular) will be amended and restated so as to provide for an aggregate of US\$4.0 billion in three year revolving funding for Element Fleet Management Corp. and Element Fleet Management (US) Corp., as co-borrowers. Such facility will provide for advances denominated in U.S., Canadian, Australian and New Zealand dollars. It is expected that a portion of the principal amount outstanding under the Existing Credit Agreement will be repaid in connection with the asset transfer from Element and a related repayment of intercompany debt owed to Element with a portion of the proceeds of the initial advance under the Senior ECN Capital Facility. For more information, see "*Funding Arrangements – Senior Credit Facility*" in Appendix L.

### *Securitization Arrangements*

#### Canadian Fleet Receivables Securitization Arrangements.

*Element Fleet Lease Receivables L.P.* Element Fleet Lease Receivables L.P., an indirect wholly-owned subsidiary of Element Fleet, has established a securitization program to fund Canadian fleet equipment finance assets. Element Fleet Lease Receivables L.P. issues floating-rate asset-backed notes secured by equipment finance assets. As of June 30, 2016, Element Fleet Lease Receivables L.P. had one series of issued and outstanding notes in an aggregate principal amount of \$1.3 billion. Such notes are comprised of two classes, with the senior notes rated AAA (sf) by DBRS Limited ("**DBRS**"). As of June 30, 2016, Element Fleet had \$300 million of available capacity under this program.

#### U.S. Fleet Receivables Securitization Arrangements.

*Chesapeake Funding LLC.* Chesapeake Funding LLC, an indirect wholly-owned subsidiary of Element Fleet, has established a securitization program to fund U.S. fleet equipment finance assets. Under this program, Chesapeake Funding LLC issues variable funding notes and term notes secured by vehicles, related lease agreements and receivables allocated to a special unit of beneficial interest in D.L. Peterson Trust. As of June 30, 2016, Chesapeake Funding LLC had two series of issued and outstanding variable funding notes in an aggregate principal amount of US\$1.6 billion and five series of term notes in an aggregate principal amount of US\$1.6 billion. The term notes are comprised of various classes, with the senior notes term rated Aaa (sf) by Moody's Investors Service, Inc. ("**Moody's**") and AAA (sf) by DBRS. The variable funding notes are comprised of various classes, with the senior notes rated Aa3 (sf) by Moody's. As of June 30, 2016, Element Fleet had available unutilized forward funding commitments of US\$1.35 billion under the variable funding notes issued by Chesapeake Funding LLC.

*Chesapeake Funding II LLC.* Chesapeake Funding II LLC, an indirect wholly-owned subsidiary of Element Fleet, has established a securitization program to fund U.S. equipment finance assets. Under this program, Chesapeake Funding II LLC issues variable funding notes and term notes secured by vehicles, related lease agreements allocated to special units of beneficial interest in Gelco Fleet Trust. As of June 30, 2016, Chesapeake Funding II LLC had two series of issued and outstanding variable funding notes in an aggregate principal amount of US\$3.0 billion and two series of term notes in an aggregate principal amount of US\$1.7 billion. The term notes are comprised of various classes, with the senior notes term rated Aaa (sf) by Moody's, AAA (sf) by DBRS and AAA (sf) by Kroll Bond Rating Agency. The variable funding notes are comprised of various classes, with the senior notes rated A (sf) by DBRS. As at

June 30, 2016, Element Fleet had available and unutilized funding capacity of US\$2.6 billion under the variable funding notes issued by Chesapeake Funding II LLC. Chesapeake Funding II LLC also has two series of issued and outstanding amortizing asset backed investor notes in the aggregate amount of US\$1.4 billion.

For more information regarding Element Fleet's funding arrangements, see the Element Annual Financial Statements and related management's discussion and analysis and the Element Interim Financial Statements and related management's discussion and analysis, as specifically incorporated by reference in this Management Information Circular. See also "*Summary Historical and Pro Forma Consolidated Financial Information*" in this Appendix K as well as the Element Fleet Pro Forma Financial Statements included in Appendix J to this Management Information Circular.

## **Growth Strategy**

Element Fleet believes that its most significant growth opportunities are: (i) building on its strong value proposition and long sales cycle to protect key accounts; (ii) increasing its penetration into the market by leveraging its existing client base and providing services that offer additional fee income without financing; (iii) tapping into the "non-lease" market, such as companies that use their own money for financing its fleet or companies that reimburse its employees; (iv) entering into new markets such as providing fleet services to large state and municipal enterprises or integrating a "for-hire" trucking business into its Fleet Management Business; and (v) inorganic growth opportunities through acquisitions to enhance its value proposition, scale and grow its portfolio.

### *Growth and Development of the Fleet Business*

A primary component of Element Fleet's growth strategy is to continue to expand its technology and service offerings. Element Fleet has seen strong growth in its service and fee revenue and has emerged as a leading fleet service company, with significant purchasing power, scale and leverage, combined with an extensive North American supplier network. In the first quarter of 2016, Element Fleet's total services and fee revenue accounted for approximately 56% of total revenue.

Element Fleet believes that there is a significant opportunity to increase its growth through funding investments in technology that support new products and services. Services offer additional fee income without financing and by offering new products and services Element Fleet can leverage its existing product base to expand its revenues. Element Fleet's ability to offer global solutions in 47 countries through its strategic partnership with Arval provides additional room for growth.

Element Fleet also believes that there are growth opportunities from market share takeaway, the conversion of historically self-managed fleets and product and service innovations. The competitive landscape has shifted to more than just financing, as clients look for service partners for recommendations and support in achieving cost savings.

Element Fleet evaluates business and growth opportunities and continues to consider a number of acquisition, investment and disposition opportunities to achieve its business and growth strategies. While Element Fleet is regularly engaged in discussions regarding possible acquisition opportunities, Element Fleet has not entered into any definitive agreement for an acquisition. Element Fleet will continue to pursue discussions regarding possible acquisitions, enter into negotiations with respect to such potential acquisitions and actively pursue other acquisition opportunities that present themselves or become available.

Element Fleet's acquisition activities will be focused on businesses or portfolios that are a strategic fit in terms of back-office, systems and originations capabilities, have the required infrastructure to continue to operate and grow independently without straining Element Fleet's existing infrastructure and offer accretion to Element Fleet from a net income and return on equity perspective.

Element Fleet's experienced management team has successfully completed numerous industry acquisitions and integrations. Element Fleet management's experience provides Element Fleet with a disciplined approach to acquisition opportunities. Element Fleet believes that its management's past experience in the fleet leasing and services industries provides Element Fleet with the skills and experience to effectively identify and evaluate acquisition opportunities.

## **Competition**

Element Fleet's markets are highly competitive and characterized by various competitive factors that vary by region. Competitive factors include breadth of product and service features, price, equipment, maintenance, service and geographic coverage. In North America, Australia and New Zealand, Element Fleet's competitors in the Fleet Management Business are mainly comprised of other established fleet management companies that offer a similar comprehensive suite of services.

Element Fleet believes it is well positioned to compete with its competitors by means of having an experienced management team with a track record of success, access to capital, purchasing power, scale, an established geographic footprint as well as a global alliance with Arval.

Competition in the fleet business is likely to remain aggressive. The fleet management industry is mature and wholly new entrants are rare. There are high barriers to entry as existing entrants have significant purchasing power and scale, high capital investments are required for entry and the required supplier networks are difficult to replicate. Due to the cost to customers of changing fleet service providers, the ability of participants to retain existing customers is relatively strong in the fleet leasing market.

The competitive landscape has shifted to more than just a financing business as clients look for consultative service partners for prescriptive cost saving measures as well as support in achieving those results. Element Fleet's focus on value-added service offerings and continued investment in technology help reinforce these needs and lead to strong, long term customer relationships.

## **Employees**

At the Element Effective Date, Element Fleet is expected to have a total of approximately 2,600 employees in the U.S. and Canada. None of Element Fleet's employees is represented by a collective bargaining agreement and Element Fleet has never experienced any work stoppages. Element has employment, non-solicitation and non-competition agreements with each of its senior executives and originators. Element Fleet considers its relations with its employees to be strong and views its employees as an important competitive advantage. Historically, Element Fleet has been successful in retaining its key employees including members of its senior management team. Element Fleet's senior management team has an in depth knowledge of equipment finance, and of the independent financial services industry in general.

## **Summary Historical and Pro Forma Consolidated Financial Information**

The following summary historical consolidated financial information for the three months ended and as at March 31, 2016 has been derived from the Element Interim Financial Statements. The summary *pro forma* information for the three months ended and as at March 31, 2016 is presented as if the Element Arrangement had been effected on January 1, 2016, for purposes of the *pro forma* operating results, and on March 31, 2016 for purposes of the *pro forma* balance sheet data. The summary *pro forma* information is derived from the Element Fleet Pro Forma Financial Statements.

This summary historical and *pro forma* financial information should be read in conjunction with the Element Interim Financial Statements and the related management's discussion and analysis, which is incorporated by reference in this Management Information Circular, and the Element Fleet Pro Forma Financial Statements included in Appendix J.

The *pro forma* financial information has been prepared for illustrative purposes only and may not be indicative of the operating results or financial condition that would have been achieved if the Element Arrangement had been completed on the dates or for the periods noted above, nor do they purport to project the results of operations or financial position for any future period or as of any future date. In addition to the *pro forma* adjustments that comprise this *pro forma* financial information, various other factors will have an effect on the financial condition and results of operations of Element Fleet following the completion of the Element Arrangement.

	As at and for three-month period ended March 31, 2016	
	Pro Forma \$	Historical \$
<i>(in 000's for stated values)</i>		
<b>Operations</b>		
Net financial income	253,836	309,760
Adjusted operating income before taxes <sup>(1)</sup>	142,225	182,900
Net income	72,206	101,269
<b>Financial Position</b>		
Total finance assets	15,107,655	20,577,820
Total assets	18,149,317	23,933,519
Total debt	13,667,547	17,866,376
Shareholder's equity	3,879,578	5,401,579

(1) Adjusted operating income before tax is a financial measure that is not calculated in accordance with IFRS. For a reconciliation of this non-IFRS measure to the most directly comparable IFRS measure see reconciliation below:

#### **Reconciliation of Net Income to Adjusted Operating Income**

	As at and for three-month period ended March 31, 2016	
	Pro Forma \$	Historical \$
<i>(in 000's for stated values)</i>		
Net income	72,206	101,269
Amortization of convertible debenture synthetic discount	3,003	3,003
Share-based compensation	7,813	9,883
Amortization of intangible assets from acquisitions	16,126	16,776
Transaction and integration costs	31,369	31,369
Provision of income taxes	11,708	20,600
Adjusted operating income before taxes	142,225	182,900

## DESCRIPTION OF SHARE CAPITAL

### General

The authorized capital of Element Fleet consists of an unlimited number of Element Fleet Common Shares and an unlimited number of preferred shares, issuable in series. As at July 15, 2016, there were 386,704,197 Element Common Shares issued and outstanding, 4,600,000 Series A Shares issued and outstanding, 5,126,400 Series C Shares issued and outstanding, 5,321,900 Series E Shares issued and outstanding, and 6,900,000 Series G Shares issued and outstanding. The following is a summary of the rights.

### Common Shares

Each Element Fleet Common Share entitles the holder to (i) one vote at all meetings of shareholders (except meetings at which only holders of a specified class of shares are entitled to vote), (ii) to receive, subject to the holders of another class of shares, any dividend declared by Element Fleet, and (iii) to receive, subject to the rights of the holders of another class of shares, the remaining property of Element Fleet on the liquidation, dissolution or winding up of Element Fleet, whether voluntary or involuntary.

### Preferred Shares

The preferred shares of Element Fleet may at any time and from time to time be issued in one or more series. The directors of Element Fleet may fix, before the issuance thereof, the number of preferred shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-up of Element Fleet, any sinking fund or other provisions, the whole to be subject to the issuance of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of the series.

The preferred shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding up of Element Fleet, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the Element Fleet Common Shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets constituting a return of capital in respect of the preferred shares of any series is not paid in full, the preferred shares of such series shall participate rateably with the preferred shares of every other series in respect of all such dividends and amounts.

Each of Element's outstanding series of preferred shares will remain outstanding obligations of Element Fleet following the Arrangement. For more information on the series of outstanding preferred shares, see "*Description of Share Capital – Preferred Shares*" in Element's Annual Information Form dated March 29, 2016, which is incorporated by reference herein.

### Debentures

Element currently has two outstanding series of convertible debentures: the Element 2014 Debentures and the Element 2015 Debentures. The Debentures remain outstanding obligations of Element Fleet following the Element Arrangement.

The Debentures are convertible into Element Fleet Common Shares at any time prior to maturity, at the option of the holder, at the applicable conversion price. The Element 2014 Debentures are convertible at any time prior to maturity, at the option of the holder, at an initial Conversion Price of \$17.85 per Element



Common Share (subject to adjustment in accordance with their terms), representing a conversion ratio of approximately 56.0224 Common Shares per \$1,000 principal amount of Element 2014 Debentures. The 2015 Debentures are convertible at any time prior to maturity, at the option of the holder, at an initial Conversion Price of \$23.80 per Element Common Share (subject to adjustment in accordance with their terms), representing a conversion ratio of approximately 42.0168 Common Shares per \$1,000 principal amount of Element 2015 Debentures.

The indentures governing the Debentures provide that, in certain circumstances, the Conversion Price of the Debentures shall be adjusted by the Board in a manner equitable in the circumstances. The indentures governing the Debentures provide that an adjustment in such case is subject to the prior written consent of the TSX. The Board consulted with its legal and financial advisors regarding the indenture provisions and the adjustment of the Conversion Prices.

In accordance with the Element Debenture Indentures, the Board has determined, after consideration of the advice received from its legal and financial advisors, to adjust the Conversion Prices of the Debentures after the Element Effective Date in a manner equitable in the circumstances so as to reflect the effect of the Element Arrangement. The Board expects the Adjusted Conversion Prices to be determined with reference to the relative trading prices of Element Fleet Common Shares and ECN Capital Common Shares over a specified period of time following the Element Effective Date. The determination of the Adjusted Conversion Prices will be subject to final approval of the Board of Directors and of the TSX. Element will advise holders of the Debentures of such Adjusted Conversion Prices in the manner required by the indentures governing the Debentures.

For more information on the Debentures, see “*Description of Share Capital – Debentures*” in Element’s Annual Information Form dated March 29, 2016, which is incorporated by reference herein.

## **LONGER-TERM INCENTIVE PLAN DESCRIPTIONS**

### **Element Option Plan**

The Board enacted the Element Option Plan prior to Element becoming a public company in December 2011, renewed the Element Option Plan in 2014 and prior to the Element Arrangement, will amend and restate the Element Option Plan. Element Fleet Options allow participants to purchase Element Fleet Common Shares at a specified exercise price within a specified maximum exercise period of 8 years. The purpose of the Element Option Plan is to advance the interests of Element through the motivation, attraction and retention of officers, directors and employees of Element and such other key individuals as the Board deems reasonably appropriate.

The following is a summary of the Amended and Restated Element Option Plan, which amended and restated the Element Option Plan pursuant to the Plan of Arrangement:

- Eligible participants under the Element Option Plan will be the directors, officers and other key full-time employees of Element and its affiliates.
- Element Fleet Options typically vest 33.3% per year over three years.
- Each vested portion is exercisable for five years from the vesting date.
- Exercise price is established by the Board but shall not be less than the closing price of the Element Fleet Common Shares on the last trading day before the grant date.
- The Element Option Plan provides that the Board may make appropriate adjustments in the event of certain changes in the capital of Element Fleet.

- Maximum number of Element Fleet Common Shares that may be issued pursuant to the Element Option Plan and other security-based compensation arrangements will not exceed 10% of the issued and outstanding Element Fleet Common Shares, calculated from time to time at the date Element Fleet Options are granted. The Board will take into account previous grants of Element Fleet Options when considering future grants.
- Element Fleet Common Shares subject to an Element Fleet Option that has been granted and is subsequently cancelled or terminated without having been exercised will again be available for grant under the Element Option Plan.
- Element Fleet Options will be personal to the recipient and are non-transferable except in accordance with the Element Fleet Option Plan and the regulations thereto.
- Subject to applicable law and upon notice to Element Fleet, a holder may transfer Element Fleet Options, or Element Fleet Common Shares received under the exercise of Element Fleet Options, to any registered retirement savings plan, registered retirement income fund, tax-free savings account or similar retirement or investment fund established by or for the holder or under which the holder is a beneficiary.
- Upon death of a holder, the holder's Element Fleet Option(s) will become part of his or her estate, and any right of the holder may be exercised by the deceased holder's legal representatives in accordance with the Element Option Plan, provided the legal representatives comply with all obligations of the deceased holder.
- Element Fleet Options are not granted during "blackout periods" under Element's insider trading policy. If an Element Fleet Option expires during a blackout period, the expiry date for such option will be automatically extended to the tenth business day following the end of such blackout period.
- In the case of termination of employment of any option-holder for cause, all granted Element Fleet Options then held by such person shall immediately terminate as of the date of termination of employment.
- In the case of termination of employment of any option-holder as a result of death or disability, all granted Element Fleet Options then held by such person shall terminate as of the earlier of the expiry date for such options or one year from the date of death or disability.
- In cases where the employment of any option-holder is terminated for reason other than cause, death or disability, all granted Element Fleet Options then held by such person shall terminate as of the earlier of the expiry date for such options or one year following the last day of employment.
- In the event of a change of control, the Board, having regard to its fiduciary duties and the best interests of Element Fleet, will address the economic value of the rights that participants, as a group, have in outstanding Element Options in whatever manner the Board deems to be reasonable.

The number of Element Fleet Common Shares issuable to insiders, at any time, pursuant to the Element Option Plan and other security-based compensation arrangements shall not exceed 10% of the issued and outstanding Element Fleet Common Shares. In addition, the number of Element Fleet Common Shares issued to insiders, within a one-year period, pursuant to the Element Option Plan and other security-based compensation arrangements shall not exceed 10% of the issued and outstanding Element Fleet Common Shares. The number of Element Fleet Common Shares issuable to non-employee directors pursuant to the Element Option Plan and other security-based compensation arrangements

shall not exceed 1% of the issued and outstanding Element Fleet Common Shares, and the aggregate dollar value of such Element Fleet Options shall not exceed \$100,000 within a one-year period.

The following types of amendments to the Element Option Plan will require shareholder approval: (i) an increase to the maximum number or percentage of securities issuable under the Element Option Plan; (ii) provisions granting additional powers to the Board to amend the Element Option Plan or entitlements thereunder; (iii) reduction in the exercise price of Element Fleet Options or other entitlements; (iv) an amendment to the prohibition on transfer of Element Fleet Options (v) an amendment to the amendment provisions under the plan; (vi) extension to the term of Element Fleet Options; and (vii) changes to participation limits applicable to insiders or non-employee directors of Element.

The Board may make the following amendments to the Element Option Plan or an Element Fleet Option granted under the Element Option Plan without obtaining shareholder approval: (i) amendments to the terms and conditions of the Element Option Plan necessary to ensure that it complies with applicable law and regulatory requirements including the requirements of any applicable stock exchange, in place from time to time; (ii) amendments to the provisions of the Element Option Plan respecting administration of, and eligibility for participation under, the plan; (iii) amendments to the provisions of the Element Option Plan respecting the terms and conditions on which Element Fleet Options may be granted (including the vesting schedule); (iv) the addition of, and any subsequent amendment to, any financial assistance provision; (v) amendments to the Element Option Plan that are of a “housekeeping” nature; and (vi) any other amendments not requiring shareholder approval under applicable laws or the requirements of an applicable stock exchange (such as the TSX). Amendments to the Element Option Plan or Element Fleet Options that are not subject to shareholder approval may be implemented by Element without shareholder approval, but are subject to any approval required by the rules of the TSX and other requirements of applicable law. The Board also has the right to amend, suspend or terminate the Element Option Plan or any portion of it at any time in accordance with applicable law and subject to any required regulatory, applicable exchange or shareholder approval.

Pursuant to the Element Option Plan, for purposes of compliance with Section 409A of the Internal Revenue Code of 1986, as amended (“**Section 409A**”), certain terms of the Element Fleet Options held by U.S. taxpayers may differ from those described above.

If the Element Arrangement Resolution is approved, it is estimated that Element Fleet Options entitling the holders thereof to acquire up to 22,820,466 Element Fleet Common Shares will be outstanding following the Element Arrangement (representing approximately 5.9% of the Element Fleet Common Shares estimated to be outstanding immediately following completion of the Element Arrangement).

For further discussion on the treatment of outstanding Element Fleet Options, see “*The Element Arrangement - Treatment of Outstanding Element Options*” in this Management Information Circular. For further discussion of the Element Option Plan, see “*Additional Disclosure – Longer-Term Incentive Plan Descriptions – Stock Options*” in Element’s management information circular dated May 11, 2016.

### **Element DSU Plan**

Effective May 13, 2013, the Board of Directors adopted a deferred share unit plan for directors and executives. Under the Element DSU Plan, the Board may grant Element DSUs to directors and executives of Element Fleet.

The purpose of the Element DSU Plan is to attract and retain qualified persons to serve on the Board of Directors and executive team, and to strengthen the alignment of interests between participants in the Element DSU Plan and shareholders by requiring participants to defer receiving a portion of their compensation until, their retirement or resignation and having the value of such portion fluctuate with the value of the Element Fleet Common Shares.

Under the terms of the Element DSU Plan, the number of Element DSUs that a participant will receive is calculated by dividing the portion of the participant's eligible compensation by the volume-weighted average price of the Element Fleet Common Shares on the TSX for the 10 preceding days on which they were traded on the grant date.

As of July 15, 2016, there were 1,562,107 Element DSUs outstanding. The redemption date of a participant's Element DSUs shall not occur until his or her resignation or retirement from Element. In such case, the participant will provide Element with a written redemption notice specifying a redemption date, which shall occur no later than December 15th of the calendar year following the year in which the participant resigned or retired. On a redemption date, a participant will receive a lump sum cash payment in satisfaction of any Element DSUs credited to his or her account in an amount equal to: (i) the number of Element DSUs credited to the participant's account on the redemption date, multiplied by (ii) the volume-weighted average price of the Element Fleet Common Shares on the TSX for the 10 preceding days on which they were traded (less any applicable withholding taxes). The Element DSU Plan provides that the Board may make appropriate adjustments to the Element DSUs in the event of certain changes in the capital of Element.

Board members are required to take a minimum of 50% of their annual Board retainer in the form of Element DSUs. The Element DSU Plan will remain in place following the Element Arrangement.

Pursuant to the Element DSU Plan, for purposes of compliance with Section 409A, certain terms of the Element DSUs held by U.S. taxpayers may differ from those described above.

The Element DSUs will be adjusted in accordance with the terms of such Element DSUs and the Element DSU Plan. For further discussion on the treatment of Element DSUs, see "*The Element Arrangement - Treatment of Outstanding Element DSUs*" in this Management Information Circular.

For further discussion of the Element DSUs and Element DSU Plan, see "*Additional Disclosure - Longer-Term Incentive Plan Descriptions - DSUs (Cash Settled)*" in Element's management information circular dated May 11, 2016.

### **Element Unit Plan**

The Board adopted the Element Unit Plan in February 2014. Under the Element Unit Plan, both Element RSUs and Element PSUs may be granted.

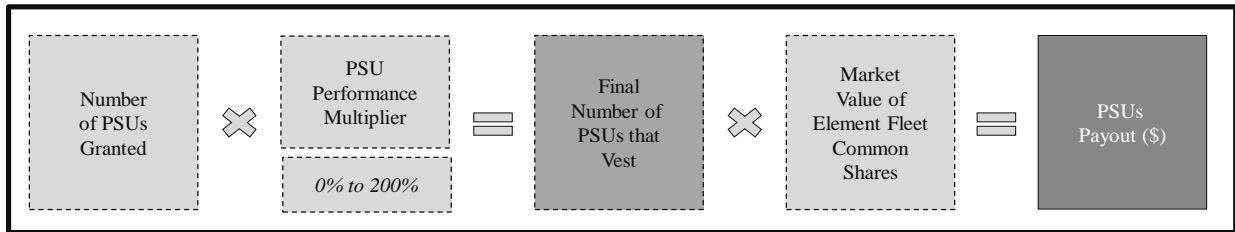
Element PSUs will be adjusted in accordance with the terms of such Element PSUs and the Element Unit Plan. For further discussion on the treatment of Element PSUs, see "*The Element Arrangement - Treatment of Outstanding Element PSUs*" in this Management Information Circular.

As of July 15, 2016, there were 1,423,081 Element PSUs outstanding and no Element RSUs outstanding. Element does not expect to issue any Element RSUs prior to the Element Arrangement. Element RSUs and PSUs vest within 3 years and are paid at the end of the term based on the volume weighted average trading price of the Element Fleet Common Shares for the 10 trading days preceding the vesting date. Element PSUs are also subject to performance conditions that are approved by the Board, upon recommendation from the Element Fleet Compensation & Corporate Governance Committee (the "**Element Fleet C&CG Committee**"), which performance conditions include, but are not limited to, originations, return on equity, earnings per share, and integration of accretive acquisitions, which align executives with our business strategy and reward executives only for the performance objectives that they are successful in achieving. Vested Element RSUs and Element PSUs will be settled in cash. The Element Unit Plan provides that the Element Fleet C&CG Committee may make proportionate adjustments to the Element PSUs in the event of certain changes in the capital of Element Fleet.

The Element Unit Plan will remain in place following the Element Arrangement.

Element PSUs granted are a bonus for services in the year the award is granted. This may be under the annual long-term incentive plan or linked to a supplemental bonus associated with a specific transaction under the annual incentive program. Depending on the specific purpose of the award, the Element Fleet C&CG Committee will determine the associated performance metrics, weightings and performance period.

The number of units that vest is based on performance against the metrics that are tied to Element’s strategic priorities. The Element PSU performance multiplier under the plan design may range from 0% to 200% dependent on actual performance. The Element PSU payout will be zero if performance is below



Pursuant to the Element Unit Plan, for purposes of compliance with Section 409A, certain terms of the Element PSUs and Element RSUs held by U.S. taxpayers may differ from those described above.

For further discussion of the Element PSUs, Element RSUs and the Element Unit Plan, see “*Additional Disclosure – Longer-Term Incentive Plan Descriptions – PSUs and RSUs (Cash-Settled)*” in Element’s management information circular dated May 11, 2016.

## RATINGS

The following credit rating information is being provided as it relates generally to Element’s financing costs, liquidity and operations prior to the Element Arrangement. More specifically, credit ratings impact Element Fleet’s ability to obtain short-term and long-term financing and can affect the cost of such financing. As of the date of this Management Information Circular, Element Fleet has not been assigned a corporate credit rating following the Element Arrangement.

### *DBRS Limited*

On September 24, 2015, DBRS assigned an issuer rating of “BBB” to Element in addition to a short-term instruments rating of “R-2 (middle)” and a rating of “Pfd-3” to Element’s Preferred Shares. The trend on all ratings is stable. On February 17, 2016, DBRS placed the ratings of Element, including its issuer rating of BBB, “Under Review with Positive Implications” following Element’s announcement of the Spin-Out Transaction.

DBRS has different rating scales for corporate ratings, short-term debt and preferred shares. DBRS rating approach is based on a combination of quantitative and qualitative considerations.

DBRS’s corporate rating analysis begins with an evaluation of the fundamental creditworthiness of the issuer, which is reflected in an “issuer rating”. Issuer ratings address the overall credit strength of the

issuer, and the scale ranges from AAA (highest credit quality) to D (very highly speculative) categories. BBB is the fourth highest of ten DBRS categories. Unlike ratings on individual securities or classes of securities, issuer ratings are based on the entity itself and do not include consideration for security or ranking. An issuer rating of BBB means that the issuer has adequate credit quality, that the issuer's capacity for the payment of financial obligations is considered acceptable, and that the issuer may be vulnerable to future events.

The DBRS short-term debt rating scale provides an opinion on the risk that an issuer will not meet its short-term financial obligations in a timely manner and ranges from R-1 (highest credit quality) to D (default). The R-1 and R-2 rating categories are further denoted by the subcategories "high", "middle" and "low". R-2 (middle) is the fifth highest of ten DBRS categories. An obligation rated R-2 (middle) represents adequate credit quality and indicates the capacity for the payment of short-term financial obligations as they fall due is acceptable, but may be vulnerable to future events or may be exposed to other factors that could reduce credit quality.

The DBRS preferred share rating scale is used in the Canadian securities market and is meant to give an indication of the risk that a borrower will not fulfill its full obligations in a timely manner, with respect to both dividend and principal commitments. The scale ranges from Pfd-1 (superior credit quality) to D (default) and each rating category is denoted by the subcategories "high" and "low". The absence of either a "high" or "low" designation indicates the rating is in the middle of the category. Pfd-3 is the third highest of six DBRS categories. Preferred shares rated Pfd-3 are of adequate credit quality, and while protection of dividends and principal is still considered acceptable, the issuing entity is more susceptible to adverse changes in financial and economic conditions, and there may be other adverse conditions present which detract from debt protection. Pfd-3 ratings generally correspond with companies whose senior bonds are rated in the higher end of the BB category.

Rating trends provide guidance in respect of DBRS' opinion regarding outlook for the rating in question. A "stable" trend indicates that a rating is not likely to change.

### ***Kroll Rating***

On September 18, 2014, KBRA assigned an issuer rating of "BBB+" to Element in addition to a senior unsecured debt rating of "BBB+", with a stable outlook for both ratings. In November 2015, KBRA affirmed the issuer and senior unsecured ratings of BBB+, with stable outlooks, for Element. On February 16, 2016, KBRA stated that it views the overall impact of the Spin-Out Transaction of the Element business as credit positive for Element.

KBRA's credit ratings are on a long-term credit rating scale that ranges from AAA to D, which represents the range from highest to lowest quality of rating. A "BBB" rating is the fourth highest of KBRA's ten rating categories. KBRA may append "+" or "-" modifiers to ratings in the AA through CCC range to indicate, respectively, lower and upper risk levels within the broader category, KBRA may also assign rating outlooks, which take on the following four states: positive, negative, stable and developing.

KBRA's credit ratings are intended to reflect both the probability of default and severity of loss in the event of default, with greater emphasis on probability of default at higher rating categories. For obligations, the determination of expected loss severity is, among other things, a function of the seniority of the claim. Generally speaking, issuer-level ratings assume a loss severity consistent with a senior unsecured claim.

### ***General***

A rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization. Credit ratings may not reflect the potential impact of all risks on the value of securities. We cannot know for certain that a rating will remain in effect for any given period of time or that a rating agency will not revise or withdraw it entirely in the future.

Element paid customary fees to the rating agencies noted above in connection with the above-mentioned ratings.

## **DIRECTORS AND EXECUTIVE OFFICERS**

### **Directors**

The names, municipality of residence and positions with Element Fleet of the persons who will serve as directors and executive officers of Element Fleet after giving effect to the Element Arrangement are set out below. Each of the seven proposed members of the Board will be formally appointed to the Board pursuant to the Element Plan of Arrangement. The Board will consist of five members from the current Element Board, being Richard E. Venn, Steven K. Hudson, William Lovatt, Joan Lamm-Tennant and Brian Tobin, and two new members Bradley Nullmeyer and Paul D. Damp.

Name and Province/ State and Country of Residence	Director since	Principal Occupation
Richard E. Venn <sup>(2), (3), (5)</sup> Toronto, Ontario, Canada	2014	Chairman of the Board; prior to the Element Arrangement, Vice-Chairman of the Board; former Senior Executive Vice-President, CIBC and Advisor to the Chief Executive Officer's Office; 40-year career with CIBC, including servicing CIBC's investment banking and merchant banking operations, and as Chairman and CEO of CIBC's Canadian dealer; a director of The Bank of N.T. Butterfield & Sons Limited and DBRS Ltd.
Steven K. Hudson <sup>(3)</sup> Toronto, Ontario, Canada	2010	Chief Executive Officer of ECN Capital; previously Chief Executive Officer of Element; previously Chief Executive Officer of Cameron Capital Corporation from 2005 to 2010. Founder and former CEO of Newcourt Credit Group Inc.
William Lovatt <sup>(1), (3), (6)</sup> Winnipeg, Manitoba, Canada	2014	Chairman of ECN Capital's Board; previously Chairman of the Board; former Executive Vice-President and Chief Financial Officer of Great-West Lifeco Inc., The Great-West Life Assurance Company, London Life Insurance Company and The Canada Life Assurance Company from 1997 to 2015 (35-year career with Great-West Life).
Joan Lamm-Tennant <sup>(1), (2)</sup> New York, New York, USA	2014	Chief Executive Officer of Blue Marble Microinsurance, a microinsurance venture incubator formed by a consortium of insurance entities in January, 2016; former Global Chief Economist and Risk Strategist at Guy Carpenter & Company, LLC, the reinsurance and risk advisory operating company of Marsh & McLennan Companies.
Brian Tobin <sup>(2)</sup> Toronto, Ontario, Canada	2015	Vice Chairman of BMO Capital Markets; former Federal Minister of Industry from 2000 to 2002, former Premier of Newfoundland & Labrador from 1996 to 2000 and Member of Parliament from 1980 to 1996. Lead director and Vice Chairman of Aecon Group Inc. and Chairman of the board of directors of New Flyer Industries Inc.
Bradley Nullmeyer <sup>(3)</sup> Toronto, Ontario, Canada	2016	Chief Executive Officer of Element Fleet and Vice-Chairman of ECN Capital's Board; previously President of Element; previously the Co-Chief Executive Officer of OTEC Research from 2007 to 2012; previously co-founder of Newcourt with lead responsibility for acquisitions, vendor finance programs and joint ventures and President of Vendor Finance for CIT USA.
Paul D. Damp <sup>(1), (4)</sup> Toronto, Ontario, Canada	2016	Chairman and Director of DH Corporation; Managing Partner of Kestrel Capital Partners; previously Chairman, Director and Chief Executive Officer of Accugraph Corporation from 1996 to 1998; former partner at KPMG LLP.

**Notes:**

- (1) Proposed member of the Audit Committee
- (2) Proposed member of the Element Fleet C&CG Committee
- (3) Proposed member of the Risk and Credit Committee
- (4) Proposed chair of the Audit Committee
- (5) Proposed chair of the Element Fleet C&CG Committee
- (6) Proposed chair of the Risk and Credit Committee



By approving the Element Arrangement Resolution, Shareholders will be deemed to have approved the proposed directors of Element Fleet, which are formally appointed pursuant to the Element Plan of Arrangement. The directors of Element Fleet will thereafter be elected by the Shareholders at each annual meeting of shareholders, and will hold office until the next annual meeting of Element Fleet, or until his or her successor is duly elected or appointed, unless: (i) his or her office is earlier vacated in accordance with the articles and by-laws of Element Fleet; or (ii) he or she becomes disqualified to act as a director.

## Executive Officers

Name and Province/State and Country of Residence	Principal Occupation
Bradley Nullmeyer Toronto, Ontario, Canada	Chief Executive Officer of Element Fleet and Vice-Chairman of ECN Capital's Board; previously President of Element; previously the Co-Chief Executive Officer of OTEC Research from 2007 to 2012; previously co-founder of Newcourt with lead responsibility for acquisitions, vendor finance programs and joint ventures and President of Vendor Finance for CIT USA.
Michel Béland Toronto, Ontario, Canada	Chief Financial and Administration Officer of Element since 2011; previously Chief Operating Officer and Chief Financial Officer of MMV Financial Inc., a private equity-backed specialty finance company from 2007 to 2011 and Senior Vice President and Chief Financial Officer at Isacsoft Inc. from 2003 to 2007. Previously Chief Financial Officer and Senior Vice President Operations of Newcourt Credit Group USA.
Daniel Jauernig Toronto, Ontario, Canada	President and Chief Operating Officer of Element since 2014; previously President and CEO of Classified Ventures/Cars.com, a leading provider of online automotive research, reviews and classified advertising products in the U.S., from 2000 to 2014; previously worked at Newcourt from 1991 to 1999 where he served as its Chief Financial Officer and President of Newcourt Services division.
Karen Martin Toronto, Ontario, Canada	Senior Vice President, Project Finance of Element since 2015 and previously served as Treasurer of Element from 2012 to 2015; previously served as Chief Operating Officer at Northbrook Capital Corp. and as President and Chief Financial Officer at Xceed Mortgage Corporation.
Kristi Webb Eden Prairie, Minnesota, U.S.	Chief Executive Officer of North American Fleet; prior to the Element Arrangement, President and CEO of Element's Fleet Management Business; formerly President and CEO of GE Capital Fleet Services until it was acquired; prior to this role, general manager of the GE Capital Dealer Finance business.
Jim Halliday Glenwood, Maryland, U.S.	Executive Vice President of International Fleet; previously, President and CEO of Element's Fleet Management Business; prior to this role held operations and management positions with Fundata Canada, Hollinger Mutual Fund Group and Vincent Associates.
Kathryn Parkinson Hunt Valley, Maryland, U.S.	Chief Credit Officer; prior to the Element Arrangement, Senior Vice President, Credit and Risk; previously Chief Credit Officer for CIT Finance, U.S. Vendor Finance Division; served as chair of the Business Segment Investment committee and Chief Risk Officer for CIT's U.S. Vendor Finance business.

## **Board Committees**

Element Fleet will have three standing committees of its Board of Directors following completion of the Element Arrangement as follows: an Audit Committee (members: William Lovatt, Joan Lamm-Tennant and Paul Damp, Chair), a Compensation and Corporate Governance Committee (members: Joan Lamm-Tennant, Brian Tobin and Richard Venn, Chair) and a Risk and Credit Committee (members: Richard Venn, Bradley Nullmeyer, Steven Hudson and William Lovatt, Chair).

## **EXECUTIVE COMPENSATION**

Management and the Board of Directors of Element are developing a compensation structure that is “right-sized” to the scope of Element Fleet following the Element Arrangement while continuing to provide strong incentive for business growth. The executive compensation of Element Fleet is therefore anticipated to be a continuation of the compensation to which such executives are currently entitled in their positions as officers of Element or its subsidiaries, as applicable. For senior management, there will be no special awards linked to the separation of Element. Management will be rewarded through their equity ownership in Element Fleet if the market views the transaction favourably.

The expected components of compensation for senior executive of Element Fleet will be base salary, short-term incentives and medium and long-term incentives. The short-term incentives will be based on the results of an executive’s scorecard and focused on M&A activity and/or operational performance measures. The medium and long-term incentives will be linked to Element PSUs. The Element PSUs will have defined multi-year objectives and will be inclusive of a total shareholder return measure, as well as other appropriate operational measures. As discussed above under “*Longer-Term Incentive Plan Descriptions – Element Unit Plan*”, the Element PSU grant size can be increased based on M&A activity and/or exceptional performance. Both short-term and medium and long-term incentives will have base targets for payout, as well as a maximum target. The difference between the target award and the maximum award includes allowance for M&A opportunities, which will eliminate the need for transactional bonuses in the normal course.

For further information see “*Compensation Discussion and Analysis*” in Element’s management information circular dated May 11, 2016.

Element Fleet senior executives will enter into amended and restated employment agreements at the Element Effective Time. These agreements will be substantially similar to the contracts currently in place with Element. The specific terms of the employment contracts to be entered into with Element Fleet’s senior executives will be subject to review and approval by the Element Fleet C&CG Committee and the Board prior to the Element Effective Date.

## **CORPORATE GOVERNANCE**

Except as otherwise stated herein, the corporate governance practices of Element Fleet are anticipated to be a continuation of the corporate governance practices of Element or its subsidiaries, as applicable. For more information, see “*Statement of Corporate Governance Practices*” in Element’s management information circular dated May 11, 2016. However, such practices remain subject to revision prior or subsequent to the Element Effective Date. See “*Notice to Readers*” in this Appendix K.

## **RISK FACTORS**

Shareholders should be aware that there are various known and unknown risk factors in connection with the Element Arrangement and the ownership of Element Fleet Common Shares following completion of the Element Arrangement. Shareholders should carefully consider the risk factors described under the heading “*Risk Factors*” and set forth elsewhere in this Management Information Circular as well as the risk factors included in Element’s annual information form and management’s discussion and analysis for the year ended December 31, 2015 and for the interim period ended March 31, 2016.

APPENDIX L

ECN CAPITAL CORP. FOLLOWING THE ARRANGEMENTS

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## NOTICE TO READERS

As at the date of the Management Information Circular, ECN Capital Corp. (“**ECN Capital**”) has not carried on any active business and until the Element Arrangement is effected, ECN Capital will have no assets or liabilities, will conduct no operations and will not issue shares in its capital stock. Pursuant to the Element Arrangement, ECN Capital will become an independent, public corporation. Unless otherwise indicated, the disclosure in this Appendix L has been prepared assuming that the Element Arrangement has become effective and that ECN Capital has become an independent, public corporation. In particular, the disclosure in respect of the business and assets of ECN Capital contained in this Appendix L is presented on the assumption that the Element Arrangement has become effective and the ECN Capital Assets have been transferred to ECN Capital prior to the date in respect of which such disclosure relates. References to the “ECN Capital Assets” in this Appendix L are to such assets as held by Element Financial Corporation (“**Element**”) or its subsidiaries prior to the Element Arrangement and to be held by ECN Capital upon the Element Arrangement becoming effective (the “**Element Effective Date**”). ECN Capital’s audited carve-out combined financial statements as at and for the years ended December 31, 2015, 2014 and 2013 and the accompanying notes (“**ECN Capital Annual Carve-out Combined Financial Statements**”) and ECN Capital’s unaudited carve-out combined financial statements as at and for the three months ended March 31, 2016 and 2015 and the accompanying notes (“**ECN Capital Interim Carve-out Combined Financial Statements**”) and, together with the ECN Capital Annual Combined Financial Statements, the “**ECN Capital Carve-out Combined Financial Statements**”), which are included in Appendix M to the Management Information Circular, have, unless otherwise indicated, been derived from the historical consolidated financial statements of Element for each of the relevant periods. Information included in this Appendix L derived from the ECN Capital Carve-out Combined Financial Statements is presented on a carve-out basis from such historical consolidated financial statements of Element for the relevant period. Where indicated, information presented on a *pro forma* basis has been derived from the ECN Capital Carve-out Combined Financial Statements. Unless otherwise defined herein, all capitalized terms used in this Appendix L have the meanings given to such terms in the Glossary of Terms to the Management Information Circular. Unless the context otherwise permits, indicates or requires, all references in this Appendix L to “ECN Capital”, “we”, “our”, “us” and similar expressions are references to ECN Capital and the business carried on by it following completion of the Element Arrangement.

This Appendix L is limited to a description of ECN Capital, the business and assets being transferred to ECN Capital as part of the Element Arrangement and the acquisition by ECN Capital of all the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) of INFOR Acquisition Corp. (“**IAC**”) in exchange for ECN Capital common shares (“**ECN Capital Common Shares**”) pursuant to the IAC Arrangement (as further described herein). Accordingly, the information set forth in this summary does not address all of the information that may be important to you as a shareholder of Element (“**Element Shareholder**”) and you are urged to review the more detailed information contained elsewhere in, or incorporated by reference into, the Management Information Circular for which this Appendix L forms a part (the “**Management Information Circular**”).

In order to facilitate the incorporation of ECN Capital, and handle certain organizational and other transitional matters prior to the Element Arrangement, two officers of Element have been appointed to the ECN Capital board of directors (the “**ECN Capital Board**”). Unless otherwise indicated, references herein to the programs, policies, procedures, practices, guidelines, mandates, plans and position descriptions (collectively, the “**Programs and Policies**”) of ECN Capital refer, in each case, to the Programs and Policies of ECN Capital which are expected to be formally ratified and adopted by the ECN Capital Board subsequent to the Element Arrangement. Each of the Programs and Policies are expected to be in substantially the same form as those presently in place at Element and, unless otherwise indicated, the disclosure in respect thereof contained in this Appendix L is presented on the assumption that the Programs and Policies have been formally ratified by the ECN Capital Board in such form and have been instituted at ECN Capital. Notwithstanding the foregoing, prior to the formal ratification and adoption of each of the Programs and Policies, it is expected that the ECN Capital Board will review and adjust such Programs and Policies to the extent necessary to ensure that the specific requirements of ECN Capital

and its operations are met. Accordingly, the disclosure contained in this Appendix L in respect of such Programs and Policies remains subject to revision prior or subsequent to the Element Effective Date.

Unless otherwise specified, all dollar amounts are expressed in Canadian dollars and all references to “\$” are to Canadian dollars. References to “US\$” are to United States dollars. Unless otherwise indicated, all financial statements and information included in, or incorporated by reference into, this Appendix L were prepared in accordance with the international financial reporting standards (“IFRS”) as adopted by the International Accounting Standards Board.

This Appendix L includes select non-IFRS measures to analyze performance. Non-IFRS measures used by ECN Capital to analyze performance include adjusted operating expenses, adjusted operating income or before-tax adjusted income, adjusted operating income on average earning assets, allowance for credit losses as a percentage of finance receivables, average cost of borrowing, average debt advance rate, average debt outstanding, average net financial income margin yield, average outstanding earning assets or average earning assets, earning assets or total earning assets or finance earning assets, finance assets or total finance assets, financial leverage or financial leverage ratio, net interest income and rental revenue, net before provisions for credit losses, operating expense ratio, provision for credit loss as a percentage of average finance receivables, rental revenue, net. ECN Capital believes that these non-IFRS financial measures provide meaningful supplemental information regarding its performance and may be useful to investors because they allow for greater transparency with respect to key metrics used by management in its financial and operational decision making. Non-IFRS measures do not have standardized meanings and are unlikely to be comparable to any similar measures presented by other companies. For a description of why these measures are presented, see the section entitled “*IFRS to Non-IFRS Measures*” in the management discussion and analysis filed in connection with the Element Annual Financial Statements incorporated by reference in the Management Information Circular.

The ECN Capital unaudited *pro forma* consolidated financial statements as at and for the three month period ended March 31, 2016 and as at and for the year ended December 31, 2015 (“**ECN Capital Pro Forma Financial Statements**”) included in Appendix N to the Management Information Circular assume the completion of the Element Arrangement and the acquisition by ECN Capital of all the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) of IAC in exchange for ECN Capital Common Shares pursuant to the IAC Arrangement. The ECN Capital Pro Forma Financial Statements should be read in conjunction with the Element Annual Financial Statements and related management discussion and analysis and the Element Interim Financial Statements and related management discussion and analysis, as specifically incorporated by reference in the Management Information Circular and with the ECN Capital Carve-out Combined Financial Statements included in Appendix M to the Management Information Circular.

## **FORWARD-LOOKING INFORMATION**

This Appendix L includes and incorporates statements that are prospective in nature that constitute forward-looking information and/or forward-looking statements within the meaning of applicable securities laws (collectively, “**forward-looking statements**”). Forward-looking statements include, but are not limited to, statements concerning the completion and proposed terms of, and matters relating to, the Element Arrangement and the IAC Arrangement (each as defined herein, and collectively referred to as the “**Arrangements**” in this Appendix L) and the expected timing related thereto, the tax treatment of the Arrangements, the expected operations, financial results and condition of ECN Capital following the Arrangements, ECN Capital’s future objectives and strategies to achieve those objectives, including ECN Capital’s stated intention of transitioning to a fee-based integrated structuring, advisory and asset management model as well as the development of future transportation, rail and other funds, the future prospects of ECN Capital as an independent company, the listing or continued listing of ECN Capital Common Shares on the Toronto Stock Exchange (“**TSX**”), any market created for ECN Capital’s securities, the estimated cash flow, capitalization and adequacy thereof for ECN Capital following the Arrangements, the expected benefits of the Arrangements to, and resulting treatment of, shareholders of ECN Capital (“**ECN Capital Shareholders**”), holders of options and units, and ECN Capital, the anticipated effects of the Arrangements, the estimated costs of the Arrangements, the satisfaction of the

conditions to consummate the Arrangements, the expected terms of ECN Capital's credit facilities and funding arrangements, the expected terms of the Separation Agreement and Transition Services Agreement (as defined herein) and other intercompany arrangements, as well as other statements with respect to management's beliefs, plans, estimates and intentions, and similar statements concerning anticipated future events, results, circumstances, performance or expectations that are not historical facts. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "outlook", "objective", "may", "will", "expect", "intend", "estimate", "anticipate", "believe", "should", "plans" or "continue", or similar expressions suggesting future outcomes or events.

Forward-looking statements reflect management's current beliefs, expectations and assumptions and are based on information currently available to management, management's historical experience, perception of trends and current business conditions, expected future developments and other factors which management considers appropriate. With respect to the forward-looking statements included in or incorporated into this Appendix L, ECN Capital has made certain assumptions with respect to, among other things, the anticipated approval of the Arrangements by Element Shareholders and the Ontario Superior Court of Justice, the anticipated receipt of any required regulatory approvals and consents (including the final approval of the TSX), the expectation that each of Element, 2510204 Ontario Inc. ("**Subco**"), IAC and ECN Capital will comply with the terms and conditions of the Arrangement Agreement (as defined herein), the expectation that no event, change or other circumstance will occur that could give rise to the termination of the Arrangement Agreement, that no unforeseen changes in the legislative and operating framework for ECN Capital will occur, that ECN Capital will meet its future objectives and priorities, that ECN Capital will have access to adequate capital to fund its future projects and plans, that ECN Capital's future projects and plans will proceed as anticipated, as well as assumptions concerning general economic and industry growth rates, commodity prices, currency exchange and interest rates and competitive intensity.

Readers are cautioned not to place undue reliance on forward-looking statements, as there can be no assurance that the future circumstances, outcomes or results anticipated or implied by such forward-looking statements will occur or that plans, intentions or expectations upon which the forward-looking statements are based will occur. By their nature, forward-looking statements involve known and unknown risks and uncertainties and other factors that could cause actual results to differ materially from those contemplated by such statements. Factors that could cause such differences include, but are not limited to: conditions precedent or approvals required for the Arrangements not being obtained; the potential benefits of the Arrangements not being realized; the potential for the combined trading prices of Element Fleet common shares (the "**Element Fleet Common Shares**") and ECN Capital Common Shares after the Element Arrangement being less than the trading price of Element Common Shares immediately prior to the Element Arrangement; there being no established market for the ECN Capital Common Shares; the potential inability or unwillingness of current Element Shareholders to hold Element Fleet Common Shares and/or ECN Capital Common Shares following the Arrangements; Element's ability to delay or amend the implementation of all or part of the Arrangements or to proceed with the Arrangements even if certain consents and approvals are not obtained on a timely basis; future factors that may arise making it inadvisable to proceed with, or advisable to delay, all or part of the Arrangements; indemnity obligations that Element and ECN Capital will owe to each other following the Element Arrangement; the reduced diversity of Element and ECN Capital as separate companies; the costs related to the Arrangements that must be paid even if the Arrangements are not completed; the risk that Element or ECN Capital may default in its obligations under the Separation Agreement, Transition Services Agreement and/or ancillary agreements; and general business and economic uncertainties and adverse market conditions; risks related to ECN Capital's status as an independent public company following the Element Arrangement; and risks related to the achievement of ECN Capital's business objectives, including its transition to a fee-based integrated structuring, advisory and asset management model. For a further description of these and other factors that could cause actual results to differ materially from the forward-looking statements included in or incorporated into this Appendix L, see the risk factors discussed under the heading "*Risk Factors*" in this Appendix L and under the heading "*Risk Factors*" in the Management Information Circular as well as the risks factors included in Element's annual information form and management discussion and analysis for the year ended December 31, 2015 and as described from time to time in the reports and disclosure documents filed by ECN Capital with the Canadian securities regulatory agencies and

commissions. This list is not exhaustive of the factors that may impact ECN Capital's forward-looking statements. These and other factors should be considered carefully and readers should not place undue reliance on ECN Capital's forward-looking statements. As a result of the foregoing and other factors, there can be no assurance that actual results will be consistent with these forward-looking statements.

**All forward-looking statements included in and incorporated into this Appendix L are qualified by these cautionary statements. The forward-looking statements contained herein are made as of the date of the Management Information Circular and except as required by applicable law, Element and ECN Capital undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.**

**Readers are cautioned that the actual results achieved will vary from the information provided herein and that such variations may be material. Consequently, there are no representations by Element or ECN Capital that actual results achieved will be the same in whole or in part as those set out in the forward-looking statements. Reference should also be made to the section entitled “*Forward-Looking Information*” in the Management Information Circular.**

### **THE ELEMENT ARRANGEMENT**

*The following contains only a summary of the Element Plan of Arrangement, the Element Arrangement and the Arrangement Agreement and certain related agreements and matters. Shareholders are urged to read the more detailed information included elsewhere in, or incorporated by reference into, the Management Information Circular, including the Arrangement Agreement included in Appendix D and Section 185 of the Business Corporations Act (Ontario) (the “**OBCA**”).*

The Element Arrangement (the “**Element Arrangement**”) will be effected by way of plan of arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the Element Plan of Arrangement (the “**Element Plan of Arrangement**”) included in Appendix D to the Management Information Circular, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement among Element, ECN Capital, Subco and IAC dated as of July 25, 2016 (the “**Arrangement Agreement**”), the Element Plan of Arrangement or at the direction of the Ontario Superior Court of Justice.

The purpose of the Element Arrangement and the related transactions is to reorganize Element into two separate publicly-traded companies: (1) Element Fleet Management Corp. (“**Element Fleet**”), which will operate Element’s existing Fleet Management Business and (2) ECN Capital, a new publicly traded company which will own and operate the businesses currently carried on by Element and its Affiliates consisting of, among other things, the commercial and vendor finance, the rail finance, and aviation finance businesses, and includes the assets and liabilities pertaining thereto (the “**Commercial Finance Business**”). Following completion of the Element Arrangement, ECN Capital Common Shares and warrants will trade on the TSX. ECN Capital Common Shares will trade on the TSX under the symbol “ECN”.

The Element Arrangement will result in, among other things, Participating Shareholders (as defined in the Management Information Circular) holding all of the outstanding Element Fleet Common Shares and ECN Capital Common Shares. At closing of the Element Arrangement, Element Shareholders will retain ownership in both companies in the same proportionate voting and equity interest, directly or indirectly, in all of the assets currently held by Element. For a detailed summary of what is proposed under the Element Arrangement, and the related transactions to occur prior to and after the Element Arrangement, see the section entitled “*The Element Arrangement*” in the Management Information Circular and, for detailed reasons for the Element Arrangement, see “*The Element Arrangement – Reasons for the Element Arrangement*” in the Management Information Circular.



## THE IAC ARRANGEMENT

*The following contains only a summary of the IAC Arrangement and the Arrangement Agreement and certain related matters. Shareholders are urged to read the more detailed information included elsewhere in, or incorporated by reference into, the Management Information Circular, including the Arrangement Agreement included in Appendix D.*

The IAC Arrangement (the “**IAC Arrangement**”) will be effected by way of plan of arrangement pursuant to the provisions of section 182 of the OBCA on the terms set forth in the IAC Plan of Arrangement (the “**IAC Plan of Arrangement**”) included in Appendix D to the Management Information Circular, subject to any amendment or supplement thereto made in accordance with the Arrangement Agreement, the IAC Plan of Arrangement or at the direction of the Ontario Superior Court of Justice. The IAC Arrangement will result in, among other things, the acquisition by ECN Capital of all the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) in IAC in exchange for ECN Capital Common Shares. In connection with the IAC Arrangement, assuming no redemptions, ECN Capital expects to issue approximately 13% of its common shares to former IAC shareholders. For further details, see “*The IAC Arrangement*” in the Management Information Circular.

Following completion of the Element Arrangement, ECN Capital will be a new commercial finance company with a significant potential growth profile built on a broad commercial finance origination platform supported by global institutional investors and will continue to transition to a fee-based integrated structuring, advisory and asset management model. In pursuing its growth plan, ECN Capital expects to access a variety of sources of capital to fund organic growth by expanding its origination capabilities and pursue acquisitive opportunities. As an initial step in this plan, Element and ECN Capital have agreed to the combination of ECN Capital with IAC pursuant to the IAC Arrangement which will provide ECN Capital with immediate and timely access to capital by way of public equity to fund and accelerate future growth and also results in the strengthening of the ECN Capital Board and senior management. For detailed reasons for the IAC Arrangement, see “*The IAC Arrangement – Reasons for the IAC Arrangement*” in the Management Information Circular.

## GENERAL DEVELOPMENT OF THE BUSINESS

### ECN Capital

#### **Background**

The fleet management, commercial and vendor finance, rail finance, and aviation finance divisions of Element, ECN Capital’s predecessor company, made it into one of North America’s leading fleet management and equipment finance companies.

On February 16, 2016, Element announced that its board of directors (the “**Element Board**”) unanimously approved in principle the reorganization of Element into two separate publicly-traded companies (the “**Spin-Out Transaction**”) that Element believes will be better able to pursue independent strategies and opportunities for growth and ultimately enhance long-term value for Element Shareholders. If implemented, the reorganization would result in Element (which will be renamed “Element Fleet Management Corp.”) continuing as a fleet management company focused on generating revenue and earnings based on the continued service to Element’s existing fleet management business. The reorganization would also result in the creation of a new commercial finance company (to be named ECN Capital Corp.) with a broad origination platform in the commercial and vendor, rail and aircraft sectors, which would transition into an asset management business. On July 25, 2016, Element announced that ECN Capital will acquire all of the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) of IAC in exchange for ECN Capital Shares pursuant to the IAC Arrangement. The acquisition of IAC is a separate transaction to the Spin-Out Transaction, and is expected to close after completion of the Spin-Out Transaction. See “*The Element Arrangement*” and the “*The IAC Arrangement*” in the Management Information Circular.

## ***Business of ECN Capital***

ECN Capital's business is operated across North America in three verticals of the equipment finance market (commercial and vendor finance, rail finance and aviation finance). ECN Capital originates the financing of a broad range of equipment and capital assets by way of secured loans, financial leases, conditional sales contracts and operating leases. ECN Capital originates the vast majority of its commercial and vendor financings through relationships or programs with vendors, in which ECN Capital originates its business by executing master lease and service agreements with end user customers. ECN Capital originates the majority of its rail leases and loans through the Trinity Vendor Program, as well as through direct originations. ECN Capital distinguishes itself from traditional lenders such as banks and finance companies in that it: (i) offers select, asset-based financing services rather than providing full-service lending as well as provides significant services regarding utilization of financed assets; (ii) originates primarily through vendor relationships or programs with equipment manufacturers; (iii) funds its activities through commitments from institutional investors rather than accepting deposits from the public; and (iv) manages equipment finance funds on behalf of institutional investors.

ECN Capital's assets will include Element's \$2.9 billion (as of March 31, 2016) portfolio of commercial and vendor finance assets, Element's \$2.2 billion (as of March 31, 2016) portfolio of rail assets and Element's \$1.5 billion (as of March 31, 2016) portfolio of "on balance sheet" general aviation assets. Following a strategic review of its aviation finance business in early 2016, Element determined to discontinue the majority of its "on balance sheet" aviation finance business and to sell, manage to maturity or transition to a future aviation fund its portfolio of general aviation assets. In addition, ECN Capital will manage Element's Commercial Aircraft Fund's \$2.2 billion (as of March 31, 2016) portfolio of commercial aviation assets.

ECN Capital is led by its chief executive officer, Steven Hudson. Mr. Hudson has over 30 years of experience and success in the equipment and asset finance industry, including most recently serving as the chief executive officer of Element since 2011. During Mr. Hudson's time as chief executive officer of Element, Element became one of North America's leading fleet management and equipment finance companies, increasing its portfolio of assets from approximately \$50.0 million to approximately \$24.0 billion as a result of numerous acquisitions, including Element's US\$1.4 billion acquisition of PHH Corporation's fleet management services business in 2014 and Element's \$8.9 billion acquisition of GE Capital Corporation's fleet management operations in the United States, Mexico and Australia & New Zealand in 2015, and significant organic growth. Mr. Hudson also served for 14 years as chief executive officer of Newcourt Credit Group Inc., a company he founded. Under Mr. Hudson's leadership, Newcourt went public in early 1994, completed numerous acquisitions and experienced significant organic growth prior to the merger of Newcourt with The CIT Group, Inc. in 1999. Under Mr. Hudson's leadership, Newcourt completed a number of acquisitions, including AT&T Capital Corporation, Commcorp Financial Services Inc. (CIBC Equipment Leasing) and the asset finance operations of Lloyd's Bank and grew its portfolio of finance assets to approximately \$35.0 billion at the time of its sale to CIT Group.

ECN Capital has an experienced executive management team with seasoned executives leading each of ECN Capital's core business verticals with decades of diversified equipment finance and asset finance industry experience. ECN Capital utilizes its management team's extensive experience in the equipment financing industry to maintain and expand relationships and programs with equipment vendors and direct relationships with customers. Following completion of the Element Arrangement, ECN Capital and its subsidiaries are expected to have approximately 200 employees.



## DESCRIPTION OF THE BUSINESS

### ECN Capital's Business Verticals

ECN Capital has organized its activities and operations around three core business verticals: (i) commercial and vendor Finance, (ii) rail finance and (iii) aviation finance.



### *Commercial and Vendor Finance*

Commercial and vendor finance is ECN Capital's vertical servicing the mid-ticket finance segment of the equipment finance industry. Commercial and vendor finance, in conjunction with manufacturers and distributors, delivers financing and leasing solutions to end-user customers in the transportation, construction, commercial, industrial, healthcare, franchise, technology, office products and energy sectors. The mid-ticket finance segment involves financing for the acquisition of equipment ranging in value from approximately \$10,000 to over \$5.0 million. In general, the Canadian and U.S. equipment finance industry is served by three main industry participants: independent lease finance companies like ECN Capital, captive finance companies owned by manufacturers and distributors, and banks.

ECN Capital has identified three key objectives for the development of its equipment financing business: (i) target specific segments of the equipment finance market and establish separate business units to cover each segment; (ii) as ECN Capital's market presence grows, expand its vendor finance business by increasing the number of its vendor relationships; and (iii) expand ECN Capital's equipment finance origination capabilities through targeted organic and acquisitive growth.

ECN Capital primarily originates its equipment finance assets directly through its relationships or programs with equipment vendors. Unlike many of its competitors, ECN Capital does not rely on third-party brokers to originate its business. To further assure the quality of its equipment finance assets, ECN Capital emphasizes the creditworthiness of the ultimate lessee or borrower, the value of the financed assets and the creditworthiness of the vendor. The commercial and vendor finance segment has assembled an industry-leading sales force, and has employees covering Canada and the United States with offices in Mississauga, Montréal, Calgary, Chicago and Horsham, Pennsylvania.

### *Rail Finance*

Rail finance focuses on vendor relationships with rail manufacturers to provide railcar leasing and other secured financing for railcars for the North American rail industry, sources railcar investment opportunities through its direct origination channel and participates in the secondary market. Rail finance was launched in December 2013 when Element entered into the Trinity Vendor Program, a strategic alliance agreement with Trinity, a leading North American manufacturer of railcars. The program was renewed in October 2015 for an additional four year period.

Pursuant to the terms of a vendor finance program (the "**Trinity Vendor Program**") with Trinity Industries Inc., ECN Capital is presented with opportunities to enter into lease financings ("**Leases**") with Trinity Industries Leasing Company and/or affiliates ("**Trinity**") for railcars manufactured by Trinity ("**Railcars**", and together with the Leases, the "**Railcar Assets**"). The Leases assumed by ECN Capital are consistent

with the diversification criteria established by Element at the time of entering into the Trinity Vendor Program.

The identification of the Railcar Assets offered by Trinity to ECN Capital under the Trinity Vendor Program include Leases for newly manufactured railcars, existing railcars and secondary market purchases from third parties identified by Trinity, and are based on predetermined diversification criteria, including limits on railcar type, use, Lease duration, average age and credit quality of the lessee. Offers of qualifying railcar assets are made to ECN Capital by Trinity from time to time. Trinity and ECN Capital will meet on a quarterly basis to report on and consult with respect to material business and process issues under the Trinity Vendor Program.

The lessees under the Trinity Vendor Program consist of entities rated by S&P (or, in certain instances, entities whose parents and/or affiliates are rated by S&P) and/or by another rating agency, as well as unrated entities.

Under Trinity's procedures, railcars are leased to a Trinity customer pursuant to a master railcar lease agreement which specifies general terms applicable to the lease of all railcars to be leased to such customer and one or more riders/supplements are entered into from time to time which describe the specific railcars to be leased by the customer, together with the applicable term and lease rates applicable to such railcars. The rider incorporates the terms of the master railcar lease agreement which, together with such incorporated terms, evidences and constitutes a Lease.

Trinity also offers ECN Capital the right to assume railcar financing transactions on financial terms to be agreed upon by the parties at the time of offer. Under the terms of the Trinity Vendor Program: (i) Trinity Rail Asset Management Company, LLC provides ECN Capital with new business and general advisory services, including assisting ECN Capital with analyzing the operating and financial performance of the Railcar Assets and advising Element on the status of the railcar and railcar leasing markets; and (ii) Trinity is responsible for performing operating, maintenance and servicing on behalf of ECN Capital in respect of the Railcar Assets.

ECN Capital has also established direct origination capabilities through the creation of a dedicated rail investment team operating out of offices in Montreal and Chicago. The group mandate is to internally source Railcar Asset investment opportunities that consist of newly manufactured railcars, existing railcars and secondary market purchases from third parties. Target Railcar Asset lease structures, terms and lessee counterparties are subject to similar diversification and investment criteria as the Trinity Vendor Program. ECN Capital will be responsible for performing operating, maintenance and servicing in respect of the Railcar Assets purchased through the direct origination channel.

In early 2016, Element determined to reduce or defer originations from the Trinity Vendor Program and its direct originations business in order to be well positioned to capitalize on market opportunities in the secondary market in 2016. ECN Capital will continue to pursue strategic partnerships and investment opportunities to grow its rail finance business.

### ***Aviation Finance***

Historically, the Aviation finance vertical has provided leases and other secured financing arrangements for corporate airplanes and helicopters and has also originated large aviation financing and leasing transactions that ranged in size from \$5.0 million to over \$150.0 million. These transactions typically applied to the financing of high-value assets such as a corporate jets or helicopters. Element originated these larger, longer-duration aviation financing transactions through its teams of knowledgeable aviation finance specialists who have established networks of contacts with both manufacturers and end-users of various types of equipment. Following a strategic review of its aviation finance business in early 2016, Element determined to discontinue the majority of its "on balance sheet" aviation finance business and to sell, manage to maturity or transition to a future aviation fund its portfolio of aviation assets.

Going forward, ECN Capital expects to focus its aviation expertise on arranging, co-investing in and managing portfolios of commercial aviation funds on behalf of institutional investors. In June 2015, Element completed the closing of a US\$1.21 billion debt offering for the ECAF I Fund secured by a portfolio of commercial passenger aircraft manufactured by Boeing and Airbus. Element acted as structurer in the formation of the ECAF I Fund and sourced the third-party institutional equity co-investors in the ECAF I Fund. Building on the successful arrangement and management of the ECAF I Fund, ECN Capital intends to grow its aviation finance business by largely focusing on transactions and opportunities involving the structuring and participating in an expanded family of funds (“**ECAF Family Funds**”).

The origination of the commercial aviation assets to be included in future ECAF Family Funds will primarily be sourced through secondary market purchases from third parties identified by ECN Capital through its extensive network of industry relationships, and will be based on predetermined diversification criteria within each discreet ECAF Family Fund, including limits on aircraft type, lease term, average age, lessee credit and jurisdictional considerations of the operating lessee. ECN Capital will engage a third-party aircraft lease manager for each ECAF Family Fund to be responsible for overseeing the on-going re-leasing, servicing and aircraft maintenance management on behalf of its respective ECAF Family Fund.

In addition to originating and/or arranging the assets for inclusion in each ECAF Family Fund, ECN Capital will structure, co-invest in and manage each ECAF Family Fund, and will use its extensive institutional investor relationships to identify co-investors for each ECAF Family Fund. ECN Capital will provide on-going administrative support for the benefit of each of the institutional investors participating in each ECAF Family Fund.

### **Three-Year History**

The following is a summary of significant developments in Element’s commercial and vendor finance, rail finance and aviation finance divisions, which form the business of ECN Capital, over the past three years:

Trinity Strategic Alliance. On December 9, 2013, Element established the Trinity Vendor Program with Trinity Industries Inc. to enter into lease financing transactions with Trinity over a two year period (and subsequently renewed in October 2015 for an additional four year period). Under the terms of the Trinity Vendor Program, Element and Trinity formed a strategic alliance whereby Element is presented with opportunities from time to time to enter into lease financings for railcars manufactured by Trinity. Trinity also offers Element the right to assume railcar financing transactions on financial terms to be agreed upon by the parties at the time of offer. Under the terms of the Trinity Vendor Program, (i) Trinity Rail Asset Management Company, LLC provides Element with new business and general advisory services, including assisting Element with analyzing the operating and financial performance of the railcar assets and advising Element on the status of the railcar and railcar leasing markets, and (ii) Trinity is responsible for performing operating, maintenance and servicing on behalf of Element in respect of the railcar assets.

Helicopter Finance Assets Acquisition. On December 19, 2013, Element acquired finance assets consisting of lease and loan arrangements secured by 57 individual helicopters primarily located in the United States from, *inter alia*, GE Capital Corporation and Path Air L.L.C., a division of GE Capital Corporation.

Element Commercial Aircraft Funds. On June 22, 2015, Element completed the closing of a US\$1.21 billion debt offering of ECAF I Ltd., Series 2015-1 Notes. Element acted as structurer in the formation of ECAF I Ltd. (the “**ECAF I Fund**”) and sourced the third-party institutional equity co-investors in the ECAF I Fund. Element also acts as the on-going administrator to the ECAF I Fund and retained BBAM Aviation Services Limited, an affiliate of BBAM Limited Partnership, to act as servicer with respect to the portfolio under the terms of a multi-year contract. The Asset Backed Securities offering was comprised of three tranches of notes with two classes (representing 87% of the aggregate notes) carrying an A (sf) rating from Standard & Poor’s (“**S&P**”) and A- (sf) rating from Fitch Ratings (“**Fitch**”), and the remaining notes carrying a BBB (sf) rating from S&P and a BBB (sf) rating from Fitch. The notes are secured by a portfolio of commercial passenger aircraft manufactured by Boeing and Airbus.

## **Growth Strategy**

### ***Transition to Fee-Based Asset Management Model***

As a primary part of ECN Capital's growth strategy ECN Capital intends to transition into a fee-based integrated structuring, advisory and asset management model with an initial focus on establishing a family of institutional funds within its core areas of expertise in the commercial and vendor finance, rail finance and commercial aviation finance verticals, such as ECAF Family Funds. ECN Capital believes that there is a significant opportunity to increase its growth profile through structuring, advisory and management fees, increased effective leverage rates and institutional investor and co-investor support pursuant to its transition to an asset management model. In addition to the commercial aircraft ECAF funds, ECN Capital is also developing a transportation fund which will consist of a well-diversified portfolio of assets originated from ECN Capital's three business verticals. The portfolio will include rail, commercial and general aviation and other transportation assets. The financing contracts in the portfolio will consist of a mix of senior debt, subordinated debt and participations in operating leases. This vehicle will allow institutional investors to have access to ECN Capital's proprietary deal origination platform and the ability to co-invest with an expert in the origination and management of transportation finance assets.

In the future ECN Capital will also develop rail funds which will consist entirely of railcar leases originated from ECN Capital's rail vertical. The fund will provide institutional investors the opportunity to invest in a portfolio of railcar leases which is well diversified by car type, industry, lessee and lease term and that produces strong cash flow and tax deferral benefits.

ECN Capital is also exploring and identifying opportunities to create a group of funds that focus on the transactions originated through its commercial and vendor finance vertical to allow institutional investors to have direct access to ECN Capital's proprietary vendor finance programs.

Ultimately, ECN Capital intends develop into a global asset management company delivering high returns, while allowing it to pursue organic and acquisitive growth opportunities within a broad range of verticals. Through a family of investment funds, and assets financed based on ECN Capital's investment grade balance sheet, ECN Capital expects to supply institutional investors and funding partners with predictable access to a range of high-quality rated asset backed portfolios diversified by geography, asset, duration and yield, allowing its equity investors to participate in the ownership of a high cash flow, fee-based asset management business with experienced leadership, efficient and stable funding sources and an industry-leading position in multiple core verticals.

### ***Commercial Finance Growth Strategies***

ECN Capital's growth strategy relating to its "on balance sheet" commercial finance business is based on three broad initiatives: (i) capitalizing on organic and direct origination opportunities by leveraging established customer relationships and by continuing to "build out" its existing capabilities on both sides of the Canada-U.S. border; (ii) developing new strategic vendor relationships and programs with manufacturers, dealers and distributors; and (iii) pursuing and completing acquisitions that can broaden ECN Capital's base of vendor and dealer relationships.

This approach to organic, new vendor and acquisitive growth is founded upon a number of considerations:

- ECN Capital is operationally capable of serving equipment vendors that have customers on both sides of the Canada-US border;
- As ECN Capital's relationships and programs with existing vendors mature, it hopes to transition those into more extensive and integrated service offerings;

- As an integral part of its growth strategy, ECN Capital is focusing its activities for its “on-balance sheet” business on establishing vendor finance programs as its main origination channel;
- ECN Capital has the operational infrastructure in place to increase the number of independent equipment manufacturers, dealers and distributors that rely on ECN Capital to provide equipment finance transactions for their customers; and
- ECN Capital believes that the North American equipment finance industry has opportunities similar to those provided by the 2008 market disruption to acquire attractive portfolios and seasoned businesses at favourable prices, to expand its origination staff by hiring experienced teams with well-established origination relationships and to pursue other strategic and accretive acquisition opportunities. ECN Capital intends to continue pursuing a disciplined approach to such opportunities.

### ***Capitalize on Organic Opportunities***

#### *Leverage Existing Customer Relationships*

Building on Element’s prior acquisitions and strategic alliances in the commercial and vendor finance, rail finance and aviation finance verticals, ECN Capital will seek to expand its operational capabilities in North America. ECN Capital will leverage its enhanced ability to provide equipment financing for ECN Capital’s existing vendor relationships on both sides of the border and compete in the U.S. market. ECN Capital will hold discussions with its existing vendor relationships to better serve their needs in this manner. Examples of this strategy have already been realized and ECN Capital is encouraged by the interest expressed by existing relationships in expanding ECN Capital’s business on both sides of the Canada-U.S. border.

#### *Deepen Existing Capabilities*

ECN Capital intends to build upon the mutual strengths of each of its Canadian and U.S. operations in a disciplined manner and in a way that leverages the skills and expertise of management and personnel on either side of the border to create a North American leasing platform. ECN Capital also intends to continue building these strengths in each geographic region by hiring experienced teams and by way of acquisitions.

#### ***Develop New Strategic Vendor Relationships***

ECN Capital believes its executive management team’s experience in the equipment financing industry provides ECN Capital with access to key decision makers at equipment vendors across North America, thereby enabling it to develop and enhance equipment vendor relationships in ECN Capital’s core business verticals. ECN Capital is focusing its activities on establishing vendor finance programs as its main origination channel as an integral part of its growth strategy.

As part of developing and enhancing vendor relationships, ECN Capital seeks to establish itself effectively as a business partner of its vendors through the establishment of commercial arrangements, including joint ventures, designed to develop, promote and administer equipment financing programs for such vendors’ customers. ECN Capital typically provides the vendor with assistance and advice as to interest rates, down payments, repayment maturities, documentation, collections, liquidations, marketing and related matters. Although ECN Capital seeks and often obtains a preferred relationship with vendors pursuant to these programs, these arrangements do not obligate ECN Capital to approve any financing transactions which do not meet its credit standards or require the vendor to refer all of its financing transactions to ECN Capital.



ECN Capital currently has a number of commercial and vendor finance programs with a broad range of customers and leading manufacturers in place in Canada and the United States, including the Trinity Vendor Program through which ECN Capital originates the majority of its rail leases and loans.

### ***Pursue Strategic Acquisitions and Other Partnerships***

ECN Capital is positioned to capitalize on opportunities to expand its business through potential acquisition and partnership opportunities. The market dislocation that began in 2008 and the regulatory response to that dislocation as it affected regulated financial institutions created opportunities to acquire attractive portfolios and seasoned businesses at favourable prices, to expand its origination staff by hiring experienced teams with well-established origination relationships and to pursue other strategic and accretive acquisition opportunities. ECN Capital believes that opportunities currently exist similar to those created by the market dislocation in 2008 which will present acquisition and partnership opportunities for ECN Capital going forward. ECN Capital believes that it has excellent access to capital, a highly experienced management team and a broad network of relationships that provide it with a strong capability to opportunistically complete accretive transactions and develop long-term strategic partnerships.

### ***Pursue Strategic Acquisitions***

ECN Capital will undertake a prudent and disciplined approach in reviewing numerous acquisition opportunities and believes that significant strategic and accretive opportunities exist.

ECN Capital's acquisitive growth objectives are currently focused on acquisitions of:

- asset management companies and platforms;
- independent equipment leasing companies within ECN Capital's core equipment and vendor markets;
- captive finance companies and portfolios; and
- leasing businesses and portfolios from financial institutions.

ECN Capital's focus for these acquisitive growth objectives will concentrate on opportunities within the North American market that are within ECN Capital's core verticals and that possess processing capabilities and strong local management teams. As part of ECN Capital's strategy, ECN Capital may acquire established origination teams and platforms in order to provide increased national coverage and regional diversification and/or strengths in desirable business verticals.

Further, acquisition activities will be focused on businesses or portfolios that are a strategic fit in terms of back-office, systems and originations capabilities, have the required infrastructure to continue to operate and grow independently without straining ECN Capital's existing infrastructure and offer accretion to ECN Capital from a net income and return on equity perspective.

ECN Capital's experienced management team has successfully completed numerous industry acquisitions and integrations. ECN Capital management's experience provides ECN Capital with a disciplined approach to acquisition opportunities. ECN Capital believes that its management's past experience in the equipment financing and financial services industries provides ECN Capital with the skills and experience to effectively identify and evaluate acquisition opportunities.

## Competition

ECN Capital's markets are highly competitive and characterized by various competitive factors that vary by business vertical and by region.

Element's competitors in the commercial finance market in North America include other independent equipment finance companies and regional and national banks, such as Canadian Western Bank, CIT, Laurentian Bank of Canada, Key Equipment Finance, HSBC, PNC Equipment Finance, Bank of America Equipment Finance, and other Canadian and U.S. banks. Competitors service this market through either the direct distribution channel, whereby the end-user of the equipment is the main customer, or through the vendor origination channel, whereby the equipment manufacturer or dealer/distributor network is the main customer. In the direct distribution channel, Element focused on servicing large national accounts where its established industry expertise, national reach, knowledge of assets values and skill in transaction structuring enable it to compete effectively. Similarly, in the vendor origination channel, Element's reputation for structuring and servicing national vendor finance programs for leading manufacturers, together with its long-standing relationships with its funding partners, provided it with competitive advantages. As ECN Capital transitions to an asset management business, these foregoing competitors will no longer be competitors, and ECN Capital will compete with other asset management businesses.

ECN Capital believes it is well positioned to compete with its competitors by means of having an experienced management team with a track record of success, access to capital, a large and highly experienced in-house sales team with rapid customer response times and a creative structuring approach, as well as strong relationships with end-user customers and vendors and financial institution partnerships.

In the corporate finance market, dominant U.S. participants have curtailed their activities in both the U.S. and Canada. Canadian and U.S. banks are still very active in their respective markets but are financing with tighter credit conditions, longer processes and more restrictive terms. The corporate finance market is more difficult to penetrate than the commercial finance market because it requires: (i) an origination network that is developed over many years from serving the manufacturers and end-users of a particular asset class; (ii) a deep level of knowledge regarding underwriting and structuring credit, based on the manner in which the values of these assets change over time as a result of age, use, maintenance, technological innovation and economic cycles; and (iii) knowledge of and access to funding sources in which the originator has developed a working relationship that allows syndicate structures to be put together efficiently on a transaction-by-transaction basis.

In the rail and aviation markets, ECN Capital's competitors include intermediaries that are known to have expertise in arranging and structuring portfolios of these specialized assets. ECN Capital's primary competitors in the rail finance market include CIT Group and GATX Corporation.

In the asset management market, ECN Capital expects that its competitors will include private equity focused asset managers, including mid-cap alternative asset managers operating in Canada and the U.S. ECN Capital will compete in this market on a transaction-by-transaction and fund-by-fund basis through its deep knowledge of asset values through multiple business cycles and its established access to the institutional investors that are known to participate in funding structures.

## Funding Arrangements

### *Senior Credit Facility*

In conjunction with the Element Arrangement, underwriter's commitments have been received for the establishment of a US\$2.5 billion senior three-year revolving credit facility (the "**Senior ECN Capital Facility**") in favour of ECN Capital and ECN Capital US Holdings Corp., ECN Capital's wholly-owned U.S. subsidiary, as co-borrowers. Such facility will provide for advances denominated in U.S. and Canadian

dollars and will be available for general corporate purposes including to fund its current and future finance assets. A portion of the initial advance under the Senior ECN Capital Facility will be used to repay intercompany debt owed to Element, with the proceeds of such intercompany repayment being used by Element to repay a corresponding portion of outstanding indebtedness under the Existing Credit Agreement (see discussion under the heading “*Credit Facilities*” in the Management Information Circular).

#### *Commercial Finance Funding Model*

The funding strategy for the various “on balance sheet” commercial finance assets originated by ECN Capital is determined by the nature of the underlying commercial finance assets and execution efficiency. ECN Capital’s primary sources of funding are: (i) cash flows from operating activities; (ii) securitizations, (iii) syndications; (iv) revolving secured borrowings, such as the Senior ECN Capital Facility; and (v) equity.

Various factors influence the funding decision, including the size, duration and character of the underlying equipment finance assets, and any limitations imposed by the funding sources, including in some cases obligor and asset-based concentration limits. ECN Capital’s funding strategies outlined below may not be the only financing source for a particular business unit. An important liquidity measure for ECN Capital is its ability to maintain diversified funding sources to support its operations. ECN Capital also ensures match funding on both a duration and interest rate basis for its secured funding arrangements.

ECN Capital’s funding model for its business verticals is as follows:

*Commercial and Vendor Finance* - Commercial and vendor finance’s business units originate assets that match the investment quality and duration and are financed through revolving secured borrowings, securitizations, funding facilities established with certain Canadian life insurance companies and syndications.

*Rail Finance* – Rail finance assets have longer durations and larger asset sizes and are initially financed through revolving secured borrowings, which are then repaid by the issuance of asset-backed notes secured by Railcar Assets. ECN Capital, through indirect wholly-owned subsidiaries, has established a securitization program to fund Railcar Assets. Under this program, the ECN Capital’s subsidiaries issue secured railcar equipment notes that are secured by Canadian, U.S. and Mexican Railcar Assets. The notes are comprised of various classes, with the senior notes rated A (sf) by S&P. ECN Capital plans to finance additional Railcar Assets originated under the Trinity Vendor Program through further issuances of secured railcar equipment notes.

*Aviation Finance* – Historically, Aviation finance transactions have been typically funded through the revolving secured borrowings and syndicated funding. As noted previously, ECN Capital will discontinue its “on balance sheet” aviation finance business to which these funding arrangements are applicable, and instead intends to continue to grow its aviation finance business by structuring and participating in an expanded family of funds. See “*Asset Management Funding Model*” below in this Appendix L.

For more information regarding ECN Capital’s commercial finance funding arrangements, see “*Note 9 – Secured Borrowings*” in the notes to financial statements included in the ECN Capital Annual Carve-out Combined Financial Statements and “*Note 5 – Secured Borrowings*” in the notes to the financial statements included in the ECN Capital Interim Carve-out Combined Financial Statements each included in Appendix M to the Management Information Circular. See also “*Annual and Interim Management Discussion and Analysis - Liquidity & Capital Resources*” in this Appendix L.

#### *Asset Management Funding Model*

As outlined above under the heading “*Description of the Business – Growth Strategy*”, ECN Capital intends to transition into a fee-based integrated structuring, advisory and asset management model with an initial focus on establishing a family of institutional funds. Similar to its role in arranging and managing

the ECAF I Fund, ECN Capital expects that it will act as structurer in the formation of a family of funds within its core areas of expertise in the commercial and vendor finance, rail finance and commercial aviation finance verticals, including originating and/or arranging assets, sourcing equity investments from third-party institutional investors and offering asset-backed notes secured by underlying equipment, rail and commercial aviation assets as well as other assets.

## **Employees**

At the Element Effective Date, ECN Capital is expected to have approximately 200 employees in the U.S. and Canada. None of ECN Capital's employees is represented by a collective bargaining agreement and (including during the period where the Commercial Finance Business was operated by Element) has never experienced any work stoppages. ECN Capital expects that its employment agreements with each of its senior executives and originators will contain customary non-solicitation and non-competition provisions. ECN Capital considers its relations with its employees to be good and views its employees as an important competitive advantage. Historically, Element has been successful in retaining its key employees including members of its senior management team. ECN Capital's senior management team has an in depth knowledge of equipment finance, and of the independent financial services industry in general.

## **ARRANGEMENTS BETWEEN ELEMENT AND ECN CAPITAL**

Element, ECN Capital, Subco and IAC have entered into the Arrangement Agreement which provides for, among other things, the terms of the Element Arrangement (including the Element Plan of Arrangement), the conditions to its completion, actions to be taken prior to and after the Element Effective Date and indemnities between the companies after the Element Effective Date. Pursuant to the Arrangement Agreement, Element, ECN Capital and IAC have agreed to use commercially reasonable efforts and to do all things reasonably required to complete the transactions contemplated in the Arrangement Agreement. See "*The Element Arrangement – Arrangement Agreement*" in the Management Information Circular for more information.

Prior to the Element Effective Date, Element, ECN Capital and Subco are expected to enter into the Separation Agreement, the Transition Services Agreement and several ancillary agreements which are expected to provide for, among other things, the transfer of the Commercial Finance Business to Subco and certain arrangements governing the separation of the Fleet Management Business and the Commercial Finance Business.

Pursuant to the Separation Agreement, Element and ECN Capital are expected to enter into a transition services agreement (the "**Transition Services Agreement**") pursuant to which Element and ECN Capital will agree to provide each other, on a transitional basis, certain tax, accounting, finance and real estate services in order to facilitate the orderly transfer of the Commercial Finance Business to ECN Capital and to assist ECN Capital's transition to a public company.

The terms of the Separation Agreement, the Transition Services Agreement and the ancillary agreements have not been finalized prior to finalizing the Management Information Circular. Changes, some of which may be material, may be made prior to the implementation of the Pre-Arrangement Transactions. For more information on the Separation Agreement, the Transition Services Agreement and ancillary agreements, see "*The Element Arrangement – Separation and Ancillary Agreements*" and "*The Element Arrangement – Pre-Element Arrangement Transactions*" in the Management Information Circular.

## **PRO FORMA CONSOLIDATED CAPITALIZATION**

The following table sets forth the consolidated capitalization of ECN Capital as at March 31, 2016 adjusted to give effect to the Element Arrangement and the acquisition by ECN Capital of all the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) of IAC in exchange for ECN Capital Common Shares pursuant to the IAC Arrangement. Since this date, other than

in the normal course of business, there has been no material change in the equity and debt capital of ECN Capital, on a consolidated basis.

You should read this table in conjunction with the ECN Capital Carve-out Combined Financial Statements and the ECN Capital Pro Forma Financial Statements included in Appendix M and Appendix N, respectively, to the Management Information Circular.

	As at March 31, 2016, as adjusted \$ (in thousands)
Secured borrowings	4,383,876
Shareholders' equity	1,671,664
<b>Total Capitalization</b>	<b>6,055,540</b>

### SUMMARY HISTORICAL AND PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following summary historical combined financial information as at and for the three months ended March 31, 2016 and 2015 and as at and for the years ended December 31, 2015, 2014 and 2013 has been derived from the ECN Capital Carve-out Combined Financial Statements. Those financial statements present the historical carve-out combined financial position and results of operations of ECN Capital as it has been proposed to be carved out under the Element Arrangement and as if it operated as a stand-alone entity for the periods presented.

The summary *pro forma* financial information for the three months ended and as at March 31, 2016 is presented as if the Arrangements had been effected on March 31, 2016, for the purposes of the *pro forma* balance sheet data. The summary *pro forma* financial information for the three months ended and as at March 31, 2016 and for the year ended and as at December 31, 2015 is presented as if the Element Arrangement had been effected on January 1, 2015 and as if the IAC Arrangement had been effected on April 17, 2015 (the date of formation of IAC) for the purposes of the *pro forma* operating results.

This summary historical and *pro forma* financial information should be read in conjunction with the ECN Capital Carve-out Combined Financial Statements and the ECN Capital Pro Forma Financial Statements, which are included in Appendix M and Appendix N, respectively, to the Management Information Circular.

The summary historical and *pro forma* financial information has been prepared for illustrative purposes only and may not be indicative of the operating results or financial condition that would have been achieved if the Arrangements had been completed on the dates or for the periods noted above, nor do they purport to project the results of operations or financial position for any future period or as of any future date. In addition to the *pro forma* adjustments that comprise this *pro forma* financial information, various other factors will have an effect on the financial condition and results of operations of ECN Capital following the completion of the Arrangements.

(in 000's for stated values)	As at and for three-month period ended			As at and for year ended			
	March 31, 2016		March 31, 2015	December 31, 2015		December 31, 2014	December 31, 2013
	Pro forma \$	Historical \$	Historical \$	Pro forma \$	Historical \$	Historical \$	Historical \$
<b>Operations</b>							
Net financial income	56,168	55,924	50,627	218,436	217,668	142,013	64,919
Adjusted operating income before taxes (1)	40,782	40,675	37,986	161,014	160,811	96,690	39,451
Net income	29,170	29,063	28,056	102,876	116,196	65,416	14,463
<b>Financial Position</b>							
Total finance assets	5,655,212	5,655,212		5,822,525	3,857,515		
Total assets	6,162,711	5,969,249		6,172,251	4,133,313		
Total debt	4,383,876	4,383,876		4,471,392	3,047,300		
Net investment	1,671,664	1,502,001		1,591,411	985,493		

(1) Adjusted operating income before tax is a financial measure that is not calculated in accordance with IFRS. For a reconciliation of this non-IFRS measure to the most directly comparable IFRS measure see reconciliation below:

(in 000's for stated values)	As at and for three-month period ended			As at and for year ended			
	March 31, 2016		March 31, 2015	December 31, 2015		December 31, 2014	December 31, 2013
	Pro forma \$	Historical \$	Historical \$	Pro forma \$	Historical \$	Historical \$	Historical \$
Net income	29,170	29,063	28,056	102,876	116,196	65,416	14,463
Share-based compensation	2,070	2,070	2,293	10,366	10,366	5,659	1,708
Amortization of intangible assets from acquisitions	650	650	263	1,719	1,719	305	—
Transaction and integration costs	—	—	—	13,523	—	3,077	17,366
Provision of income taxes	8,892	8,892	7,374	32,530	32,530	22,233	5,914
Adjusted operating income before taxes	40,782	40,675	37,986	161,014	160,811	96,690	39,451

## ANNUAL AND INTERIM MANAGEMENT DISCUSSION AND ANALYSIS

### Overview

The following annual and interim management discussion and analysis ("MD&A") has been prepared in respect of the Commercial Finance Business to be owned and operated by ECN Capital and its subsidiaries upon completion of the Element Arrangement. This MD&A should be read in conjunction with the ECN Capital Carve-out Combined Financial Statements which are included in Appendix M to the Management Information Circular. Additional information relating to ECN Capital will be available on SEDAR at [www.sedar.com](http://www.sedar.com).

This MD&A is dated as of the date of the Management Information Circular.

### The Element Arrangement

For details on the Element Arrangement, see "*The Element Arrangement*" in this Appendix L and in the Management Information Circular.

### Basis of Presentation

The Carve-out Combined Financial Statements, which are discussed in this MD&A present the historical carve-out combined financial position, results of operations, changes in Element's net investment, and cash flows of the commercial and vendor finance, rail finance, and aviation finance verticals of Element as they have been proposed to be carved out under the Element Arrangement and as if operated as a stand-alone entity for the periods presented. For more information on ECN Capital's commercial and vendor finance, rail finance and aviation finance verticals, see "*Description of the Business*" in this Appendix L. The Carve-out Combined Financial Statements have been derived from the accounting records of Element on a carve-out basis and should be read in conjunction with Element's annual audited consolidated financial statements and the notes thereto for the year ended December 31, 2015.

The carve-out combined financial statements have been prepared by management in accordance with IFRS using the historical cost basis for assets and liabilities and the historical results of operations of ECN Capital. All financial information discussed in this MD&A is presented in Canadian dollars.

The Carve-out Combined Financial Statements have been prepared on a combined basis and the results do not necessarily reflect what ECN Capital's results of operations, financial position and cash flows would have been had Element Commercial been a separate entity or future results in respect of Element Commercial as it will exist upon completion of the Element Arrangement.

Unless otherwise expressly provided, the historical financial information presented herein does not give effect to the Element Arrangement and associated transactions.

### Forward-Looking Information

This MD&A contains information that constitutes "forward-looking information" within the meaning of applicable securities laws. Information included in this MD&A that is not a statement of historical fact is forward-looking information. When used in this MD&A, words such as "plans", "intends", "outlook", "expects", "anticipates", "estimates", "believes", "likely", "should", "could", "will", "may" and similar expressions are intended to identify statements containing forward-looking information. Such information reflects our current views with respect to future events and is subject to inherent risks, uncertainties and numerous assumptions, including without limitation, general economic conditions, reliance on debt financing, dependence on borrowers, inability to sustain receivables, competition, interest rates, regulation, insurance, failure of key systems, debt service, future capital needs and such other risks or factors described from time to time in reports of ECN Capital.

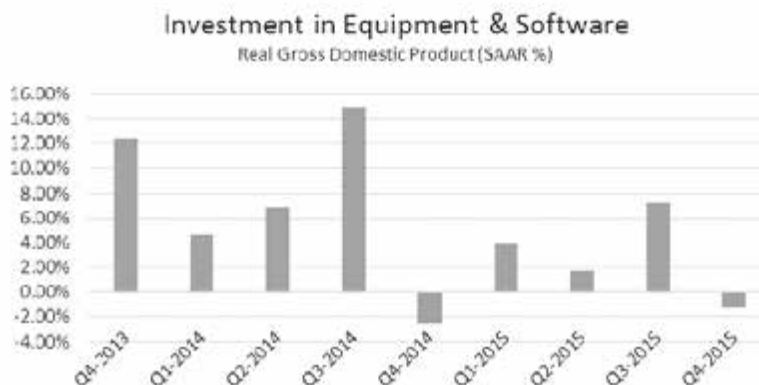
By their nature, forward-looking information involves numerous assumptions, known and unknown, risks and uncertainties, both general and specific, which contribute to the possibility that predictions, forecasts, projections and other forms of forward looking information may not be achieved. Many factors could cause ECN Capital's actual results, performance or achievements to be materially different from any future results, performance or achievements that may be expressed or implied by such forward-looking information. The reader is cautioned that these factors and risks are difficult to predict and that the assumptions used in the preparation of such information, although considered reasonably accurate at the time of preparation, may prove to be incorrect. For a further discussion of factors that could cause actual results to differ materially from the forward-looking information, see the risk factors discussed under the heading "Risk Factors" in the Management Information Circular and under the heading "Risk Factors" in this Appendix L as well as "Forward-Looking Information" in the Management Information Circular and under the heading "Forward-Looking Information" in this Appendix L. Readers are cautioned that the actual results achieved will vary from the information provided herein and that such variations may be material. Consequently, there are no representations by either Element or ECN Capital that actual results achieved will be the same in whole or in part as those set out in the forward-looking information. Furthermore, the statements containing forward-looking information that are included in this MD&A are made as of the date of the Management Information Circular, and neither Element nor ECN Capital undertakes any obligation, except as required by applicable securities legislation, to update publicly or to revise any of the included forward-looking information, whether as a result of new information, future events or otherwise. The forward-looking information contained herein is expressly qualified by this cautionary statement.

## Market Trends

### Market Outlook – United States

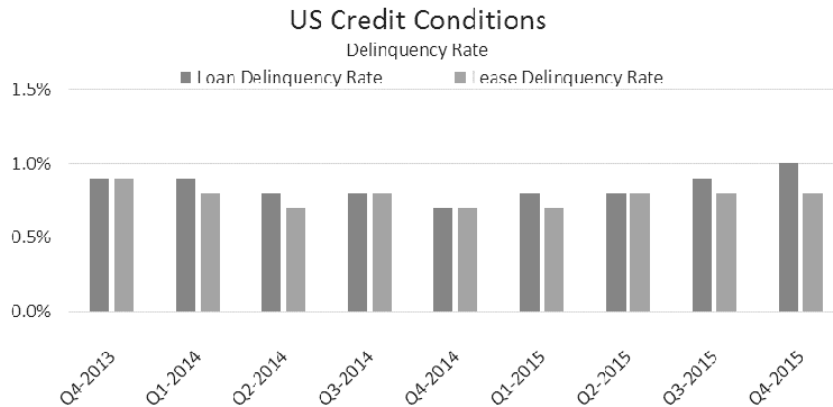
(Source: Equipment Leasing & Finance Association Outlook – April 2016)

**U.S. Capital Investment & Credit Markets:** Global uncertainty is weighing on credit demand and supply, although U.S. credit conditions remain at generally healthy levels. Despite a recent uptick in financial stress, we see little evidence of major financial risks in 2016. Turbulence in the world economy and financial markets has invited greater caution from businesses and consumers, yet both firms and households are expected to gradually increase their borrowing as these headwinds slowly fade. Acknowledging increased risks from abroad, the US Federal Reserve held interest rates unchanged this spring. However, the US Federal Reserve remains prepared to slowly raise rates this year, which may pull forward some investment and slightly expand margins for equipment finance firms.





**Overview of the U.S. Economy:** Driven by solid fundamentals, we expect the U.S. economy to expand 2.3% in 2016, roughly in line with the pace of growth over the past two years. Continued gains in the labor market and income, along with service sector strength, should drive growth this year. Weakness in the manufacturing and energy sectors is likely to persist, and a soft global economy (particularly China) will hurt U.S. exports. The economic “pivot” which began in 2015 will continue this year: manufacturing, energy, and exports have flipped from growth drivers to drags, while other previously-lagging sectors are now fueling economic expansion.



**Bottom Line for the Equipment Finance Sector:** Equipment and software investment is likely to expand modestly in 2016, as continued global headwinds limit business confidence and spending (particularly in the manufacturing and export sectors). Reflecting soft business investment, activity in equipment leasing and finance may moderate somewhat this year. However, solid fundamentals – including consumer spending and service sector strength – point to positive economic expansion in 2016, and the U.S. economy is expected to weather a slowdown in the global economy. Overall, we project 2.3% GDP growth in 2016, while equipment and software investment growth is likely to slow to around 2.7%.



Source: Q2 2016 Equipment Leasing & Finance U.S. Economic Outlook

## Market Outlook – Canada

(Source: Bank of Canada – Spring 2016 Survey, Volume 13.1, April 1, 2016)

Business sentiment in the Bank of Canada’s spring Business Outlook Survey improved but remains subdued overall. The positive impetus coming from sustained foreign demand continues to be largely offset by the persistent drag and spillovers from the oil price shock.

- Firms’ perspectives continue to diverge sharply, depending on whether they are tied to the commodity sector and on their exposure to foreign demand. Expectations for future sales growth remain positive, with clear signs of support from U.S. demand. Yet the outlook for domestic sales is guarded in light of sluggish demand and the ongoing adjustment to lower oil prices.
- Investment and employment intentions have increased but remain modest, with balances of opinion masking a sharp split among firms. Those linked to the energy sector report that they are curtailing investment expenditures as they continue to adapt to challenging conditions, while firms facing foreign demand, particularly exporters not tied to commodities, indicate stronger intentions.

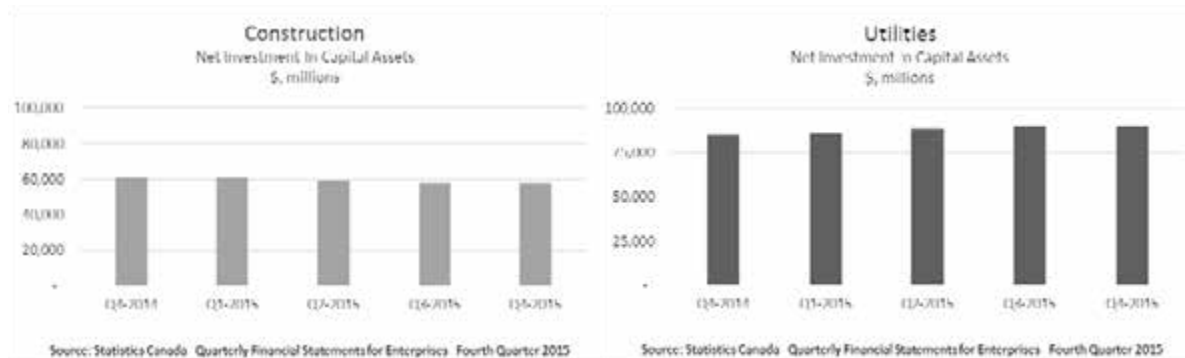
The balance of opinion on investment in machinery and equipment moved back into positive territory in the spring survey suggesting overall modest increases in investment expenditures over the next 12 months. Investment intentions continue to diverge. On the one hand, firms in the energy supply chain and those exposed to weakening demand in affected regions continue to report plans to curtail investment expenditures. More generally, the lack of momentum in domestic demand remains the primary reason cited for holding back investment, while some respondents also pointed to difficulty accessing capital or their weak financial position.

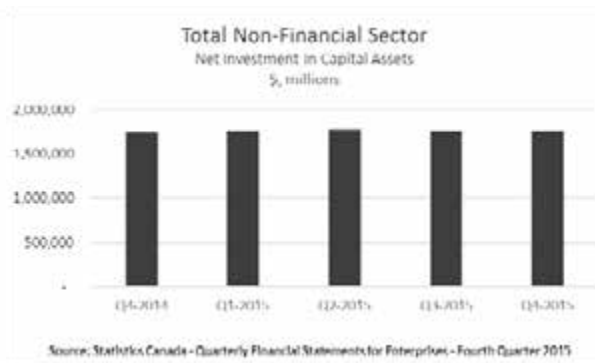
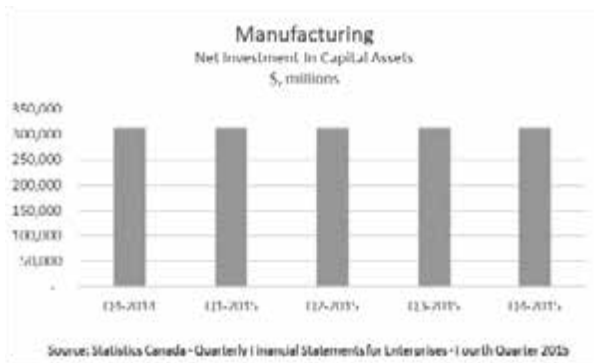
On the other hand, there are increasingly tangible signs that businesses exposed to foreign markets, including firms in various service industries such as tourism and information technology, intend to boost their investment expenditures to take advantage of solid international demand.

## Changes in Net Capital Assets

(Source: Statistics Canada – Quarterly Financial Statistics for Enterprises – Fourth Quarter 2015)

The following charts indicate changes in net capital assets held by non-financial businesses in Canada over the last five quarters. The Construction Industry and Oil and Gas Extraction industries experienced declines in net capital over 2015 of four percent and three percent respectively, while the Utilities, Wholesale Trade, Transportation & Warehousing and Mining sectors experienced increases of six percent, five percent, three percent and two percent respectively while the Manufacturing sector’s net investment in capital assets was flat over the period.





## Carve-out Combined Results of Operations – For the three months ended March 31, 2016 and March 31, 2015

The following table sets forth a summary of ECN Capital's results of the carve-out combined results operations for the three months ended March 31, 2016 and 2015:

	For the three-month periods ended		
	March 31, 2016	March 31, 2015	2016 vs 2015
<i>(in 000's for stated values, except per unit amounts)</i>	\$	\$	%
<b>Net Financial Income</b>			
Interest income	49,472	42,700	15.9
Rental revenue, net (1)	44,541	25,981	71.4
Total interest income and rental revenue, net	94,013	68,681	36.9
Interest expense	40,403	27,431	47.3
Net interest income and rental revenue, net before provision for credit losses	53,610	41,250	30.0
Provision for credit losses	3,861	2,963	30.3
Net interest income and rental revenue, net	49,749	38,287	29.9
Management fees and other revenues (1)	6,175	12,340	(50.0)
Net financial income	55,924	50,627	10.5
<b>Operating Expenses</b>			
Salaries, wages and benefits	8,056	8,067	(0.1)
General and administration expenses	7,193	4,574	57.3
Share-based compensation	2,070	2,293	(9.7)
	17,319	14,934	16.0
<b>Business acquisition costs</b>			
Amortization of intangibles from acquisition	650	263	147.1
Income before income taxes	37,955	35,430	7.1
Income tax expense	8,892	7,374	20.6
Net income for the period	29,063	28,056	3.6

(1) Rental revenue, net is equal to rental income earned on equipment under operating leases, less depreciation on equipment under operating leases.

## Carve-out Combined Results of Operations – For the years ended December 31, 2015, 2014 and 2013

The following table sets forth a summary of ECN Capital's results of the carve-out combined results operations for the years ended December 31, 2015, 2014 and 2013:

	For the year ended				
	December 31, 2015	December 31, 2014	December 31, 2013	2015 vs 2014	2014 vs 2013
<i>(in 000's for stated values, except per unit amounts)</i>	\$	\$	\$	%	%
<b>Net Financial Income</b>					
Interest income	178,557	142,666	89,060	25.2 %	60.2 %
Rental revenue, net (1)	133,833	62,645	1,058	113.6 %	5,821.1 %
Total interest income and rental revenue, net	312,390	205,311	90,118	52.2 %	127.8 %
Interest expense	128,843	85,412	36,874	50.8 %	131.6 %
Net interest income and rental revenue, net before provision for credit losses	183,547	119,899	53,244	53.1 %	125.2 %
Provision for credit losses	17,730	14,462	6,301	22.6 %	129.5 %
Net interest income and rental revenue, net	165,817	105,437	46,943	57.3 %	124.6 %
Management fees and other revenues	51,851	36,576	17,976	41.8 %	103.5 %
Net financial income	217,668	142,013	64,919	53.3 %	118.8 %
<b>Operating Expenses</b>					
Salaries, wages and benefits	32,799	29,280	17,399	12.0 %	68.3 %
General and administration expenses	24,058	16,043	8,069	50.0 %	98.8 %
Share-based compensation	10,366	5,659	1,708	83.2 %	231.3 %
	67,223	50,982	27,176	31.9 %	87.6 %
<b>Business acquisition costs</b>					
Amortization of intangibles from acquisition	1,719	305	—	463.6 %	n/a
Transaction and integration costs	—	3,077	17,366	(100.0)%	(82.3)%
	1,719	3,382	17,366	(49.2)%	(80.5)%
Income before income taxes	148,726	87,649	20,377	69.7 %	330.1 %
Income tax expense	32,530	22,233	5,914	46.3 %	275.9 %
Net income for the period	116,196	65,416	14,463	77.6 %	352.3 %

(1) Rental revenue, net is equal to rental income earned on equipment under operating leases, less depreciation on equipment under operating leases.

The following tables set forth a summary of ECN Capital's selected metrics and adjusted results of operations, for the three months ended March 31, 2016 and 2015 and the years ended December 31, 2015, 2014 and 2013:

	For the three-month period ended			For the year ended				
	March 31, 2016	March 31, 2015	2016 vs 2015	December 31, 2015	December 31, 2014	December 31, 2013	2015 vs 2014	2014 vs 2013
<i>(in 000's for stated values, except percent amounts)</i>	\$	\$	%	\$	\$	\$	%	%
<b>Selected metrics</b>								
Originations	477,327	647,836	(26.3)%	3,024,702	3,012,430	1,790,109	0.4 %	68.3 %
Average earning assets	5,805,852	4,066,325	42.8 %	4,724,828	2,982,643	2,047,958	58.4 %	45.6 %
Average debt	4,324,573	3,056,345	41.5 %	3,528,803	2,290,246	796,479	54.1 %	187.5 %
Average debt advance rate	74.5 %	75.2 %		74.7 %	76.8 %	38.9 %		
<b>Adjusted operating income</b>								
Interest income and rental revenue, net	94,013	68,681	36.9 %	312,390	205,311	90,118	52.2 %	127.8 %
Interest expense	40,403	27,431	47.3 %	128,843	85,412	36,874	50.8 %	131.6 %
	53,610	41,250	30.0 %	183,547	119,899	53,244	53.1 %	125.2 %
Syndication and other income	6,175	12,340	(50.0)%	51,851	36,576	17,976	41.8 %	103.5 %
	59,785	53,590	11.6 %	235,398	156,475	71,220	50.4 %	119.7 %
Recovery of (provision for) credit losses	(3,861)	(2,963)	30.3 %	(17,730)	(14,462)	(6,301)	22.6 %	129.5 %
Net financial income	55,924	50,627	10.5 %	217,668	142,013	64,919	53.3 %	118.8 %
Adjusted operating expenses (1)	15,249	12,641	20.6 %	56,857	45,323	25,468	25.4 %	78.0 %
Adjusted operating income before taxes	40,675	37,986	7.1 %	160,811	96,690	39,451	66.3 %	145.1 %
<b>Select operating ratios (2)</b>								
Interest income and rental revenue, net	6.5 %	6.8 %		6.6 %	6.9 %	4.4 %		
Interest expense	2.8 %	2.7 %		2.7 %	2.9 %	1.8 %		
	3.7 %	4.1 %		3.9 %	4.0 %	2.6 %		
Syndication and other income	0.4 %	1.2 %		1.1 %	1.2 %	0.9 %		
	4.1 %	5.3 %		5.0 %	5.2 %	3.5 %		
Recovery of (provision for) credit losses	(0.3)%	(0.3)%		(0.4)%	(0.5)%	(0.3)%		
Net financial income	3.9 %	5.0 %		4.6 %	4.8 %	3.2 %		
Operating expenses	1.1 %	1.2 %		1.2 %	1.5 %	1.2 %		
Adjusted operating income before taxes	2.8 %	3.7 %		3.4 %	3.2 %	1.9 %		
Cost of debt	3.7 %	3.6 %		3.7 %	3.7 %	4.6 %		

1) ECN Capital's operating expenses consist of salaries and wages and general and administration expenses, and excludes share based compensation, amortization of synthetic discount on convertible debentures, and business acquisition and integration costs.

(2) Yield as a percent of average earning assets.

## **Results of Operations - For the three months ended March 31, 2016 and March 31, 2015**

ECN Capital's results of carve-out combined operations reported total originations of \$477.3 million during the first quarter of 2016 compared to \$647.8 million during the same first comparative quarter of 2015. ECN Capital is no longer originating Aviation assets and this action and the lower targeted levels of origination in the Rail Finance vertical are responsible for the majority of the decline in originations over the comparable period.

Interest income and rental revenue, net of depreciation for the three month period ended March 31, 2016 was \$94.0 million, an increase of \$25.3 million from the amount of \$68.7 million reported during the quarter ended March 31, 2015. The increase in interest income and net rental revenue over the comparative period ended March 31, 2015 resulted from increases in average earning assets outstanding during the periods which grew to \$5,805.9 million during quarter ended March 31, 2016, from \$4,066.3 million during the quarter ended March 31, 2015.

Interest expense was \$40.4 million for the quarter ended March 31, 2016, compared to \$27.4 million for the quarter ended March 31, 2015, reflecting an increase of \$13.0 million. The increase over the comparative period ended March 31, 2015 is the result of an increase in the average outstanding debt during the periods which increased to \$4,324.6 million during the quarter ended March 31, 2016 from \$3,056.3 million during the quarter ended March 31, 2015.

Syndication and other revenue, declined to \$6.2 million in the first quarter 2016 from \$12.3 million in the comparative quarter ended March 31, 2015 as that quarter had the benefit of structuring fees earned on ECAF I Fund.

Operating expenses, which consist of direct operating expenses and an allocation of corporate expenses based on the business' average earning assets outstanding during the period, were \$15.2 million for the quarter ended March 31, 2016 compared to \$12.6 million for the comparable quarter of 2015. The increase over the comparative quarter ended March 31, 2015 is consistent with the growth of average earning assets.

ECN Capital's net income for the first quarter of 2016 was \$29.1 million, or 3.6% higher than the \$28.1 million earned in the comparable period as the underlying growth in net interest income and rental income, net, more than offset the decline in syndication and other revenue.

Adjusted operating income before taxes for the three months ended March 31, 2016 was \$40.7 million compared to \$38.0 million reported for the three months ended March 31, 2015.

## **Results of Operations - For the twelve months ended December 31, 2015, December 31, 2014 and March 31, 2013**

For the full 2015 fiscal year, the segment reports total originations of \$3,024.7 million compared to \$3,012.4 million in 2014 and \$1,790.1 million in 2013. The progressive increases reflect the organic growth of these businesses over the period and the favourable impact of the strengthening of the US dollar over this period (15.8% on average for 2015 and 7.2% for 2014) and the importance of US dollar assets, particularly in 2015 and 2016.

For fiscal year 2015, the interest income and net rental revenue was \$312.4 million, compared to \$205.3 million for 2014 and \$90.1 million for 2013. Again, the increases are largely attributable to growth in average earning assets which grew from \$2,048.0 million in 2013, to \$2,982.6 million in 2014 and \$4,724.8 million in 2015.

Interest expense in fiscal 2015 of \$128.8 million represented an increase of \$43.4 million from full year 2014, and fiscal 2014 increased by \$48.5 million from fiscal 2013. Corresponding increases in the average outstanding debt during the periods reflect both growth in earning assets and improved leverage

resulting in average outstanding debt growing from \$796.5 million in 2013, to \$2,290.2 million in 2014 and \$3,528.8 million in 2015.

Syndication and other revenue in fiscal 2015 was \$51.9 million and benefited from the above noted structuring fees and a gain on sale of a portfolio of railcars, from the \$36.6 million earned in 2014 and \$18.0 million earned in 2013.

The growth in operating expenses over the annual periods from 2013 to 2014 and to 2015 also is reflective of the growth in earning assets, and grew from \$25.5 million to \$45.3 million and \$56.9 million, respectively.

Net income for 2015 benefited from the structuring fee, the gain on sale of a railcar portfolio and growth in net interest income and rental income, net rising to \$116.2 million from \$65.4 million and \$14.5 million in 2014 and 2013, respectively.

ECN Capital's annual adjusted operating income before taxes for the year ended December 31, 2015 was \$160.8 million compared to \$96.7 million for 2014 and \$39.5 million for 2013. Like net income, these relative results are explained by the same organic growth over time and the 2015 structuring fee and sale of a portfolio of railcars.



## Carve-out Combined Financial Position

The following table sets forth a summary of ECN Capital's carve-out combined financial position as of the dates presented:

	March 31, 2016	December 31, 2015	December 31, 2014	March 31, 2016 vs December 31, 2015	December 31, 2015 vs December 31, 2014
<i>(in 000's for stated values, except per unit amounts)</i>	\$	\$	\$	%	%
<b>Assets</b>					
Finance assets					
Finance receivables	3,104,034	3,129,794	2,577,845	(0.8)	21.4
Equipment under operating leases	2,551,178	2,692,731	1,279,670	(5.3)	110.4
<b>Total finance assets</b>	<b>5,655,212</b>	<b>5,822,525</b>	<b>3,857,515</b>	<b>(2.9)</b>	<b>50.9</b>
Other assets					
Restricted cash	189,252	222,530	186,486	(15.0)	19.3
Derivative financial instruments	716	4,014	1,702	(82.2)	135.8
Accounts receivable and other assets	44,758	45,531	21,870	(1.7)	108.2
Notes receivable	26,813	27,338	23,925	(1.9)	14.3
Deferred taxes	21,235	16,674	14,571	27.4	14.4
<b>Total other assets</b>	<b>282,774</b>	<b>316,087</b>	<b>248,554</b>	<b>(10.5)</b>	<b>27.2</b>
<b>Goodwill and intangible assets</b>	<b>31,263</b>	<b>33,639</b>	<b>27,244</b>	<b>(7.1)</b>	<b>23.5</b>
<b>Total assets</b>	<b>5,969,249</b>	<b>6,172,251</b>	<b>4,133,313</b>	<b>(3.3)</b>	<b>49.3</b>
<b>Liabilities</b>					
Debt					
Secured borrowings	4,383,876	4,471,392	3,047,300	(2.0)	46.7
Other long term debt	—	—	—		
<b>Total debt</b>	<b>4,383,876</b>	<b>4,471,392</b>	<b>3,047,300</b>	<b>(2.0)</b>	<b>46.7</b>
Other liabilities					
Accounts payable and accrued liabilities	49,311	57,080	83,084	(13.6)	(31.3)
Derivative financial instruments	22,122	17,747	9,985	24.7	77.7
Deferred tax liabilities	11,939	34,621	7,451	(65.5)	364.6
<b>Total other liabilities</b>	<b>83,372</b>	<b>109,448</b>	<b>100,520</b>	<b>(23.8)</b>	<b>8.9</b>
<b>Total liabilities</b>	<b>4,467,248</b>	<b>4,580,840</b>	<b>3,147,820</b>	<b>(2.5)</b>	<b>45.5</b>
<b>Owners net investment</b>	<b>1,502,001</b>	<b>1,591,411</b>	<b>985,493</b>	<b>(5.6)</b>	<b>61.5</b>
<b>Total liabilities and shareholders' equity</b>	<b>5,969,249</b>	<b>6,172,251</b>	<b>4,133,313</b>	<b>(3.3)</b>	<b>49.3</b>

Total assets have decreased by 3.3% from December 31, 2015 to March 31, 2016 mainly as a result of the depreciation of the US dollar over the Canadian dollar which retracted by approximately 6.2% between the periods applicable to approximately 63% of total assets of ECN Capital. Total assets increased by 49.3% from December 31, 2014 to December 31, 2015, primarily due to increases in the Rail Finance portfolio as part of the Trinity Vendor Program.

## Earning Assets

The following table sets forth a breakdown of ECN Capital's earning assets by vertical as at March 31, 2016, December 31, 2015 and December 31, 2014:

	As at				
	March 31, 2016	December 31, 2015	December 31, 2014	March 31, 2016 vs December 31, 2015	December 31, 2015 vs December 31, 2014
	\$	\$	\$	%	%
<b>Finance receivables - Net investment</b>					
Aviation Finance	1,012,569	1,090,187	967,229	(7.1)%	12.7%
Commercial and Vendor Finance	2,094,670	2,067,892	1,627,624	1.3 %	27.0%
<b>Total</b>	<b>3,107,239</b>	<b>3,158,079</b>	2,594,853	(1.6)%	21.7%
<b>Equipment under operating leases, net</b>					
Rail Finance	2,230,425	2,342,058	1,153,672	(4.8)%	103.0%
Aviation Finance	320,753	350,673	125,998	(8.5)%	178.3%
<b>Total</b>	<b>2,551,178</b>	<b>2,692,731</b>	1,279,670	(5.3)%	110.4%
<b>Total</b>	<b>5,658,417</b>	<b>5,850,810</b>	3,874,523	(3.3)%	51.0%

## Portfolio Finance Asset Details

### Finance receivables

The following table sets forth a breakdown of ECN Capital's combined finance receivables as of March 31, 2016, December 31, 2015 and December 31, 2014:

	As at				
	March 31, 2016	December 31, 2015	December 31, 2014	March 31, 2016 vs December 31, 2015	December 31, 2015 vs December 31, 2014
	\$	\$	\$	%	%
<i>(in 000's for stated values, except percentage amounts)</i>					
Net investment in finance receivables	3,107,239	3,158,079	2,594,853	(1.6)	21.7
Impaired receivables - at net realizable value	7,322	4,029	5,451	81.7	(26.1)
	<b>3,114,561</b>	<b>3,162,108</b>	2,600,304	(1.5)	21.6
Unamortized origination costs and subsidies	19,403	19,722	15,330	(1.6)	28.6
Net finance receivables	3,133,964	3,181,830	2,615,634	(1.5)	21.6
Prepaid lease payments and Security deposits	(21,522)	(33,585)	(27,207)	(35.9)	23.4
Other	9,447	1,943	3,538	386.2	(45.1)
	<b>3,121,889</b>	<b>3,150,188</b>	2,591,965	(0.9)	21.5
Allowance for credit losses	17,855	20,394	14,120	(12.4)	44.4
<b>Total finance receivables</b>	<b>3,104,034</b>	<b>3,129,794</b>	2,577,845	(0.8)	21.4

### Ratios

Allowance for credit losses as a percentage of finance receivables

0.57%                      0.65%                      0.54%

Total finance receivables have decreased slightly for the quarter ended March 31, 2016 over the balance at December 31, 2015 primarily due to the decline in the US dollar between these periods. Both periods are substantially increased over the balance at December 31, 2014 from organic growth in the Commercial Finance Business and the general strengthening of the US dollar over this longer period which impacts an increasing portion of the overall balances as the U.S. finance receivables have grown from 40% at the end of 2014 to almost 60% by the end of the first quarter of 2016.

All finance receivables are secured under the applicable provincial personal property registries and the applicable United States Uniform Commercial Code.

Allowance for credit losses by segment are as follows:

<i>(in 000's, except percentage amounts)</i>	March 31, 2016		December 31, 2015		As at December 31, 2014	
	\$	% of Finance Receivable	\$	% of Finance Receivable	\$	% of Finance Receivable
	Commercial and Vendor Finance	15,968	0.76	18,438	0.88	12,355
Aviation Finance	1,887	0.18	1,956	0.19	1,765	0.19
<b>Total</b>	<b>17,855</b>	<b>0.57</b>	<b>20,394</b>	<b>0.65</b>	<b>14,120</b>	<b>0.54</b>

Credit losses and provisions, as at and for each of the respective periods are as follows:

<i>(in 000's)</i>	Three months ended March 31, 2016	Year ended December 31, 2015	Year ended December 31, 2014
	\$	\$	\$
Allowance for credit losses, beginning of period	20,394	14,120	9,950
Provision for credit losses	3,861	17,730	14,462
Charge-offs, net of recoveries (1)	(5,458)	(13,559)	(10,913)
Impact of foreign exchange rates	(942)	2,103	621
<b>Allowance for credit losses, end of period</b>	<b>17,855</b>	<b>20,394</b>	<b>14,120</b>

(1) Charge offs, net of recoveries by segment

Commercial and Vendor Finance	5,249	13,559	10,913
Aviation Finance	209	—	—
	<b>5,458</b>	<b>13,559</b>	<b>10,913</b>

#### *Allowance for credit losses*

Management maintains an allowance for credit losses, which it establishes to provide for impairment of individual, or groups of assets. Individual impairment is assessed by examining contractual delinquency, and the individual borrower's financial condition, such as the identification of a borrower entering bankruptcy, or the company being in the process of legal or collateral repossession proceedings with a debtor. Accounts over 120 days past due are automatically considered to be impaired and are fully provisioned net of any anticipated recoveries and are presented at their net realizable value. Accounts that are contractually delinquent less than 120 days are provisioned by applying probability-weighted assumptions consistent with industry standards and ECN Capital's own experience with respect to the chances of an identified account resulting in a borrower default. The amount of allowance for credit losses is measured as the difference between the carrying amounts of the assets on the consolidated

statements of financial position and the present value of the estimated future cash flows on the financial receivables, discounted at the financial receivable's original effective interest rate.

According to ECN Capital's underwriting policies and procedures, ECN Capital assesses credit risk related to specific customer defaults, by performing detailed assessments on the value of the underlying security, the customer's financial condition and ability to service the debt, both at loan inception and throughout the term of the loan.

ECN Capital's allowance for credit losses was \$17.9 million as at March 31, 2016, a decrease over the \$20.4 million reported at December 31, 2015, but an increase over the \$14.1 million reported at December 31, 2014. The allowance for credit losses for the business as a percentage of finance receivables as at March 31, 2016 was 0.6%, broadly consistent with levels at December 31, 2015 and at December 31, 2014.

Please refer to sections below titled "*Delinquencies and Losses*", "*Geographic Portfolio Segmentation*" and "*Asset Class Portfolio Distribution*" of this MD&A for additional information.

#### *Delinquencies and losses*

The contractual delinquency of the net finance receivables at each reporting period is as follows:

*(in \$'000s, except percentage amounts)*

	<b>March 31, 2016</b>		<b>December 31, 2015</b>		<b>December 31, 2014</b>		<b>As at</b>
		<b>%</b>		<b>%</b>		<b>%</b>	
<b>Current</b>	<b>3,087,953</b>	<b>99.14</b>	<b>3,143,485</b>	<b>99.41</b>	2,586,249	99.46	
<b>31 to 60 days</b>	<b>13,132</b>	<b>0.42</b>	<b>8,952</b>	<b>0.28</b>	5,476	0.21	
<b>61 to 90 days</b>	<b>4,018</b>	<b>0.13</b>	<b>2,612</b>	<b>0.08</b>	1,846	0.07	
<b>91 to 120 days</b>	<b>2,136</b>	<b>0.07</b>	<b>3,030</b>	<b>0.10</b>	1,282	0.05	
<b>Impaired receivables</b>	<b>7,322</b>	<b>0.24</b>	<b>4,029</b>	<b>0.13</b>	5,451	0.21	
<b>Total</b>	<b>3,114,561</b>	<b>100.00</b>	<b>3,162,108</b>	<b>100.00</b>	2,600,304	100.00	

### Geographic Portfolio Segmentation

ECN Capital's portfolio of net finance receivables continues to be weighted to the U.S. which accounted for 59.4% of the portfolio, while Canada represents 40.6% at March 31, 2016. The Canadian distribution of ECN Capital's finance receivables is concentrated in the provinces with the largest populations and the greatest economic activity, while the U.S. portfolio is more broadly distributed throughout the U.S.

The geographic distribution of ECN Capital's net finance receivables by vertical and by the ultimate obligor is as follows:

	As at		
	March 31, 2016	December 31, 2015	December 31, 2014
<b>United States</b>			
Rail Finance	1,842	1,782	588
Aviation Finance	618,287	666,715	295,713
Commercial and Vendor Finance	1,242,395	1,199,267	753,794
<b>Total</b>	<b>1,862,524</b>	<b>1,867,764</b>	1,050,095
<b>Canada</b>			
Rail Finance	397	435	280
Aviation Finance	392,523	421,528	576,404
Commercial and Vendor Finance	878,520	892,103	896,084
<b>Total</b>	<b>1,271,440</b>	<b>1,314,066</b>	1,472,768
<b>Other</b>			
Aviation Finance	—	—	92,771
<b>Total</b>	<b>3,133,964</b>	<b>3,181,830</b>	2,615,634

### Asset Class Portfolio Distribution

The distribution of the net finance receivables over asset classes is as follows:

	March 31, 2016		December 31, 2015		December 31, 2014	
<i>(in 000's, except percentage amounts)</i>	\$	%	\$	%	\$	%
Aircrafts (1)	1,010,810	32.3	1,088,243	34.3	964,888	36.9
Construction equipment	488,290	15.6	458,241	14.4	279,211	10.7
Vehicles	488,010	15.6	477,757	15.0	295,009	11.3
Restaurant equipment	200,966	6.4	189,646	6.0	87,112	3.3
Healthcare equipment	177,739	5.7	172,844	5.4	172,283	6.6
Highway Trailers	165,787	5.3	171,986	5.4	162,756	6.2
Office equipment	159,366	5.1	169,540	5.3	157,490	6.0
Highway Tractors	141,218	4.5	144,250	4.5	154,970	5.9
Inter-city transportation equipment	140,047	4.5	147,013	4.6	149,474	5.7
Manufacturing equipment	52,832	1.7	48,333	1.5	53,112	2.0
Industrial equipment	41,213	1.3	44,846	1.4	46,764	1.8
Technology equipment	35,186	1.1	41,381	1.3	48,119	1.8
Golf carts	10,028	0.3	11,079	0.3	15,827	0.6
Other equipment	22,472	0.6	16,671	0.6	28,619	1.2
	<b>3,133,964</b>	<b>100.0</b>	<b>3,181,830</b>	<b>100.0</b>	2,615,634	100.0

(1) ECN Capital will discontinue the majority of its "on balance sheet" aviation finance business and sell, manage to maturity or transition to a future aviation fund its portfolio of aviation assets. See "Description of the Business - Aviation Finance" in this Appendix L.

### Equipment under operating leases

The following table sets forth a breakdown by asset category of ECN Capital's equipment under operating leases as of March 31, 2016, December 31, 2015 and December 31, 2014:

	March 31, 2016	December 31, 2015	December 31, 2014	March 31, 2016 vs. December 31, 2015	December 31, 2015 vs. December 31, 2014
<i>(in 000's for stated values, except for percentage amounts)</i>	\$	\$	\$	%	
Equipment under operating leases, net					
Railcars	2,230,425	2,342,058	1,153,672	(4.8)%	103.0%
Aircrafts (1)	320,753	350,673	125,998	(8.5)%	178.3%
	<b>2,551,178</b>	<b>2,692,731</b>	1,279,670	(5.3)%	110.4%

(1) ECN Capital will discontinue the majority of its "on balance sheet" aviation finance business and sell, manage to maturity or transition to a future aviation fund its portfolio of aviation assets. See "Description of the Business - Aviation Finance" in this Appendix L.

ECN Capital's railcar assets are amortized for up to 50 years from their manufacture date to an approximate 10% salvage value. ECN Capital's aircraft assets are amortized for up to 30 years from their manufacture date up to a 30% salvage value.

Equipment under operating leases, net have decreased slightly for the quarter ended March 31, 2016 over the closing balance for the year ended December 31, 2015. This decrease largely reflects the decline in the US dollar. The growth from 2014 reflects both the organic growth in our businesses and the general strengthening of the US dollar over this period as the majority of these portfolios are in US dollars.

### Geographic Portfolio Segmentation

The geographic distribution of ECN Capital's equipment under operating lease by vertical and by the ultimate obligor is as follows:

	March 31, 2016	December 31, 2015	December 31, 2014
<b>United States</b>			
Rail Finance	1,964,498	2,058,787	1,034,812
Aviation Finance	130,312	143,565	110,962
<b>Total</b>	<b>2,094,810</b>	<b>2,202,352</b>	1,145,774
<b>Canada</b>			
Rail Finance	218,051	232,127	112,990
Aviation Finance	174,654	190,157	—
<b>Total</b>	<b>392,705</b>	<b>422,284</b>	112,990
<b>Other</b>			
Rail Finance	47,876	51,144	5,870
Aviation Finance	15,787	16,951	15,036
<b>Total</b>	<b>63,663</b>	<b>68,095</b>	20,906
<b>Total</b>	<b>2,551,178</b>	<b>2,692,731</b>	1,279,670

## Liquidity & Capital Resources

An important liquidity measure for ECN Capital is its ability to maintain diversified funding sources to support its operations. ECN Capital's primary sources of liquidity are (i) cash flows from operating activities, (ii) the secured borrowing facilities, (iii) inter-company borrowings which also provide access to the Element's senior line (see "Note 1 – Background and Basis of Presentation" and "Note 5 – Equipment Under Operating Leases" of the Carve-out Combined Financial Statements), and (iv) equity. ECN Capital's primary use of cash is the funding of finance receivables and the funding of working capital. ECN Capital manages its capital resources by utilizing the financial leverage available under its direct term funding and revolving facilities and, when additional capital is required, ECN Capital believes it will have access to capital through the issuance of convertible debt, preferred or common shares.

On the Element Arrangement Date, ECN Capital expects to enter into new credit facilities that will replace the current access to inter-company borrowings. In conjunction with the immediate liquidity available to ECN Capital under existing direct external relationships, the expected new facility plus the cash flow internally generated from the repayment of leases and loans is sufficient to fund ECN Capital's operations throughout 2016 and into 2017.

ECN Capital views its financial leverage as a key indicator of the strength of its Consolidated Statements of Financial Position. As at March 31, 2016, ECN Capital's financial leverage ratio, reflecting direct and allocated arrangements, was 2.92:1.

ECN Capital's allocated capitalization, including inter-company and allocated borrowings, is calculated as follows:

		<b>March 31,</b>	<b>December 31,</b>	<b>As at</b>
		<b>2016</b>	<b>2015</b>	December 31,
		\$	\$	2014
		\$	\$	\$
<i>(in 000's, except ratio amounts)</i>				
Secured borrowings		4,383,876	4,471,392	3,047,300
Other long term debt		—	—	—
Total debt	(a)	4,383,876	4,471,392	3,047,300
Accounts payable and accrued liabilities		49,311	57,080	83,084
		4,433,187	4,528,472	3,130,384
Element's net investment	(b)	1,502,001	1,591,411	985,493
		5,935,188	6,119,883	4,115,877
Financial leverage	(a)/(b)	2.92	2.81	3.09

## Cash flow and liquidity

For purposes of the carve-out, cash was assumed to be nil for all periods as ECN Capital manages its liquidity facilities to minimize excess idle cash and only has cash on hand for timing differences on cash flows. Accordingly, there was no change in overall corporate cash from December 31, 2014 to December 31, 2015, and to March 31, 2016.

During the three-months ended March 31, 2016, cash utilized in operating activities was \$120.6 million, a decrease of \$270.9 million over the \$391.5 million utilized during the comparative period ended March 31, 2015. The decrease over the comparative three-months ended March 31, 2015 is due to an increase in non-cash amounts charged to income, combined with a reduction in cash utilized in net operating asset and liabilities balances. During the year ended December 31, 2015, cash utilized in operating activities was \$1,200.2 million, a decrease of \$258.3 million over the \$1,458.5 million utilized during the comparative year December 31, 2014. The decrease over the comparative year ended December 31, 2014 is due to an increase in net income for the current period and an increase in non-cash amounts charged to income, combined with a reduction in cash utilized in net operating asset and liabilities balances. Cash utilized in operating activities during the year ended December 31, 2013, was \$1,239.4 million, as 2013 had comparatively lower cash utilization in net operating asset and liabilities balances, when compared to the year ended December 31, 2014.

During the three-months ended March 31, 2016, cash provided by investing activities was \$30.0 million compared to \$16.4 million for the comparative period ended March 31, 2015, an increase of \$13.6 million. The increase during the current period is primarily due to a decrease in restricted funds attributable to the timing of remittances to lenders. During the year ended December 31, 2015, cash utilized in investing activities was \$27.0 million compared to \$100.6 million for the year ended December 31, 2014, a decrease in cash utilization of \$73.6 million. The decrease during the year ended December 31, 2015 over 2014 is primarily due to a decrease in cash utilized in restricted funds attributable to the timing of remittances to lenders. Cash utilized in investing activities during the year ended December 31, 2013 was \$71.9 million, primarily from increases in restricted funds attributable to the timing of remittances to lenders and cash utilized in the acquisitions of Nexcap Finance Corporation and the acquisition of a helicopter portfolio.

Cash generated from financing activities for the three-months ended March 31, 2016 was \$90.6 million, compared to \$375.1 million generated in the comparative period ended March 31, 2015, a decrease of \$284.5 million. The decrease was due to a reduction in net investment from Element, offset by an increase in cash provided from secured borrowings. Cash generated from financing activities for the year ended December 31, 2015 was \$1,227.2 million, compared to \$1,559.1 million generated in the comparative year ended December 31, 2014, a decrease of \$331.9 million. The decrease in cash provided from financing activities is due to an increase in net investment from Element offset by a lower increase in cash provided from secured borrowings. Cash provided from financing activities in 2013 was 1,311.3 million, and was comparatively lower than 2014, due to higher net investment from Element offset by a lower level of cash provided from secured borrowings.



## Debt and contractual repayment obligations

Historically ECN Capital has had significant resources available to continue funding projected growth, including inter-company borrowings which provided access to the Element's senior facility. On the Element Arrangement Date, ECN Capital expects to enter into new credit facilities and draw down the facilities to repay all or a portion of the inter-company borrowings. Finance receivables are securitized on a regular basis to ensure cash is always available to fund new transactions. Cash levels are also monitored closely by management. In addition, ECN Capital adheres to a strict policy of matching the maturities of owned finance assets and the related debt as closely as possible in order to manage its liquidity position.

ECN Capital's non-inter-company sources of financing are as follows:

	As at		
	March 31, 2016	December 31, 2015	December 31, 2014
(in 000's)	\$	\$	\$
<b>Life Insurance Company Term Funding Facilities</b>			
Commitments	618,105	689,983	891,332
Utilized against facilities	390,462	444,128	572,956
	<b>227,643</b>	<b>245,855</b>	318,376
<b>Bank Securitization Programs</b>			
Facility commitments	1,370,402	1,349,188	1,043,617
Utilized against facility	1,060,111	1,038,048	706,366
	<b>310,291</b>	<b>311,140</b>	337,251
<b>Asset-Backed Securities</b>			
Facility	1,458,561	980,503	506,323
Utilized against facility	1,458,561	980,503	505,824
	—	—	499
<b>Total available sources of capital excluding intercompany sources of financing, end of period</b>	<b>537,934</b>	<b>556,995</b>	656,126

Element was in compliance with all of the terms of its credit facilities and loan agreements throughout the period and as at March 31, 2016 and December 31, 2015.

## Summary of Quarterly Information

The following table sets out selected financial information for each of the nine most recent quarters, the latest of which ended March 31, 2016. This information has been prepared on the same basis as ECN Capital's audited carve-out combined financial statements, and all necessary adjustments have been included in the amounts stated below to present fairly the unaudited quarterly results when read in conjunction with the audited carve-out combined financial statements of ECN Capital and the related notes to those statements.

(in \$ 000's for stated values, except per share amounts)	Q1, 2016	Q4, 2015	Q3, 2015	Q2, 2015	Q1, 2015	Q4, 2014	Q3, 2014	Q2, 2014	Q1 2014
Before tax adjusted operating income (1)	40,675	46,683	37,429	38,713	37,986	32,161	21,103	23,561	19,865
Net financial income	55,924	60,957	53,389	52,695	50,627	42,794	32,596	36,195	30,428
Net income / (loss)	29,063	33,997	26,763	27,380	28,056	22,462	14,435	14,715	13,804

(1) For additional information, see "Description of Non-IFRS Measures" section.

Key factors that account for the fluctuation in ECN Capital's quarterly results include the volume of leases and loans that ECN Capital has originated as well as the timing of the major business and portfolio acquisitions including: (i) the railcar portfolios acquired in March 2014, June 2014, September 2014, December 2014, March 2015, June 2015, September 2015, December 2015 and March 2016; and (ii) the various new vendor and commercial finance programs and relations entered into during the intervening periods.

### Contractual Obligations

ECN Capital leases its head office and its regional offices under operating leases expiring on various dates through 2023. As at December 31 of each year the remaining future minimum lease payments are as follows:

	2015	2014
	\$	\$
Within one year	1,255	684
After one year but not more than five years	4,417	3,528
More than five years	948	1,260
	<b>6,620</b>	<b>5,472</b>

ECN Capital enters into commitments to extend credit and provide lease or loan financing to its customers in the ordinary course of business, or commits to purchase equipment for leases. The funding of these commitments is subject to the customer satisfying various conditions and contractual requirements prior to funding. As a result, the total commitments outstanding do not necessarily reflect actual future cash flow requirements. As at December 31, 2015, ECN Capital had \$770,383 of commitments outstanding to provide financing or purchase equipment; \$610,782 of these commitments expire or settle on various dates through to December 31, 2016, and \$159,601 expire or settle on various dates through to December 31, 2017.

### Off-Balance Sheet Arrangements

Other than the contractual obligations noted above, ECN Capital does not have any off-balance sheet arrangements that would have a material impact to the financial statements.

### Related Party Transactions

ECN Capital's related parties include the following persons and/or entities: (a) Element, and its affiliates; (b) associates, or entities which are controlled or significantly influenced by ECN Capital; (c) key management personnel, which are comprised of directors and/or officers of Element, and those persons having authority and responsibility for planning, directing and controlling the activities of Element; (d) entities controlled by key management personnel.

ECN Capital has issued notes receivables that are loans to certain employees and directors of ECN Capital in order to help finance the purchase of Element Common Shares. Such loans have been issued at market conditions, bear interest at 3% and are evidenced by individual promissory notes secured by the shares purchased under the loan arrangements.

Element utilizes a centralized corporate platform to provide shared services for general and administrative functions to ECN Capital. These shared services include, but are not limited to, support associated with information technology, enterprise risk management, internal audit, human resources, accounting and

communications. ECN Capital is also allocated expenses for insurance, bank fees, external audit fees and for costs to manage the overall corporate function of Element. Where possible, these allocations were made on a specific identification basis. Where specific identification was not possible, these expenses were allocated by Element based on relative percentages of net average earning assets.

### **Derivatives and Hedging**

Historically, hedging has been managed at the consolidated Element level. On the Element Arrangement Date, ECN Capital will assume or enter into appropriate derivative transactions primarily in order to hedge interest rate exposure resulting from mismatches between assets and related debt. The notional amounts of the derivatives are matched to the expected amortization of the related debt. ECN Capital has designated, or will designate, these instruments as cash flow hedges when the criteria for hedge accounting has been met and the changes in fair value of the effective portions of the hedging instruments are recognized through other comprehensive income; interest settlements on these interest rate swaps are applied to the related interest expense on the debt through the statement of operations.

ECN Capital may also assume or enter into foreign exchange forward agreements to hedge its exposures to foreign currency risk on foreign denominated finance receivables and its net investment in foreign subsidiaries. Fair value changes on the foreign exchange forward agreements and settlements on the foreign exchange forward contracts are recognized through other comprehensive income, and are transferred to income as foreign exchange gains and losses are recognized on the related hedged finance receivable or on the disposition of the related foreign subsidiary.

### **Risk Management**

In the normal course of business, ECN Capital engages in operating and financing activities that generate risks in the following primary areas:

#### **Credit risk**

Credit risk is the risk that ECN Capital will incur a loss because its customers and counterparties fail to discharge their contractual obligations. ECN Capital manages and controls credit risk by setting limits on the amount of risk it is willing to accept for individual counterparties on direct financing leases and loans. Counterparty limits are established by the use of both external and internal credit risk classifications systems, which assign each counterparty a risk rating. ECN Capital also manages credit risk through the existence of asset collateral held against both direct financing leases and loans. ECN Capital maintains insurance coverage over these assets to further mitigate risk of loss. In situations where ECN Capital takes possession of collateral under the terms of the direct finance lease or loan agreement, the asset is sold and a gain or loss on disposal is recognized. ECN Capital also monitors the diversification of its lending across asset class, geography and transaction size. As a result of transaction sizes and collateral arrangements, no individual customer represents a significant credit risk to ECN Capital.

ECN Capital has credit risk relating to cash and cash equivalents and short-term investments. ECN Capital manages this risk by dealing with large chartered Canadian banks and global banks, and local banks in countries in which its foreign subsidiaries operate, as well as investing in highly liquid investment securities.

#### **Liquidity risk**

Liquidity risk is the risk that ECN Capital will not generate sufficient cash or cash equivalents in a timely and cost effective manner to satisfy its financial obligations as they come due. One of management's primary goals is to manage liquidity risk by continuously monitoring actual and projected cash flows to ensure that ECN Capital will have sufficient liquidity to meet its liabilities when due as well as sustain and

grow ECN Capital's assets and operations, under both normal and stressed conditions, without incurring unacceptable losses or risking damage to ECN Capital's reputation.

ECN Capital believes that its capacity to expand its existing secured borrowing facilities, its access to bank term and conduit funding combined with access to the issuance of equity will be sufficient to fund its normal operating and capital expenditures as ECN Capital grows.

### **Interest rate risk**

Interest rate risk relates to the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. In order to mitigate interest rate risk, ECN Capital structures its secured borrowing arrangements to maintain a fixed interest rate spread between the interest paid on both the term funding facilities and the revolving facilities and the interest received on the underlying finance receivables. This fixed interest rate spread is achieved by match funding transactions on both a duration and interest rate basis. In some instances ECN Capital enters into interest rate swaps in order to align the interest rate variability.

ECN Capital does experience short-term interest rate risk on finance receivables during the period between fixing the contractual rate under the finance contracts with its customers and the locking of the interest rate under its funding facilities. During this time, an upward movement in benchmark rates can negatively impact the spread on the transaction. In order to mitigate this risk, ECN Capital carefully monitors its borrowing costs to ensure its rates reflect appropriate spreads to insulate against sudden unexpected interest rate movements. In order to further mitigate risk, ECN Capital undertakes regular securitizations under its secured borrowing arrangements to ensure its finance contracts are appropriately match-funded by its secured borrowing, which reduces the warehouse period and the likelihood that a significant movement in bond and/or note rates will negatively impact the spreads on such transactions. ECN Capital also maintains adequate balance sheet liquidity to allow it flexibility in developing a strategy of holding versus securitizing such finance assets.

To the extent that finance receivables are not part of a secured borrowing program, ECN Capital manages its interest rate risk exposure by entering into interest rate hedges to limit such exposure. As at December 31, 2015, the percentage of the total lease portfolio and the loan portfolio that had fixed interest rates was 100% and 76%, respectively, and at March 31, 2016 was 100% and 77%.

After considering the fixed interest rate spread on the secured borrowing programs and the exposure to fixed rate finance receivables described above, ECN Capital's interest rate risk is limited to cash and restricted cash, floating-rate finance receivables which are neither hedged nor part of a match-funded secured borrowing arrangement, and senior revolving credit facility. Based on its exposure as at March 31, 2016 and December 31, 2015, ECN Capital estimates that a 50 basis point increase or decrease (subject to a floor of 1 basis point) in interest rates would not have a significant impact on ECN Capital's earnings.

### **Foreign Currency Risk**

Foreign currency risk is the risk of exposure to foreign currency movements on ECN Capital's lending and/or net investment in foreign subsidiaries, whereby there is a risk the exchange rates will be materially different when a loan or finance receivable is remeasured for accounting purposes, matures or when a foreign subsidiary is divested. ECN Capital mitigates and manages this risk on ECN Capital's lending portfolio by entering into foreign exchange forward contracts to reduce or hedge its exposure to foreign currency risk. ECN Capital does not currently hedge its net investment in foreign subsidiaries. As at March 31, 2016 and December 31, 2015, ECN Capital did not have a significant un-hedged exposure to this type of foreign currency risk that would have an impact to net income.

ECN Capital is also exposed to foreign currency risk related to net income generated from foreign currency denominated assets and operations. This risk represents the impact of fluctuations to the average Canadian and respective foreign currency exchange rate used to translate ECN Capital's foreign currency denominated net income into Canadian dollar equivalent during each period. ECN Capital may mitigate and manage this type of foreign currency risk by entering into foreign currency forward contracts to reduce or hedge this exposure to foreign currency risk. If future net income before income taxes is consistent with the results generated in fiscal 2015, each one cent increase (decrease) in the average Canadian/foreign currency exchange rate would be expected to increase/decrease net income before business acquisition costs and income taxes for the year by approximately \$0.7 million in the absence of hedging transactions.

### **Personnel significance**

Employees are a significant asset of ECN Capital. Market forces and competitive pressures may adversely affect the ability of ECN Capital to recruit and retain key qualified personnel. ECN Capital mitigates this risk by providing a competitive compensation package, which includes profit sharing and medical benefits as it continuously seeks to align the interest of employees and shareholders.

### **Competitive environment**

There can be no assurance that ECN Capital will be able to compete successfully against its current or future competitors, or that such competition will not have a material adverse effect on the financial condition and results of operations of ECN Capital. Overall, the market for the financial services offered by ECN Capital is highly competitive and some of the companies operating in this sector have greater financial resources than ECN Capital.

### **Potential acquisitions and investments**

ECN Capital seeks to acquire or invest in businesses that expand or complement its current business. Such acquisitions or investments may involve significant commitments of financial or other resources of ECN Capital. There can be no assurance that any such acquisitions or investments will generate additional earnings or other returns for ECN Capital, or that financial or other resources committed to such activities will not be lost. Such activities could also place additional strains on ECN Capital's administrative and operational resources and its ability to manage growth.

### **Critical Accounting Policies and Estimates**

Management's discussion and analysis of financial conditions and results of operations are made with reference to the carve-out combined financial statements for the year ended December 31, 2015. A summary of ECN Capital's significant accounting policies are presented in Note 2 to audited carve-out financial statements for the year ended December 31, 2015. Some of ECN Capital's accounting policies, as required by IFRS, require management to make subjective, complex judgments and estimates to matters that are inherently uncertain. ECN Capital believes the policies below are the most critical accounting estimates that affect its operating results, and that would have the most material effect on the financial statements should these policies change or be applied in a different manner.

#### *Allowance for credit losses*

Judgment is required as to the timing of establishing an allowance for credit losses and the amount of the required allowance taking into consideration counterparty creditworthiness, the fair value of underlying collateral, current economic trends, the expected residual value of leased assets, and past experience.

ECN Capital reviews its individually significant leases and loans at each consolidated balance sheet date to assess the adequacy of the allowance for credit losses and to determine whether an impairment loss

should be recorded in the consolidated statement of operations. In particular, management judgment is required in the estimation of the amount and timing of future cash flows when determining the allowance. These estimates are based on assumptions on a number of factors and actual results may differ, resulting in future changes to the allowance. Leases and loans that have been assessed individually and found not to be impaired and all individually insignificant leases are then assessed collectively, in groups of assets with similar risk characteristics, to determine whether an allowance should be made due to incurred loss events for which there is objective evidence but whose effects are not yet evident. The collective assessment takes account of data from the loan portfolio such as levels of arrears and credit utilization and judgments to the effect of concentrations of risks.

#### *Deferred income tax assets*

Deferred income tax assets are recognized for unused income tax loss carry forwards and deductible temporary differences to the extent that it is probable that taxable income will be available against which the losses and temporary differences can be utilized. Judgment is required to determine the amount of deferred income tax assets that can be recognized based upon the likely timing and level of future taxable profits together with future tax planning strategies.

#### *Share-based compensation*

Compensation expense relating to stock options granted by ECN Capital to employees and directors in exchange for service is based on the grant-date fair value of the option. The stock option fair value is determined using the Black-Scholes option valuation model which requires the use of assumptions and is, by its nature, subject to measurement uncertainty.

#### *Business combination*

Business combination requires management to exercise judgment in measuring the fair value of the assets acquired, equity instrument issued, and liabilities and contingent liabilities incurred or assumed.

The majority of assets acquired in ECN Capital's business combinations are finance receivables. ECN Capital fair values these based on the characteristics of the portfolio acquired, and are similar to the judgment used in the assessment of the allowance for credit losses.

### **Future Accounting Changes**

All accounting standards effective for periods beginning on or after January 1, 2016 have been adopted by ECN Capital. The following new IFRS pronouncements have been issued but are not yet effective and may have a future impact on ECN Capital's financial statements.

IFRS 9, Financial Instruments ("IFRS 9"), was issued in November 2009 and amended in October 2010, November 2013, and July 2014, and is effective for years beginning on or after January 1, 2018, to be applied retrospectively, or on a modified retrospective basis. It is intended to replace IAS 39. The project has been divided into three phases: classification and measurement, impairment of financial assets, and hedge accounting. IFRS 9's classification and measurement methodology provides that financial assets are measured at either amortized cost or fair value on the basis of the entities business model for managing the financial assets and the contractual cash flow characteristics of the financial assets. The classification and measurement for financial liabilities remains generally unchanged. The new standard replaces the existing incurred loss model used for measuring the allowance for credit losses with an expected loss model. The standard introduces a new hedge accounting model, together with corresponding disclosures about risk management activity for those applying hedge accounting. Management is currently evaluating the potential impact that the adoption of IFRS 9 will have on ECN Capital's consolidated financial statements.

IFRS 15, Revenue from Contracts with Customers ("IFRS 15") was issued in May 2014 and is effective for years beginning on or after January 1, 2018, to be applied retrospectively or on a modified retrospective basis. IFRS 15 clarifies revenue recognition principles, provides a robust framework for recognizing revenue and cash flows arising from contracts with customers and enhances qualitative and quantitative disclosure requirements. IFRS 15 does not apply to lease contracts, financial instruments and other related contractual rights and obligations and insurance contracts. Management is currently evaluating the potential impact that the adoption of IFRS 15 will have on ECN Capital's consolidated financial statements.

IFRS 16, Leases ("IFRS 16"), will replace IAS 17, Leases ("IAS 17"). IFRS 16 substantially carry forward IAS 17 accounting requirements for lessor accounting, with additional disclosure requirements. For lessee accounting, the new standard will result in almost all leases being accounted for similar to finance leases under IAS 17, including leases previously accounted for as operating leases. IFRS 16 is to be effective for fiscal years beginning on or after January 1, 2019. Management is currently evaluating the potential impact that the adoption of IFRS16 will have on ECN Capital's consolidated financial statements.

### **Internal Control over Disclosure and Financial Reporting**

ECN Capital's Chief Executive Officer ("ECN Capital CEO") and Chief Financial Officer ("ECN Capital CFO") are responsible for designing disclosure controls and procedures to ensure that material information is being recorded, processed, summarized, and reported to senior management, including the certifying officers and other members of the ECN Capital Board, on a timely basis, so that appropriate decisions can be made regarding public disclosure. In addition, the ECN Capital CEO and CFO are responsible to design, or cause to be designed under their supervision, internal controls over financial reporting to a standard that provides reasonable assurance of the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS.

#### *Limitations on the effectiveness of disclosure controls and internal controls over financial reporting*

It should be noted that while ECN Capital's CEO and CFO believe that ECN Capital's internal control system and disclosure controls and procedures provide a reasonable level of assurance that the objectives of the control systems are met, they do not expect that ECN Capital's control systems will prevent all errors and fraud. A control system, no matter how well conceived or operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurances that any designs will succeed in achieving its stated goals under all potential conditions.

ECN Capital has an established process in place which includes the continuous testing and reporting of the results to senior management and the ECN Capital Board on the effectiveness of the disclosure controls and internal controls over financial reporting.

### **IFRS to Non-IFRS Measures**

#### **Description of Non-IFRS Measures**

ECN Capital's carve-out combined financial statements have been prepared in accordance with IFRS as issued by the International Accounting Standards Board ("IASB") and the accounting policies ECN Capital adopted in accordance with IFRS. These carve-out combined financial statements reflect all adjustments that are, in the opinion of management, necessary to present fairly ECN Capital's financial position as at March 31, 2016 and December 31, 2015, 2014 and 2013, the results of operations, comprehensive income and cash flows for the three months ended March 31, 2016 and 2015, and the years ended December 31, 2015, 2014 and 2013.

Management uses both IFRS and Non-IFRS Measures to monitor and assess the operating performance of ECN Capital's operations. Throughout this MD&A, management uses the following terms and ratios which do not have a standardized meaning under IFRS and are unlikely to be comparable to similar measures presented by other organizations:

#### **Adjusted operating expenses**

Adjusted operating expenses are equal to Salaries, wages and benefits and, General and administration expenses. Management believes adjusted operating expenses provide the most appropriate measure of operating costs during the period as they exclude synthetic discount amortization and share-based compensation.

#### **Adjusted operating income or Before-tax adjusted operating income**

Adjusted operating income reflects Income before income taxes, business acquisition costs and Share-based compensation. Management believes that this measure is the most appropriate operating measure of ECN Capital's performance as it excludes business acquisition costs, and share-based compensation which do not relate to maintaining operating activities.

#### **Adjusted operating income on average earning assets**

Adjusted operating income on average earning assets is the adjusted operating income for the period divided by the average earning assets outstanding throughout the period, presented on an annualized basis.

#### **Allowance for credit losses as a percentage of finance receivables**

Allowance for credit losses as a percentage of finance receivables is the allowance for credit losses at the end of the period divided by the finance receivables (gross of the allowance for credit losses) at the end of the period.

#### **Average cost of borrowing**

Average cost of borrowing is equal to interest expense divided by the average debt outstanding during the period and is presented on an annualized basis. The average cost of borrowing provides an indication of the average interest rate that ECN Capital pays on debt financing.

#### **Average debt advance rate**

Average debt advance rate is calculated as the average debt outstanding divided by the average earning assets throughout the period.

#### **Average debt outstanding**

Average debt outstanding is calculated as the daily weighted average borrowings outstanding under all of ECN Capital's secured borrowings facilities and convertible debentures throughout the period.

#### **Average net financial income margin yield**

Average net financial income margin yield is the net financial income divided by average earning assets outstanding during the period provided on an annualized basis. Average net financial income margin yield provides an indication of the effective net yield generated on the earning assets before deductions for all other operating expenses and of the net margin generated on the portfolio of earning assets.



**Average outstanding earning assets or average earning assets**

Average outstanding earning assets or average earning assets is the sum of the average outstanding finance receivables, average equipment under operating leases and average investment in managed fund during the period.

**Earning assets or total earning assets or finance earning assets**

Earning assets are the sum of the total net investment in finance receivables and total carrying value of the equipment under operating leases.

**Finance assets or total finance assets**

Finance assets are the sum of the total finance receivables and total carrying value of the equipment under operating leases.

**Financial leverage or financial leverage ratio**

Financial leverage or financial leverage ratio is calculated as total debt (the sum of secured borrowings and convertible debentures) outstanding at the end of the period, divided by total shareholders' equity outstanding at the end of the period. Financial leverage refers to the use of debt to acquire/finance additional finance receivables and provides an indication of future potential ability to increase the level of debt when compared to specific industry-standard and/or existing debt covenants.

**Net interest income and rental revenue, net before provisions for credit losses**

Net interest income and rental revenue, net before provisions for credit losses is equal to total interest income and total rental revenue, net less total interest expense and excludes provisions for credit losses as reported for the period. Net interest income and rental revenue before provisions for credit losses provides an indication of the gross interest and rental revenues from earning assets, before consideration of credit losses.

**Operating expense ratio**

The operating expense ratio is calculated as total adjusted operating expenses divided by average earning assets outstanding throughout the period on an annualized basis. The operating expense ratio is used by ECN Capital to assess the efficiency of the management of ECN Capital's finance receivables portfolio and equipment under operating leases.

**Provision for credit loss as a percentage of average finance receivables**

The provision for credit loss as a percentage of average finance receivables is the provision for credit losses during the period as recorded on the statements of operations divided by the average finance receivables outstanding throughout the period, presented on an annualized basis.

**Rental revenue, net**

Rental revenue, net is equal to rental income earned on equipment under operating leases, less depreciation.

## IFRS to Non-IFRS Reconciliations

The following table provides a reconciliation of non-IFRS to IFRS measures related to ECN Capital:

<i>\$ thousands</i>	For the years ended		
	December 31, 2015	December 31, 2014	December 31, 2013
<b>Reported and adjusted income measures</b>			
Net income (loss)	116,196	65,416	14,463
Adjustments:			
Share-based compensation	10,366	5,659	1,708
Amortization of intangible assets from acquisitions	1,719	305	—
Transaction and integration costs	—	3,077	17,366
Provision (recovery) of income taxes	32,530	22,233	5,914
<b>Before-tax adjusted operating income</b>	<b>160,811</b>	<b>96,690</b>	<b>39,451</b>

<i>\$ thousands</i>	As at and for the three months ended	
	March 31, 2016	March 31, 2015
<b>Reported and adjusted income measures</b>		
Net income (loss)	29,063	28,056
Adjustments:		
Share-based compensation	2,070	2,293
Amortization of intangible assets from acquisitions	650	263
Transaction and integration costs	—	—
Provision (recovery) of income taxes	8,892	7,374
<b>Before-tax adjusted operating income</b>	<b>40,675</b>	<b>37,986</b>

## DESCRIPTION OF SHARE CAPITAL

### General

The following is a summary of the rights, privileges, restrictions and conditions attaching to the ECN Capital Common Shares and the ECN Capital preference shares (the “**ECN Capital Preferred Shares**”) after giving effect to the Element Arrangement. Following completion of the Element Arrangement, ECN Capital will be authorized to issue an unlimited number of ECN Capital Common Shares and an unlimited number of ECN Capital Preferred Shares.

Upon completion of the Element Arrangement, based on the number of Element Common Shares outstanding as at July 15, 2016 (and assuming that no Dissent Rights are exercised in connection with the Element Arrangement), approximately 386,704,197 ECN Capital Common Shares will be issued and outstanding and no ECN Capital Preferred Shares will be issued and outstanding. The number of ECN Capital Common Shares expected to be issued and outstanding upon completion of the IAC Arrangement will be based on an exchange ratio to be determined on or about the date of the completion of the IAC Arrangement. See “*Other Matters Relating to the IAC Arrangement – IAC Exchange Ratios*” in the Management Information Circular. As of the date of the Management Information Circular, no ECN Capital Common Shares and no ECN Capital Preferred Shares have been issued.

Pursuant to the Element Plan of Arrangement, each Participating Shareholder will receive one ECN Capital Common Share for each Element Common Share held by such Participating Shareholder before the Element Arrangement. Immediately after giving effect to the Element Arrangement, but prior to giving effect to the IAC Arrangement, Participating Shareholders will hold directly all of the outstanding Element Fleet Common Shares and ECN Capital Common Shares. See “*The Element Arrangement*” and “*The IAC Arrangement*” in the Management Information Circular.

### ECN Capital Common Shares

Each ECN Capital Common Share entitles the holder to (i) one vote at all meetings of ECN Capital Shareholders (except meetings at which only holders of a specified class of shares are entitled to vote), (ii) to receive, subject to the holders of another class of shares, any dividend declared by ECN Capital, and (iii) to receive, subject to the rights of the holders of another class of shares, the remaining property of ECN Capital on the liquidation, dissolution or winding up of ECN Capital, whether voluntary or involuntary.

### ECN Capital Preferred Shares

Preferred shares of ECN Capital may at any time and from time to time be issued in one or more series. The directors of ECN Capital may fix, before the issuance thereof, the number of preferred shares of each series, the designation, rights, privileges, restrictions and conditions attaching to the preferred shares of each series, including, without limitation, any voting rights, any right to receive dividends (which may be cumulative or non-cumulative and variable or fixed) or the means of determining such dividends, the dates of payment thereof, any terms and conditions of redemption or purchase, any conversion rights, and any rights on the liquidation, dissolution or winding-up of ECN Capital, any sinking fund or other provisions, the whole to be subject to the issuance of a certificate of amendment setting forth the designation, rights, privileges, restrictions and conditions attaching to the ECN Capital Preferred Shares of the series.

The ECN Capital Preferred Shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding up of ECN Capital, whether voluntary or involuntary, rank on a parity with the preferred shares of every other series and be entitled to preference over the ECN Capital Common Shares. If any amount of cumulative dividends (whether or not declared) or declared non-cumulative dividends or any amount payable on any such distribution of assets

constituting a return of capital in respect of the ECN Capital Preferred Shares of any series is not paid in full, the ECN Capital Preferred Shares of such series shall participate rateably with the ECN Capital Preferred Shares of every other series in respect of all such dividends and amounts.

### **Advance Notice Requirements for Director Nominations**

ECN Capital's by-laws contain an advance notice provision pertaining to ECN Capital Shareholders (who meet the necessary qualifications outlined in the by-laws) seeking to nominate candidates for election as directors (a "**Nominating Shareholder**") at any annual meeting of ECN Capital Shareholders, or for any special meeting of ECN Capital Shareholders if one of the purposes for which the special meeting was called was the election of directors (the "**Advance Notice Provisions**"). The following description is a summary only and is qualified in its entirety by the full text of the applicable provisions of ECN Capital's by-laws which will be made available on ECN Capital's SEDAR profile at [www.sedar.com](http://www.sedar.com).

In addition to any other applicable requirements, for a nomination to be made by a Nominating Shareholder, the Nominating Shareholder must have given timely notice thereof in proper written form to the corporate secretary of ECN Capital. To be timely, a Nominating Shareholder's notice to the corporate secretary must be made: (i) in the case of an annual meeting of shareholders (including an annual and special meeting), not less than 30 days prior to the date of the annual meeting of ECN Capital shareholders; provided, however, that in the event that the annual meeting of shareholders is to be held on a date that is less than 50 days after the date (the "**Notice Date**") on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Shareholder may be made not later than the close of business on the 10th day following the Notice Date; and (ii) in the case of a special meeting of shareholders (which is not also an annual meeting) called for the purpose of electing directors (whether or not called for other purposes as well), not later than the close of business on the 15th day following the day on which the first public announcement of the date of the special meeting of shareholders was made. ECN Capital's by-laws also prescribe the proper written form for a Nominating Shareholder's notice.

The chairperson of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the notice procedures set forth in the by-laws and, if any proposed nomination is not in compliance with such provisions, the discretion to declare that such defective nomination will be disregarded.

Notwithstanding the foregoing, the directors of ECN Capital may, in their sole discretion, waive any requirement in the Advance Notice Provisions.

### **DIVIDEND POLICY**

The declaration of dividends on ECN Capital Common Shares will be at the sole discretion of the ECN Capital Board. No dividend policy has yet been adopted by the ECN Capital Board. ECN Capital does not intend to pay dividends on the ECN Capital Common Shares in the immediate future following the separation as it intends to retain earnings to finance the growth and development of its business and to otherwise reinvest in its business. Therefore, ECN Capital does not anticipate paying cash dividends on ECN Capital Common Shares in the near future. ECN Capital's dividend policy will be reviewed from time to time by the ECN Capital Board in the context of ECN Capital's earnings, financial condition and other relevant factors. The payment of dividends in the future will depend on the earnings, cash flow and financial condition of ECN Capital as well as the need to finance ECN Capital's business activities and any restrictions contained in ECN Capital's credit or financing agreements and such other factors as the ECN Capital Board considers appropriate. Until the time that ECN Capital does pay dividends, which it may never do, ECN Capital Shareholders will not be able to receive a return on their ECN Capital Common Shares unless they sell them.

## LONGER-TERM INCENTIVE PLAN DESCRIPTIONS

### ECN Capital Option Plan

The ECN Capital Board has adopted the ECN Capital stock option plan (the “**ECN Capital Option Plan**”), the form of which is attached as Appendix O to the Management Information Circular. ECN Capital options (“**ECN Capital Options**”) issued thereunder will allow participants to purchase ECN Capital Common Shares at a specified exercise price within a specified maximum exercise period of eight years. The purpose of the ECN Capital Option Plan is to advance the interests of ECN Capital through the motivation, attraction and retention of officers, directors and employees of ECN Capital and such other key individuals as the ECN Capital Board deems reasonably appropriate.

The following is a summary of the ECN Capital Option Plan:

- Eligible participants under the ECN Capital Option Plan will be the directors, officers and other key full-time employees of ECN Capital and its affiliates.
- ECN Capital Options will typically vest 33.3% per year over three years.
- Each vested portion will be exercisable for five years from the vesting date.
- Exercise price will be established by the ECN Capital Board at the time the ECN Capital Option is granted but shall not be less than the closing price of the ECN Capital Common Shares on the last trading day before the grant date.
- The ECN Capital Option Plan provides that the Board may make appropriate adjustments in the event of certain changes in the capital of ECN Capital.
- Maximum number of ECN Capital Common Shares that may be issued pursuant to the ECN Capital Option Plan and other security based compensation arrangements will not exceed 10% of the issued and outstanding ECN Capital Common Shares, calculated from time to time at the date ECN Capital Options are granted. The ECN Capital Board will take into account previous grants of ECN Capital Options when considering future grants.
- ECN Capital Common Shares subject to an ECN Capital Option that has been granted and that is subsequently cancelled or terminated for any reason without having been exercised will again be available for grant under the ECN Capital Option Plan.
- ECN Capital Options will be personal to the recipient and are non-transferable except in accordance with the ECN Capital Option Plan and the regulations thereto.
- Subject to applicable law and upon notice to ECN Capital, a holder may transfer ECN Capital Options, or ECN Capital Common Shares received under the exercise of ECN Capital Options, to any registered retirement savings plan, registered retirement income fund, tax-free savings account or similar retirement or investment fund established by or for the holder or under which the holder is a beneficiary.
- Upon death of a holder, the holder’s ECN Capital Option(s) will become part of his or her estate, and any right of the holder may be exercised by the deceased holder’s legal representatives in accordance with the ECN Capital Option Plan, provided the legal representatives comply with all obligations of the deceased holder.
- ECN Capital Options will not be granted during “blackout periods” under ECN Capital’s Insider Trading Policy (as defined herein). If an ECN Capital Option expires during a blackout period, the expiry date for such option will be automatically extended to the 10th business day following the end of such blackout period.

- In the case of termination of employment of any option-holder for cause, all granted ECN Capital Options then held by such person shall immediately terminate as of the date of termination of employment.
- In the case of termination of employment of any option-holder as a result of death or disability, all granted ECN Capital Options then held by such person shall terminate as of the earlier of the expiry date for such options or one year from the date of death or disability.
- In cases where the employment of any option-holder is terminated for reason other than cause, death or disability, all granted ECN Capital Options then held by such person shall terminate as of the earlier of the expiry date for such options or one year following the last day of employment.
- In the event of a change of control, the Board, having regard to its fiduciary duties and the best interests of ECN Capital, will address the economic value of the rights that participants, as a group, have in outstanding Element Options in whatever manner the Board deems to be reasonable.

The number of ECN Capital Common Shares issuable to insiders of ECN Capital, at any time, pursuant to the ECN Capital Option Plan and other security based compensation arrangements shall not exceed 10% of the issued and outstanding ECN Capital Common Shares. In addition, the number of ECN Capital Common Shares issued to insiders of ECN Capital, within a one-year period, pursuant to the ECN Capital Option Plan and other security based compensation arrangements shall not exceed 10% of the issued and outstanding ECN Capital Common Shares. The number of ECN Capital Common Shares issuable to non-employee directors pursuant to the ECN Capital Option Plan and other security based compensation arrangements shall not exceed 1% of the issued and outstanding ECN Capital Common Shares, and the aggregate dollar value of such ECN Capital Options shall not exceed \$100,000 within a one-year period. In addition, the aggregate equity value of all awards that are eligible to be settled in Shares granted to a non-employee director within a one year period, pursuant to all security based compensation arrangements (including the ECN Capital Option Plan) shall not exceed \$150,000.

The following types of amendments to the ECN Capital Option Plan will require shareholder approval: (i) an increase to the maximum number or percentage of securities issuable under the ECN Capital Option Plan; (ii) provisions granting additional powers to the ECN Capital Board to amend the ECN Capital Option Plan or entitlements thereunder; (iii) reduction in the exercise price of ECN Capital Options or other entitlements; (iv) any cancellation and reissue of ECN Capital Options or other entitlements; (v) any change to the categories of individuals eligible to be selected for grants of ECN Capital Options where such change may broaden or increase the participation of non-employee directors under the plan; (vi) an amendment to the prohibition on transfer of ECN Capital Options; (vii) an amendment to the amendment provisions under the plan; (viii) an extension to the term of ECN Capital Options; and (ix) changes to participation limits applicable to insiders or non-employee directors of ECN Capital.

The ECN Capital Board may make the following amendments to the ECN Capital Option Plan or an ECN Capital Option granted under the ECN Capital Option Plan without obtaining shareholder approval: (i) amendments to the terms and conditions of the ECN Capital Option Plan necessary to ensure that it complies with applicable law and regulatory requirements, including the requirements of any applicable stock exchange, in place from time to time; (ii) amendments to the provisions of the ECN Capital Option Plan respecting administration of, and eligibility for participation under, the plan; (iii) amendments to the provisions of the ECN Capital Option Plan respecting the terms and conditions on which ECN Capital Options may be granted (including the vesting schedule); (iv) the addition of, and any subsequent amendment to, any financial assistance provision; (v) amendments to the ECN Capital Option Plan that are of a “housekeeping” nature; (vi) amendments to the provisions relating to a change of control; and (vii) any other amendments not requiring shareholder approval under applicable laws or the requirements of an applicable stock exchange (such as the TSX). Amendments to the ECN Capital Option Plan or ECN Capital Options that are not subject to shareholder approval may be implemented by ECN Capital without shareholder approval, but are subject to any approval required by the rules of the TSX and other requirements of applicable law. The ECN Capital Board also has the right to amend, suspend or

terminate the ECN Capital Option Plan or any portion of it at any time in accordance with applicable law and subject to any required regulatory, applicable exchange or shareholder approval.

Pursuant to the ECN Capital Option Plan, for purposes of compliance with Section 409A of the Internal Revenue Code of 1986, as amended ("**Section 409A**"), certain terms of the ECN Capital Options held by U.S. taxpayers may differ from those described above.

It is estimated that immediately following completion of the Element Arrangement, based on the number of ECN Capital Common Shares estimated to be outstanding immediately following the completion of the Element Arrangement of 386,704,197, a maximum number of 38,670,419 ECN Capital Common Shares will be available for issuance under the ECN Capital Option Plan (approximately 10% of the ECN Capital Common Shares estimated to be outstanding immediately following the completion of the Element Arrangement) and there will be 15,799,103 that remain available for issuance under the ECN Capital Option Plan (approximately 4% of the ECN Capital Common Shares estimated to be outstanding immediately following the completion of the Element Arrangement). The maximum number of ECN Capital Common Shares issuable under the ECN Capital Option Plan shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time, and the maximum number of ECN Capital Common Shares issuable under all security based compensation arrangements of ECN Capital, including the ECN Capital Option Plan, shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time.

For more information on the treatment of outstanding Element Options pursuant to the Element Arrangement, see "*The Element Arrangement – Treatment of Outstanding Element Options*" in the Management Information Circular.

#### **ECN Capital Deferred Share Unit Plan**

Pursuant to the Element Arrangement, the ECN Capital Board has adopted the ECN Capital Deferred Share Unit Plan (the "**ECN Capital DSU Plan**"), the form of which is attached as Appendix P to the Management Information Circular. Under the ECN Capital DSU Plan, the ECN Capital Board may grant ECN Capital DSUs to designated executives (being officers or employees designated by the ECN Capital Board as eligible) and non-employee directors of ECN Capital. A DSU is a right to receive an amount of shares or cash from ECN Capital equal to the value of one ECN Capital Common Share. ECN Capital DSU grants for directors and executives are approved by the ECN Capital Board based on the recommendation of the ECN Capital C&CG Committee. The ECN Capital C&CG Committee will take into account previous grants of DSUs when considering future grants.

The purpose of the ECN Capital DSU Plan is to attract and retain qualified persons to serve on the ECN Capital Board of Directors and executive team, to strengthen the alignment of interests between participants in the ECN Capital DSU Plan and shareholders by requiring participants to defer receiving a portion of their compensation until their retirement or resignation and having the value of such portion fluctuate with the value of the ECN Capital Common Shares and to provide a compensation system for non-employee directors that, together with the other director compensation mechanisms of ECN Capital, is reflective of the responsibility, commitment and risk accompanying membership on the ECN Capital Board and the performance of the duties required of the various committees of the ECN Capital Board.

Under the terms of the ECN Capital DSU Plan, the number of ECN Capital DSUs that a participant will receive will be calculated by dividing the portion of the participant's eligible compensation by the volume-weighted average price of the ECN Capital Common Shares on the TSX for the 10 most recent preceding days on which they were traded on the grant date (the "**DSU Fair Market Value**"). ECN Capital Board members will be required to take a minimum of 50% of their annual board retainer in the form of ECN Capital DSUs. If and when cash dividends are paid with respect to ECN Capital Common Shares during the term of a grant, a participant will be granted a number of dividend equivalent ECN Capital DSUs.

Such dividend equivalents shall be converted into additional ECN Capital DSUs based on the DSU Fair Market Value as of the date on which the dividends are paid.

The maximum number of ECN Capital Common Shares which may be issued to insiders under the ECN Capital DSU Plan within a one year period or which may be issuable to insiders at any time, under all security based compensation arrangements of ECN Capital, shall be 10% of the ECN Capital Common Shares outstanding at the time of the issuance. Any increase in the ECN Capital Common Shares reserved shall be subject to the approval of the ECN Capital Shareholders in accordance with the rules of the TSX. The aggregate equity award value of any grants of ECN Capital DSUs that are eligible to be settled in ECN Capital Common Shares, in combination with the aggregate equity award value of any grants under any other security based compensation arrangements of ECN Capital that may be made to a non-employee director for a year shall not exceed \$150,000.

The redemption date of a participant's ECN Capital DSUs shall not occur until his or her resignation or retirement from ECN Capital. In such case, the participant will provide ECN Capital with a written redemption notice specifying a redemption date, which shall occur no later than December 15th of the calendar year following the year in which the participant resigned or retired.

The ECN Capital Board may grant awards of ECN Capital DSUs from time to time to each non-employee director or executive designated by the ECN Capital Board as eligible to participate in the plan. The ECN Capital DSUs are then credited to the participant's account on the award date. The ECN Capital DSU Plan provides that the ECN Capital Board may make appropriate adjustments to the ECN Capital DSUs in the event of certain changes in the capital of ECN Capital. In any particular year the ECN Capital Board may, in its sole discretion, determine not to make an award to a particular eligible director/executive or to all eligible directors/executives as a group.

The ECN Capital Board may specify in a ECN Capital DSU award agreement whether the ECN Capital DSUs subject to such agreement will be settled in cash or ECN Capital Common Shares, or a combination of both, provided that where an agreement does not provide for the settlement of the ECN Capital DSUs in ECN Capital Common Shares, such ECN Capital DSUs may only be settled in cash. On the redemption date, ECN Capital will: (a) pay cash, equal to the number of ECN Capital DSUs credited to the participant's account on the redemption date, multiplied by the DSU Fair Market Value (less any applicable withholding taxes), to the participant or the participant's legal representative, as the case may be; (b) issue one ECN Capital Common Share for each ECN Capital DSU to the participant or the participant's legal representative, as the case may be. No fractional ECN Capital Common Shares will be issued and any fractional vested ECN Capital DSUs shall be settled in cash based on the DSU Fair Market Value on the relevant settlement date.

The ECN Capital Board may, without ECN Capital Shareholder approval, make any amendments to the ECN Capital DSU Plan or ECN Capital DSUs granted thereunder as it deems necessary or appropriate including, but not limited to, (i) amendments to the terms and conditions of the ECN Capital DSU Plan necessary to ensure that it complies with applicable law and regulatory requirements, including the requirements of any applicable stock exchange, in place from time to time; (ii) amendments to the provisions of the ECN Capital DSU Plan respecting administration of, and eligibility for participation under, the plan; (iii) amendments to the provisions of the ECN Capital DSU Plan respecting the terms and conditions on which ECN Capital DSUs may be granted; (iv) amendments to the ECN Capital DSU Plan that are of a "housekeeping" nature; (v) amendments to the provisions relating to a change of control; and (vi) any other amendments not requiring shareholder approval under applicable laws or the requirements of an applicable stock exchange (such as the TSX). Amendments to the ECN Capital DSU Plan that are not subject to shareholder approval may be implemented by ECN Capital without shareholder approval, but are subject to any approval required by the rules of the TSX and other requirements of applicable law. The ECN Capital Board also has the right to amend, suspend or terminate the ECN Capital DSU Plan or any portion of it at any time in accordance with applicable law and subject to any required regulatory, applicable exchange or shareholder approval. No such amendment shall, without the consent of the eligible participant or unless required by law, adversely affect the rights of an eligible participant with



respect to any amount in respect of which an eligible participant has then elected to receive ECN Capital DSUs or ECN Capital DSUs which the eligible participant has been granted under the plan.

Notwithstanding the foregoing, the following changes to the ECN Capital DSU Plan will require ECN Capital Shareholder approval in accordance with the requirements of the TSX: (i) any increase to the maximum number or percentage of ECN Capital Common Shares issuable under the ECN Capital DSU Plan; (ii) a change in the term of any ECN Capital DSUs; (iii) an amendment to the amending provisions of the ECN Capital DSU Plan granting additional powers to the Board to amend the ECN Capital DSU Plan; (iv) a reduction in the DSU Fair Market Value in respect of any ECN Capital DSUs benefitting an insider; (v) any change to the categories of individuals eligible to be selected for grants of ECN Capital DSUs where such change may broaden or increase the participation of non-employee directors under the ECN Capital DSU Plan; (vi) any change to the insider participation limits set forth in the ECN Capital DSU Plan; (vii) any amendments that increase non-employee director participation limits set forth in the ECN Capital DSU Plan; (viii) an amendment to the prohibitions on assignment or transfer of ECN Capital DSUs; and (ix) an amendment to the amending provisions of the ECN Capital DSU Plan

Except as required by law, the rights of a participant under the ECN Capital DSU Plan will not be transferable or assignable other than by will or the laws of descent and distribution. An eligible participant may designate in writing a beneficiary to receive any benefits that are payable under the ECN Capital DSU Plan upon the death of such eligible participant.

The ECN Capital Board may terminate the ECN Capital DSU Plan at any time, but no such termination shall, without the consent of the eligible participant or unless required by law, adversely affect the rights of an eligible participant with respect to any amount in respect of which an eligible participant has elected to receive in ECN Capital DSUs, or has then been granted under the plan.

Upon a change of control, any unvested ECN Capital DSUs will immediately and automatically vest upon the date a change of control becomes effective. In the event an eligible participant's termination date is within twelve months following a change of control, the ECN Capital Board may, in its discretion, determine that the eligible participant or his or her beneficiary shall receive a payment in cash of an aggregate amount equal to the product of the price attributed to the ECN Capital Common Shares in connection with the transaction resulting in the change of control (as determined by the ECN Capital Board in good faith if no ECN Capital Common Share price was in fact established) multiplied by the number of ECN Capital DSUs being settled.

Pursuant to the ECN Capital DSU Plan, for purposes of compliance with Section 409A, certain terms of the ECN Capital DSUs held by U.S. taxpayers may differ from those described above.

It is estimated that immediately following completion of the Element Arrangement, based on the number of ECN Capital Common Shares estimated to be outstanding immediately following the completion of the Element Arrangement of 386,704,197, the aggregate number of ECN Capital Common Shares reserved for issuance under the ECN Capital DSU Plan will not exceed 38,670,419, representing approximately 10% of the outstanding ECN Capital Common Shares on a non-diluted basis. The maximum number of ECN Capital Common Shares issuable under the ECN Capital DSU Plan shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time, and the maximum number of ECN Capital Common Shares issuable under all security based compensation arrangements of ECN Capital, including the ECN Capital DSU Plan, shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time. As a result, should ECN Capital issue additional ECN Capital Common Shares in the future, the number of ECN Capital Common Shares issuable under the ECN Capital DSU Plan will increase accordingly.

For more information on the treatment of outstanding Element DSUs pursuant to the Element Arrangement, see "*The Element Arrangement – Treatment of Outstanding Element DSUs*" in the Management Information Circular.

## ECN Capital Share Unit Plan

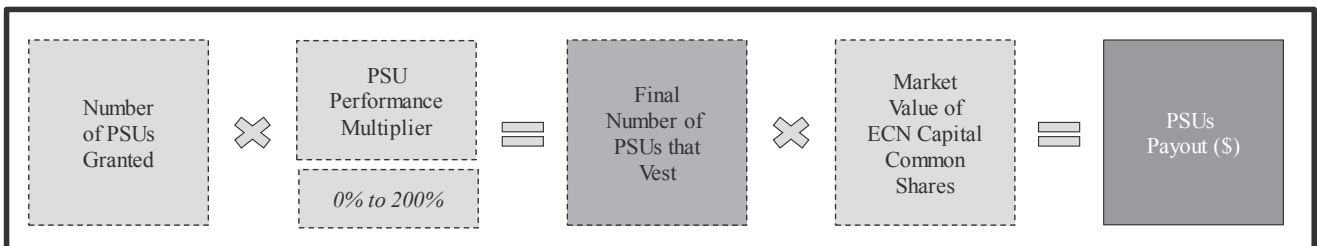
The ECN Capital Board has adopted the ECN Capital Share Unit Plan (the “**ECN Capital Unit Plan**”), the form of which is attached as Appendix Q to the Management Information Circular. Under the ECN Capital Unit Plan, both restricted share units (“**ECN Capital RSUs**”) and performance share units (“**ECN Capital PSUs**”) may be granted. Eligible participants under the ECN Capital Unit Plan are individuals employed by ECN Capital or its subsidiaries, or other controlled entities that are determined by the Compensation, Corporate Governance and Nominating Committee (the “**ECN Capital C&CG Committee**”) to be in a position to contribute to the success of ECN Capital. ECN Capital RSU and ECN Capital PSU grants are approved by the ECN Capital C&CG Committee. The ECN Capital C&CG Committee will take into account previous grants of RSUs and PSUs when considering future grants. The ECN Capital C&CG Committee, unless otherwise determined by the Board, has the sole and absolute discretion to administer the ECN Capital Unit Plan and to exercise all powers and authorities granted to it under the ECN Capital Unit Plan, or that are necessary and advisable in the administration of the ECN Capital Unit Plan.

ECN Capital RSUs and ECN Capital PSUs will vest in a period specified by the ECN Capital C&CG Committee, which shall not be later than December 15 of the third year following the year in which the eligible participant performed the services to which the grant related. ECN Capital PSUs will also be subject to performance conditions that are approved by the ECN Capital C&CG Committee. The ECN Capital Unit Plan will provide that the ECN Capital C&CG Committee may make appropriate adjustments to the ECN Capital RSUs and ECN Capital PSUs in the event of certain changes in the capital of ECN Capital.

ECN Capital PSUs granted will be a bonus for services in the year the award is granted. Depending on the specific purpose of the award, the ECN Capital C&CG Committee will determine the associated performance metrics, weightings and performance period.

Under the ECN Capital Unit Plan, the number of units that will vest will be based on performance against metrics that are tied to ECN Capital’s strategic priorities. The ECN Capital PSU performance multiplier under the plan design may range from 0% to 200% dependent on actual performance. The ECN Capital PSU payout will be zero if performance is below the minimum threshold.

Under the ECN Capital Unit Plan, the payout of ECN Capital PSUs will be determined by multiplying the number of ECN Capital PSUs that vest by volume weighted average trading price of the ECN Capital Common Shares for the 10 trading days preceding the vesting date (the “**Share Unit Fair Market Value**”).



On the vesting date, the ECN Capital Board, in its absolute discretion, can elect one or any combination of the following payment methods for the ECN Capital RSUs or ECN Capital PSUs credited to a participant’s account: (a) pay cash, equal to the Share Unit Fair Market Value on the relevant settlement date multiplied by the number of ECN Capital PSUs or ECN Capital RSUs, as applicable, credited to the participant’s account (less any applicable withholding taxes), to the participant or the participant’s legal representative, as the case may be; or (b) issue ECN Capital Common Shares to the participant or the

participant's legal representative, as the case may be. No fractional ECN Capital Common Shares will be issued and any fractional vested ECN Capital PSUs or ECN Capital RSUs shall be settled in cash based on the Share Unit Fair Market Value on the relevant settlement date.

Except as otherwise provided in a grant agreement relating to a grant of ECN Capital PSUs or ECN Capital RSUs, if and when cash dividends (other than extraordinary or special dividends) are paid with respect to ECN Capital Common Shares during the term of a grant, a participant will be granted a number of dividend equivalent ECN Capital PSUs or ECN Capital RSUs in an amount equal to the aggregate amount of dividends that would have been paid on such share units had they been ECN Capital Common Shares at the time of the dividend divided by the Share Unit Fair Market Value at the time of the dividend.

The maximum number of ECN Capital Common Shares which may be issued to insiders under the ECN Capital Unit Plan within a one year period or which may be issuable to insiders at any time, under all security based compensation arrangements of ECN Capital, shall be 10% of the ECN Capital Common Shares outstanding at the time of the issuance. Any increase in the ECN Capital Common Shares reserved shall be subject to the approval of the ECN Capital Shareholders in accordance with the rules of the TSX. The plan does not provide for a maximum number of ECN Capital Common Shares which may be issued to a non-insider participant pursuant to the ECN Capital Unit Plan and all other security compensation arrangements.

The ECN Capital Board may, without ECN Capital Shareholder approval, make any amendments to the ECN Capital Unit Plan including, but not limited to, (i) amendments to the terms and conditions of the ECN Capital Unit Plan necessary to ensure that it complies with applicable law and regulatory requirements, including the requirements of any applicable stock exchange, in place from time to time; (ii) amendments to the provisions of the ECN Capital Unit Plan respecting administration of, and eligibility for participation under, the plan; (iii) amendments to the provisions of the ECN Capital Unit Plan respecting the terms and conditions on which ECN Capital PSUs and ECN Capital RSUs may be granted (including the vesting schedule); (iv) amendments to the ECN Capital Unit Plan that are of a "housekeeping" nature; (v) amendments to the provisions relating to a change of control; and (vi) any other amendments not requiring shareholder approval under applicable laws or the requirements of an applicable stock exchange (such as the TSX). Amendments to the ECN Capital Unit Plan or ECN Capital PSUs or ECN Capital RSUs that are not subject to shareholder approval may be implemented by ECN Capital without shareholder approval, but are subject to any approval required by the rules of the TSX and other requirements of applicable law. The ECN Capital Board also has the right to amend, suspend or terminate the ECN Capital Unit Plan or any portion of it at any time in accordance with applicable law and subject to any required regulatory, applicable exchange or shareholder approval.

Notwithstanding the foregoing, the following changes to the ECN Capital Unit Plan will require ECN Capital Shareholder approval in accordance with the requirements of the TSX: (i) an increase to the maximum number or percentage of ECN Capital Common Shares reserved for issuance pursuant to the ECN Capital Unit Plan; (ii) changes to the amendment provisions to grant additional powers to the ECN Capital Board to amend the ECN Capital Unit Plan or entitlements thereunder; (iii) any change to the categories of individuals eligible for grants of ECN Capital PSUs or ECN Capital RSUs where such change may broaden or increase the participation of non-employee directors in the ECN Capital Unit Plan; (iv) any changes to the insider participation limits set forth in the ECN Capital Unit Plan; (v) an amendment to the prohibition on assignment or transfer of ECN Capital PSUs or ECN Capital RSUs; and (vi) an amendment to the amending provisions in the ECN Capital Unit Plan. The ECN Capital Board may also not make any amendments to the plan or grants made pursuant to the plan without the consent of a participant if it adversely alters or impairs the rights of the participant in respect of any grant previously granted to such participant under the plan. Consent will not be required where the amendment is required for purposes of compliance with applicable laws or regulatory requirements.

In the case of termination of employment of any participant for cause, or resignation of a participant, subject to the terms of any written employment agreement, and unless otherwise determined by the ECN

Capital C&GC Committee, no ECN Capital PSUs or ECN Capital RSUs that have not yet vested and been settled prior to the date of such termination or resignation, as the case may be, including dividend equivalent ECN Capital PSUs and ECN Capital RSUs shall vest, and all such ECN Capital PSUs and ECN Capital RSUs shall be forfeited immediately.

In the case of termination of a participant without cause, subject to the terms of any written employment agreement and the relevant grant agreement, all ECN Capital PSUs and/or ECN Capital RSUs that have not previously vested shall vest on the effective date of such termination, provided that in the case of ECN Capital PSUs, the total number of PSUs that vest shall be the number of PSUs covered by the relevant grant without giving effect to any potential increase or decrease in such number as a result of graduated performance conditions permitting the vesting of more or less than 100% of such ECN Capital PSUs.

In the case of death or disability, subject to the terms of a participant's written employment agreement and the relevant grant agreement, in the event a participant dies or experiences a disability prior to the end of a vesting period for the grant, a portion of the ECN Capital RSUs shall vest as of the date of such event and all other ECN Capital RSUs not so vested shall be forfeited immediately. The number of ECN Capital PSUs, if any, that vest shall be determined in accordance with the grant agreement governing such ECN Capital PSUs, and any ECN Capital PSUs that do not vest pursuant to the relevant grant agreement shall be forfeited immediately.

In the event of a change of control of ECN Capital, subject to the terms of any written employment agreement with ECN Capital, all ECN Capital PSUs and ECN Capital RSUs that have not previously vested shall vest on the effective date of the change of control, provided that in the case of ECN Capital PSUs, the total number of PSUs that vest shall be the number of PSUs covered by the relevant grant without giving effect to any potential increase or decrease in such number as a result of graduated performance conditions permitting the vesting of more or less than 100% of such ECN Capital PSUs. ECN Capital PSUs and ECN Capital RSUs that vest pursuant to a change of control shall be settled by a lump sum cash payment based on the price attributed to ECN Capital Common Shares in connection with the transaction giving rise to the change of control, or as determined by the ECN Capital C&GC Committee in good faith if no ECN Capital Common Share price was in fact established.

Except as required by law, and in accordance with the provisions of the plan allowing for the designation of a beneficiary, the assignment or transfer of the ECN Capital PSUs or ECN Capital RSUs or any other benefits under the plan shall not be permitted other than by operation of law.

Pursuant to the ECN Capital Unit Plan, for purposes of compliance with Section 409A, certain terms of the ECN Capital PSUs and ECN Capital RSUs held by U.S. taxpayers may differ from those described above.

It is estimated that immediately following completion of the Element Arrangement, based on the number of ECN Capital Common Shares estimated to be outstanding immediately following the completion of the Element Arrangement of 386,704,197, the aggregate number of ECN Capital Common Shares reserved for issuance under the ECN Capital Unit Plan will not exceed 38,670,419, representing approximately 10% of the outstanding ECN Capital Common Shares on a non-diluted basis. The maximum number of ECN Capital Common Shares issuable under the ECN Capital Unit Plan shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time, and the maximum number of ECN Capital Common Shares issuable under all security based compensation arrangements of ECN Capital, including the ECN Capital Unit Plan, shall not exceed such number which represents 10% of the issued and outstanding ECN Capital Common Shares from time to time. As a result, should ECN Capital issue additional ECN Capital Common Shares in the future, the number of ECN Capital Common Shares issuable under the ECN Capital Unit Plan will increase accordingly.

For more information on the treatment of outstanding Element PSUs pursuant to the Element Arrangement, see “*The Element Arrangement – Treatment of Outstanding Element PSUs and RSUs*” in the Management Information Circular. As of the date of the Management Information Circular, no Element RSUs are outstanding and Element does not expect to issue any RSUs prior to the Element Arrangement.

### **OPTIONS TO PURCHASE SECURITIES**

There are currently no options to purchase ECN Capital Common Shares outstanding. As described further in the Management Information Circular under the heading “*The Element Arrangement – Treatment of Outstanding Element Options*”, outstanding Element Options will ultimately be exchanged, in part, for ECN Capital Arrangement Options. Based on the number of Element Options outstanding on July 15, 2016, the following table sets forth information with respect to the ECN Capital Arrangement Options issuable pursuant to the Element Arrangement in exchange for Element Options:

<b>Group</b>	<b>Number of ECN Capital Common Shares under Option<sup>(1)</sup></b>	<b>Expiry Dates</b>
Non-Employee Directors	2,913,555	August 15, 2017 to February 27, 2023
Executive Officers	7,602,329	May 18, 2017 to September 30, 2023
Employees	12,304,582	August 1, 2016 to May 13, 2024

**Notes:**

- (1) The exercise price of the ECN Capital Arrangement Options will be determined using the formula described under the heading “*The Arrangement – Treatment of Outstanding Element Options*” in the Management Information Circular.

### **PRIOR SALES**

No ECN Capital Common Shares have been issued, or will be issued, prior to the Element Arrangement.

### **ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER**

To the knowledge of ECN Capital, as of the date of the Management Information Circular, no securities of any class of securities of ECN Capital are held in escrow or subject to contractual restrictions on transfer or are anticipated to be held in escrow or subject to contractual restrictions on transfer following the completion of the Element Arrangement.

### **PRINCIPAL SHAREHOLDERS**

There are no ECN Capital Common Shares outstanding. To the knowledge of ECN Capital, assuming that there are no Dissenting Shareholders, there is no person or company that will, immediately following completion of the Element Arrangement, beneficially own or will own, directly or indirectly, or exercise control or direction over, ECN Capital Common Shares carrying more than 10% of the voting rights attached to the ECN Capital Common Shares.

## DIRECTORS AND EXECUTIVE OFFICERS

The names, municipality of residence and positions with ECN Capital of the persons who will serve as directors and executive officers of ECN Capital after giving effect to the Element Arrangement are set out below. Each of the seven proposed members of the ECN Capital Board will be formally appointed to the ECN Capital Board pursuant to the Element Arrangement. In order to facilitate the incorporation of ECN Capital, and handle certain organizational and other transitional matters prior to the Element Arrangement, two officers of Element have been appointed to the ECN Capital Board.

### Directors

Name and Province/State and Country of Residence	Principal Occupation
William Lovatt <sup>(1), (2), (3)</sup> Winnipeg, Manitoba, Canada	Chairman of ECN Capital's Board; previously Chairman of the Element Board; former Executive Vice-President and Chief Financial Officer of Great West Lifeco Inc., The Great-West Life Assurance Company, London Life Insurance Company and The Canada Life Assurance Company from 1997 to 2015 (35-year career with Great-West Life)
Bradley Nullmeyer <sup>(3)</sup> Toronto, Ontario, Canada	Chief Executive Officer of Element Fleet and Vice-Chairman of ECN Capital's Board; previously President of Element; previously the Co-Chief Executive Officer of OTEC Research from 2007 to 2013; previously co-founder of Newcourt Credit Group Inc. with lead responsibility for acquisitions, vendor finance programs and joint ventures; previously President of Vendor Finance for CIT USA
Steven Hudson <sup>(3)</sup> Toronto, Ontario, Canada	Chief Executive Officer of ECN Capital; previously Chief Executive Officer of Element; previously Chief Executive Officer of Cameron Capital Corporation from 2005 to 2010. Founder and former CEO of Newcourt Credit Group Inc.
Paul Stoyan <sup>(1), (2), (5)</sup> Toronto, Ontario, Canada	Chairman of Gardiner Roberts LLP
Pierre Lortie <sup>(3), (6)</sup> St-Lambert, Québec, Canada	Senior Business Advisor at Dentons Canada LLP
Gordon Giffin <sup>(2)</sup> Atlanta, Georgia, U.S.A.	Senior Partner and the Chair of the Public Policy and International department of the international law firm of Dentons LLP
David Morris <sup>(1),(4)</sup> Beaconsfield, Québec, Canada	Partner at Deloitte & Touche LLP (Retired)

#### Notes:

- (1) Proposed member of the Audit Committee<sup>†</sup>
- (2) Proposed member of the C&CG Committee
- (3) Proposed member of the Credit and Risk Committee
- (4) Proposed chair of the Audit Committee
- (5) Proposed chair of the C&CG Committee
- (6) Proposed chair of the Credit and Risk Committee

By approving the Element Arrangement Resolution, Element Shareholders will be deemed to have approved the proposed directors of ECN Capital, which are formally appointed pursuant to the Element Plan of Arrangement. The directors of ECN Capital will thereafter be elected by the ECN Capital Shareholders at each annual meeting of shareholders, and will hold office until the next annual meeting of ECN Capital, or until his or her successor is duly elected or appointed, unless: (i) his or her office is earlier vacated in accordance with the articles and by-laws of ECN Capital; or (ii) he or she becomes disqualified to act as a director.

Further, by approving the Element Arrangement Resolution, Element Shareholders will be deemed to have authorized the directors of ECN Capital to appoint one or more additional directors of ECN Capital, such appointed directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders of ECN Capital, provided that the total number of directors so appointed may not exceed one third of the number of directors of ECN Capital approved pursuant to the Element Arrangement Resolution.

Pursuant to the Arrangement Agreement, ECN Capital has agreed to use its commercially reasonable efforts to appoint Neil Selfe, Chief Executive Officer and Chairman of the Board of IAC, and William T. Holland, a Director of IAC, to the ECN Capital Board effective as soon as practicable following completion of the IAC Arrangement. In addition, following completion of the IAC Arrangement, Mr. Selfe will also join the ECN Capital management team as Executive Vice Chairman.

† Should Mr. Holland be appointed to the ECN Capital Board, as described above, ECN Capital expects that Mr. Holland would replace Mr. Stoyan as a member of the Audit Committee.

## Executive Officers

<b>Name and Province/State and Country of Residence</b>	<b>Principal Occupation</b>
Steven Hudson Toronto, Ontario, Canada	Chief Executive Officer; previously Chief Executive Officer of Element; previously Chief Executive Officer of Cameron Capital Corporation from 2005 to 2010. Founder and former CEO of Newcourt Credit Group Inc.
David McKerroll Toronto, Ontario, Canada	President, Aviation & Rail; previously President, Aviation & Rail for Element; previously Co-Chief Executive Officer of OTEC Research from 2007 to 2013; previously co-founder of Newcourt Credit Group Inc. and President of Newcourt Capital and Group CEO of CIT Capital Finance
Jim Nikopoulos Toronto, Ontario, Canada	Senior Vice President, General Counsel & Corporate Secretary; previously Senior Vice President, General Counsel & Corporate Secretary of Element; previously Senior Vice President and General Counsel and current director of TeraGo Inc.; previously a partner at Davies Ward Phillips and Vineberg LLP
Don Campbell Wyndmoor, Pennsylvania, U.S.A.	President, Vendor and Commercial Finance; previously Chief Executive Officer of Element Financial (USA); previously co-founder of CoActiv Capital Partners Inc., a U.S. based commercial leasing finance company that was acquired by Element in 2013; previously Chief Executive Officer of Tokai Financial Services
Bruce Ells Toronto, Ontario, Canada	Chief Credit Officer, Aviation & Rail; previously Chief Credit Officer, Aviation & Rail of Element; previously Vice-President of Credit at Newcourt Credit Group Inc.; previously Chief Credit Officer of CIT Capital
Steven Sands Toronto, Ontario, Canada	Chief Credit Officer, Vendor & Commercial Finance; previously Chief Credit Officer, Vendor & Commercial Finance of Element; previously Chief Operating Officer at Maxium Financial; previously Vice President, Commercial & Industrial Finance at Newcourt Credit Group Inc.
Steve Grosso Newtown, Pennsylvania, U.S.A.	Chief Operating Officer (US); previously Chief Operating Officer of Element Financial (USA); previously President and Chief Executive Officer of De Lage Laden; previously Chief Operating Officer of Tokai Financial Services; previously Senior Vice President and Division Head for First Fidelity Bank's Equipment Leasing Group
Todd Hudson Toronto, Ontario, Canada	Chief Operating Officer (Canada); previously Executive Vice President, Originations of Element; previously President of Hathaway Financial; previously an executive officer of Newcourt Credit Group Inc. and CIT Capital

Element is currently undertaking a comprehensive search for a candidate to assume the position of Chief Financial Officer of ECN Capital. Element expects that a Chief Financial Officer of ECN Capital, effective upon the Element Arrangement, will be appointed prior to the Meeting. As noted above, it is expected that Neil Selfe will be appointed Executive Vice Chairman of ECN Capital following completion of the IAC Arrangement.



Based on shareholdings as at July 25, 2016, the proposed directors and executive officers of ECN Capital, as a group, are expected to beneficially own, or control or direct, directly or indirectly, approximately 6,171,384 ECN Capital Common Shares, representing approximately 1.6% of the expected number of outstanding ECN Capital Common Shares upon completion of the Element Arrangement (but prior to giving effect to the IAC Arrangement and assuming that no Dissent Rights are exercised in connection with the Element Arrangement).

## **Biographies**

The following are brief profiles of the proposed directors and executive officers of ECN Capital, including a description of each individual's principal occupation within the past five years.

### ***Directors***

#### *William Lovatt (Chairman)*

Mr. Lovatt is the Chairman of ECN Capital's Board and is a member of Element Fleet's Board. Mr. Lovatt serves as a member of the Audit Committee, the C&CG Committee and the Credit and Risk Committee of the ECN Capital Board. Mr. Lovatt also served on Element's Board since December 2014, bringing with him 40 years of investment and senior management expertise. Mr. Lovatt is one of Canada's most respected financial services executives having served as Executive Vice President and Chief Financial Officer of Great-West Lifeco Inc., Great-West Life Assurance Company, London Life Insurance Company and Canada Life Assurance Company. Mr. Lovatt joined Great West-Life in 1979 serving in various positions in the insurer's investments department prior to being appointed Chief Financial Officer. Mr. Lovatt served as a member of the Accounting Standards Oversight Council from 2000 to 2008 and in 2009, following the global financial crisis, was asked to serve the Canadian Government on the Department of Finance's Advisory Committee on Liquidity in the Financial Markets. Mr. Lovatt received his Bachelor of Commerce (Hons.) degree from the University of Saskatchewan in 1975, his Chartered Financial Analyst designation in 1983 and became a Fellow Certified General Accountant in 2003.

#### *Bradley Nullmeyer (Vice-Chairman)*

Mr. Nullmeyer is the Chief Executive Officer of Element Fleet and a member of the Element Fleet board of directors and Vice-Chairman of ECN Capital's Board. Mr. Nullmeyer serves as a member of the Credit and Risk Committee of the Board. He previously served as President of Element Financial Corporation (a finance company) since September 2012. Prior to that, he was President and Chief Executive Officer of A&A Capital (a private investment company). From 1999 to 2001 he was Chief Executive Officer, Vendor Finance of CIT Group (a finance company) and, prior to 1999, President of Newcourt Financial (a finance company). Mr. Nullmeyer is a Chartered Professional Accountant, previously with Ernst & Young and a graduate of McMaster University.

#### *Steven Hudson*

Mr. Hudson is the Chief Executive Officer of ECN Capital and a member of ECN Capital's Board and a member of Element Fleet's board of directors. Mr. Hudson serves as a member of the Credit and Risk Committee of the Board. Mr. Hudson served as Chief Executive Officer of Element since March 2011 and as a director of Element since April 2010. During Mr. Hudson's time as chief executive officer of Element, Element became one of North America's leading fleet management and equipment finance companies, increasing its portfolio of assets from approximately \$50 million to approximately \$24 billion as a result of numerous acquisitions, including Element's US\$1.4 billion acquisition of PHH Corporation's fleet management services business in 2014 and Element's \$8.9 billion acquisition of GE Capital Corporation's fleet management operations in the United States, Mexico and Australia & New Zealand in 2015, and significant organic growth. Steven Hudson is also the founder and principal of Cameron Capital Corporation, a private investment firm established more than 20 years ago. An entrepreneur, investor and

operator of successful businesses, Mr. Hudson has a distinguished track record across several business sectors. In 1984 Mr. Hudson founded Newcourt Credit Group Inc. and assumed the position of CEO. Under his leadership, Newcourt grew to become a worldwide leader in equipment and asset finance with owned and managed assets exceeding \$35 billion before the company was acquired in 1999. Mr. Hudson has been an active director on numerous boards of both public and private companies across several business sectors and an active community leader and philanthropist. Mr. Hudson received his Fellowship with the Institute of Chartered Accountants of Ontario in 2000 and graduated from York University in 1981 with an Honours Bachelor of Business Administration degree. In 1996, Mr. Hudson was named one of Canada's Top 40 Under 40.

#### *Paul Stoyan*

Mr. Stoyan is the Chairman of Gardiner Roberts LLP, a Canadian law firm. He is Chairman of the C&CG Committee and a member of the Audit Committee of the ECN Capital Board. Mr. Stoyan practices business law with a special emphasis on mergers and acquisitions, corporate finance and corporate governance. Mr. Stoyan has worked extensively with various companies in the technology sector and has assisted such companies in various cross-border transactions, in going public and in establishing and enforcing corporate governance regimes. Mr. Stoyan serves on the board of directors of Enghouse Systems Limited, a publicly-traded software company listed on the TSX. He is a past director of the National Ballet School of Canada, and the Canadian Centre for Ethics and Corporate Policy. Mr. Stoyan is also Past Chair of the Business Law Section of the Ontario Bar Association. Mr. Stoyan has previously served as a director of Open Text Corporation from 1998 – 2002, a publicly-traded software company listed on the NASDAQ and TSX. Mr. Stoyan holds a bachelor of laws from the University of Toronto and a bachelor of arts from the University of Toronto, where Mr. Stoyan was the Gold Medalist. Mr. Stoyan has earned the professional independent director designation (ICD.D) from the Institute of Corporate Directors and the University of Toronto's Rotman School of Management.

#### *Pierre Lortie*

Mr. Lortie is Senior Business Advisor at Dentons Canada LLP, a major Canadian law firm. He is Chairman of the Credit and Risk Committee of the Board. Mr. Lortie also served as a director of Element since August 2011, He is currently a director of Canam Group Inc., Lamêlée Iron Ore Ltd. and Quest Rare Minerals Ltd. Mr. Lortie also served as President of the Transition Committee of the Agglomeration of Montréal from its inception in June 2004 to the end of its mandate in December 2005. Mr. Lortie served as President and Chief Operating Officer of Bombardier Transportation, Bombardier Capital, Bombardier International, and as President of Bombardier Aerospace, Regional Aircraft. He has also served as Chairman of Canada's Royal Commission on Electoral Reform and Party Financing. He has been Chairman of the Board, President and Chief Executive Officer of Provigo Inc., President and Chief Executive Officer of the Montréal Stock Exchange and a Senior Partner of Secor Inc. Mr. Lortie received a Master of Business Administration degree with honours from the University of Chicago, a license in applied economics from the Université catholique de Louvain, Belgium, and a Bachelor's degree in applied sciences (engineering physics) from Université Laval, Canada. He was awarded a Doctorate Honoris Causa in civil law from Bishop's University. He has earned the professional independent director designation (ICD.D) from the Institute of Corporate Directors and the McGill University Desautels Faculty of Management. Mr. Lortie is a Fellow of the Canadian Academy of Engineering and a member of the Order of Canada.

#### *Gordon Giffin*

Ambassador Giffin is Senior Partner and the Chair of the Public Policy and International department of the international law firm of Dentons LLP. Mr. Giffin serves as a member the C&CG Committee of the ECN Capital Board. He has been engaged in the practice of law or government service for more than 35 years. Mr. Giffin served as the nineteenth U.S. Ambassador to Canada from August 1997 to April 2001. Born in 1949 in Springfield, Massachusetts, Gordon Giffin moved to Canada in 1950 and lived in Montréal

and Toronto for 17 years. He is a member of the Board of Trustees of the Jimmy Carter Presidential Center and is a member of the Council on Foreign Relations and Tri-Lateral Commission. He earned a B.A. from Duke University in 1971 and a J.D. from Emory University School of Law in Atlanta, Georgia in 1974.

*David Morris*

Mr. Morris recently retired as a senior audit partner at Deloitte & Touche LLP after serving over 41 years with the Firm. Mr. Morris is a graduate of McGill University. He has extensive experience auditing global financial institutions and public companies. Mr. Morris has worked closely with senior management of these companies and with audit committees on a number of special engagements relating to mergers and acquisitions, due diligence and complex transactions. Mr. Morris also has a strong background with U.S. Securities and Exchange Commission registrants, including internal controls over financial reporting. Mr. Morris has acted as an advisor to senior management and directors throughout his career.

**Executive Officers**

*Steven Hudson*

See Mr. Hudson's biography in this section under "Directors".

*David McKerroll*

Mr. McKerroll is the President, Aviation & Rail of ECN Capital. Mr. McKerroll joined Element in May 2014 as President leading the Rail and Aviation business units. Mr. McKerroll was one of the founders of Newcourt Credit Group Inc. where he served as President of Newcourt Capital which focused on providing structured finance and advisory service in the aerospace, rail, energy and infrastructure segments. Mr. McKerroll subsequently served as the Group CEO of CIT Structured Finance and later as the Group CEO of CIT Capital Finance where he managed a portfolio in excess of US\$10 billion. Mr. McKerroll obtained his chartered accountant designation while working for Clarkson Gordon and he holds a Bachelor of Commerce degree from McMaster University.

*Jim Nikopoulos*

Mr. Nikopoulos is the Senior Vice President, General Counsel & Corporate Secretary of ECN Capital. Mr. Nikopoulos joined Element in September 2013 as Vice President and General Counsel, and was subsequently appointed Senior Vice President, General Counsel and Corporate Secretary. Before joining Element, Mr. Nikopoulos was Vice President, Corporate Development and General Counsel at TeraGo Inc., a TSX-listed company offering broadband and data communication services to business customers. He was previously a Partner at Davies Ward Phillips and Vineberg LLP, where he practiced in the areas of mergers and acquisitions, corporate finance and securities, corporate governance, and general corporate and commercial law. Mr. Nikopoulos sits on the Board of Directors of TeraGo Inc. as well as numerous charitable organizations. Mr. Nikopoulos earned his Honours Bachelor of Arts degree (Economics and Political Science) from the University of Toronto and Law degree (JD) from Osgoode Hall Law School. Mr. Nikopoulos was named one of Canada's Top 40 Lawyers under 40 by Lexpert in 2014.

*Don Campbell*

Mr. Campbell is the President, Vendor and Commercial Finance of ECN Capital. Previously, Mr. Campbell served as the Chief Executive Officer of Element Financial (USA). Mr. Campbell's career spans 44 years in the equipment financing and leasing industry. Prior to Element, Mr. Campbell co-founded CoActiv Capital Partners, Inc. and served as Chief Executive Officer of Tokai Financial Services. He also served as President of Commerce Commercial Leasing, First Fidelity Leasing Group and ITT Financial

Middle Market and Large Ticket Capital Market Group. Mr. Campbell has participated on various boards, including the Equipment Leasing and Finance Association and the Leukemia & Lymphoma Society.

#### *Bruce Ells*

Mr. Ells is the Chief Credit Officer, Aviation & Rail for ECN Capital. Previously, Mr. Ells served as the Chief Credit Officer of Element's Rail and Aviation verticals. A former Vice President of Credit at Newcourt Capital Group Inc. and Chief Credit Officer of CIT Capital, Mr. Ells brings almost 30 years of risk management and finance experience to the Element team. He served as Senior Vice President of Project Finance at DBRS before taking on his responsibilities at Element. Mr. Ells previously held senior positions at CCG Trust and CIT Structured Finance, and earlier in his career held origination, treasury, risk management and research roles at RBC Dominion Securities, EDC and the Bank of Canada. Mr. Ells graduated from Queen's University with a B.A (Honours) in Economics and a B.A in History going on to earn his MBA in Finance and Accounting from the Ivey School of Business.

#### *Steven Sands*

Mr. Sands is the Chief Credit Officer, Vendor & Commercial Finance of ECN Capital. Steve Sands founded Element in 2007 and previously served as the Element's Chief Credit Officer providing oversight for all credit underwriting and risk management functions. Prior to forming Element, Mr. Sands served in senior operational and credit underwriting positions within the Canadian equipment leasing industry including positions as Chief Operating Officer at Maxium Financial and Vice President, Commercial & Industrial Finance at Newcourt Credit Group Inc. For several years, Steve has served as a leader in the Entrepreneurs-in-Residence Program at the Institute for Entrepreneurship, Ivey Business School in London, Ontario. Mr. Sands holds a Bachelor of Arts and Master degree in Business Administration from the University of Toronto.

#### *Steve Grosso*

Mr. Grosso is the Chief Operating Officer (US) of ECN Capital. Steve Grosso previously served as the President and Chief Operating Officer of Element Financial (USA), bringing 30 years of experience in the equipment finance industry to his role. Prior to the launch of Element, Mr. Grosso served as President and CEO of De Lage Landen, COO of Tokai Financial Services and Senior Vice President & Division Head for First Fidelity Bank's Equipment Leasing Group. A native of Pennsylvania, Mr. Grosso earned his B.S. in Finance and Accounting at the University of Connecticut and attended the Institute of Executive Lease Management at Columbia University. Mr. Grosso serves on the board of directors of Vantage Technologies, one of the country's largest educational software developers. He is a recent past board member for St. Mary Medical Center Foundation, one of the country's top 100 healthcare institutions, and the Equipment Leasing and Finance Association.

#### *Todd Hudson*

Mr. Hudson is the Chief Operating Officer (Canada) of ECN Capital. Todd Hudson has more than 20 years of sales management experience in the Canadian leasing industry and previously served as Executive Vice President of Originations at Element. Prior to joining Element, Mr. Hudson was the President of Hathway Financial, a financial services company that specialized in small to mid-sized commercial credits in the transportation, construction and industrial equipment markets. Before founding Hathway Financial in 2003, Mr. Hudson held key roles at Newcourt Credit Group Inc. and CIT Group and was responsible for national vendor programs in the transportation, construction and automotive groups.

## Other Reporting Issuer Experience

The following table sets out the proposed directors of ECN Capital that are or were directors of other reporting issuers (or the equivalent) in Canada or a foreign jurisdiction, other than Element, during the last five years:

<b>ECN Capital Director</b>	<b>Name of Reporting Issuer</b>
William Lovatt	Element Fleet
Steve Hudson	Element Fleet
Brad Nullmeyer	Element Fleet DH Corporation
Gordon Giffin	Canadian National Railway Company Canadian Imperial Bank of Commerce TransAlta Corporation Canadian Natural Resources Limited Just Energy Group Inc. (former director)
Pierre Lortie	Canam Group Inc. Lam��lee Iron Ore Ltd. Quest Rare Minerals Ltd.
Paul Stoyan	Enghouse Systems Limited

## Cease Trade Orders, Bankruptcies, Penalties or Sanctions

To the knowledge of ECN Capital, no proposed nominee for election as a director of ECN Capital has been, at the date of the Management Information Circular or within the last 10 years: (a) a director, chief executive officer or chief financial officer of any company that, while that person was acting in that capacity, (i) was the subject of a cease trade or similar order or an order that denied the company access to any exemption under securities legislation, for a period of more than 30 consecutive days, or (ii) was the subject of an event that resulted, after that person ceased to be a director or chief executive officer or chief financial officer, in the company being the subject of such an order; or (b) a director or executive of a company that, while that person was acting in that capacity or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets; except that: (i) Ambassador Giffin was a director of AbitibiBowater Inc. from October 29, 2007 until his resignation on January 22, 2009; in April 2009, AbitibiBowater Inc. and certain of its U.S. and Canadian subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware for relief under the provisions of Chapter 11 and Chapter 15 of the United States Bankruptcy Code, as amended, and sought creditor protection under the CCAA with the Superior Court of Qu  bec in Canada; (ii) Steven Hudson was a director of Herbal Magic Inc. which was deemed to have made an assignment in bankruptcy pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) in August, 2014 and Mr. Hudson was a director until March 18, 2015 of 8942595 Canada Inc., the successor business to Herbal Magic Inc.,

which made a voluntary assignment into bankruptcy on August 17, 2015; and (iii) Pierre Lortie who until June 2015 was Chairman of Biocean Canada Inc. which, on October 10th, 2014, filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act (Canada).

No proposed director of ECN Capital has been subject to (a) any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a securities regulatory authority; or (b) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable securityholder in deciding whether to vote for a proposed director.

### **Majority Voting Policy**

It is expected that ECN Capital will adopt a majority voting policy similar to that adopted by Element. Pursuant to the policy, shareholders will vote for the election of individual directors at each annual meeting of shareholders, rather than for a fixed slate of directors. Further, in an uncontested election of directors at an applicable meeting of shareholders, the votes cast in favour of the election of a director nominee will be required to represent a majority of the shares voted and withheld for the election of the director. If that is not the case, that director must tender his or her resignation to the Chairman of the Board (the “**ECN Capital Chairman**”). The C&CG Committee will promptly consider such tendered resignation and recommend to the Board the action to be taken with respect to such tendered resignation, and the Board shall accept the resignation absent exceptional circumstances and it must promptly disclose its decision via press release.

### **Conflicts of Interest**

Certain of the proposed directors and executive officers of ECN Capital are officers and directors of, or are associated with, other public and private companies, including Element Fleet. Such associations may give rise to conflicts of interest with ECN Capital from time to time. The OBCA requires, among other things, that the directors and executive officers of ECN Capital act honestly and in good faith with a view to the best interest of ECN Capital, to disclose any personal interest which they may have in any material contract or transaction which is proposed to be entered into with ECN Capital and, in the case of directors, to abstain from voting as a director for the approval of any such contract or transaction. To the extent that conflicts of interest arise, such conflicts will be resolved in accordance with the provisions of the OBCA. See also “*Corporate Governance*” in this Appendix L.

### **Directors’ and Officers’ Liability Insurance**

ECN Capital intends to carry a directors’ and officers’ liability insurance policy which will be designed to protect ECN Capital and its directors and officers against any legal action which may arise as a result of wrongful acts on the part of directors and/or officers of ECN Capital. Such policy will be written with a maximum limit and be subject to a corporate deductible on all claims.

## **DIRECTOR AND EXECUTIVE OFFICER COMPENSATION**

To date, ECN Capital has not carried on any active business. No compensation has been paid by ECN Capital to its proposed executive officers or directors and none will be paid by ECN Capital until after the Element Arrangement is completed.

Following completion of the Element Arrangement, it is anticipated ECN Capital will adopt a compensation structure for executive officers that is “right-sized” to the scale of ECN Capital while continuing to provide strong incentive for business growth. ECN Capital’s executive officer compensation is expected to be of a similar character to the compensation which the proposed executive officers of ECN Capital are currently entitled in their positions as executive officers of Element or its subsidiaries, as applicable, however scaled back to reflect the smaller size of ECN Capital following the Element

Arrangement. For senior management of ECN Capital, there will be no special awards linked to the separation of Element. Senior management will be rewarded through their equity ownership in ECN Capital if the market views the transaction favourably.

The expected components of compensation for executive officers of ECN Capital will be base salary, short-term incentives and medium and long-term incentives. The short-term incentives will be based on the results of an executive’s scorecard and focused on M&A activity and operational performance measures. Medium and long-term compensation will mainly be awarded through grants of PSUs. PSUs will have defined multi-year objectives including a component tied to total shareholder returns, as well as other appropriate operational measures. As discussed above under the heading “*Longer-Term Incentive Plan Descriptions – ECN Capital Share Unit Plan*”, the PSU grant size can be increased based on M&A activity and/or exceptional performance. Short, medium and long-term incentives will have base targets for payout, as well as a maximum target. The difference between the target award and the maximum award includes allowance for M&A opportunities, which will eliminate the need for transactional bonuses in the normal course.

ECN Capital senior executives will enter into employment agreements with ECN Capital following the Element Effective Date. These agreements will be substantially similar to the contracts which the proposed executive officers of ECN Capital currently have in place with Element, but adjusted as described above. However, as at the date of the Management Information Circular, there are no employment contracts in place between ECN Capital and any of the executive officers of ECN Capital and there are no provisions with ECN Capital for compensation for the executive officers of ECN Capital in the event of termination of employment or a change in responsibilities following a change of control of ECN Capital. It is expected that the employment agreements of the proposed executive officers of ECN Capital to be entered into with ECN Capital following the Element Effective Date will contain customary change of control provisions. The specific terms of the employment contracts to be entered into with ECN Capital’s senior executives will be subject to review and approval by the C&CG Committee and the ECN Capital Board prior to the Element Effective Date.

ECN Capital has not established an annual retainer fee or attendance fee for directors. However, ECN Capital may establish directors’ fees in the future and will reimburse directors for all reasonable expenses incurred in order to attend meetings.

## INDEBTEDNESS OF DIRECTORS, OFFICERS AND EMPLOYEES

### Aggregate Indebtedness

Loans previously made to employees of Element who transfer to ECN Capital, together with the rights in the security for those loans, will be assigned to ECN Capital as part of the asset transfer from Element. The following table sets forth the indebtedness as of July 15, 2016, that will be transferred to ECN Capital incurred by all of the proposed directors, officers and employees that will be transferred to ECN Capital and its subsidiaries.

Purpose	Aggregate Indebtedness to ECN Capital or its Subsidiaries
Share Purchases	\$25,705,301
Other	—

## Indebtedness of Directors and Executive Officers under Securities Purchase Program

The following table sets out the total amount of loans from ECN Capital to proposed ECN Capital directors and executive officers who will have their indebtedness, together with the rights in the security for such indebtedness, assigned from Element to ECN Capital (or its subsidiaries, or to other entities if the indebtedness to such other entities is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by ECN Capital or any of its subsidiaries) as part of the asset transfer from Element. The loans will become payable upon the individual's cessation of employment with ECN Capital or a subsidiary thereof, as the case may be. For more information on these loans, see "Indebtedness of Directors, Officers and Employees" in the Management Information Circular.

Name and Principal Position	Involvement of Issuer	Amount Outstanding as at July 15, 2016 (\$)
Steven Hudson, <i>Chief Executive Officer</i>	Lender	16,598,148
David McKerroll, <i>President, Aviation &amp; Rail</i>	Lender	1,202,737
Jim Nikopoulos, <i>Senior Vice-President, General Counsel &amp; Corporate Secretary</i>	Lender	1,342,064
Don Campbell <i>President, Vendor and Commercial Finance</i>	Lender	654,576
Bruce Eells <i>Chief Credit Officer, Aviation &amp; Rail</i>	Lender	1,165,552
Steven Sands <i>Chief Credit Officer, Vendor &amp; Commercial Finance</i>	Lender	1,242,065
Steve Grosso <i>Chief Operating Officer (US)</i>	Lender	453,896
Todd Hudson <i>Chief Operating Officer (Canada)</i>	Lender	1,376,596

The indebtedness reflected in the above table reflects loans previously made to directors and executive officers of Element to finance the acquisition of securities in Element, and which indebtedness is being assigned to ECN Capital as part of the asset transfer from Element. These loans were originally approved by the Element Board on the basis that it was important that management's interest be aligned with that of Element's Shareholders, and ECN Capital believes that this policy is important. Future purchases of securities through the loan program, if any, will occur through the secondary market in compliance with the ECN Capital Insider Trading Policy and applicable TSX and securities laws. In accordance with the executive share accumulation program, loans will reflect arm's length terms, including a market rate of interest (currently a rate of 3% per annum), principal repayment no later than 7 years from advance, and ECN Capital being granted a first-priority security interest in certain ECN Capital and Element Fleet securities held by the executive and having full recourse to the executive as security for payment of the



full amount of their indebtedness. No portion of any outstanding loan amounts has ever been forgiven by Element or ECN Capital.

## **AUDIT COMMITTEE**

The following disclosure is based on the present expectations of ECN Capital with respect to the formal establishment of the Audit Committee (the “**Audit Committee**”) of the ECN Capital Board (without changes to the proposed composition) and the ratification and adoption of its proposed mandate (without any material modifications) will occur following completion of the Element Arrangement. However, such disclosure remains subject to revision prior or subsequent to the Element Effective Date. See “*Notice to Readers*” in this Appendix L. The proposed mandate of the Audit Committee is set out in Schedule “B” to this Appendix L.

### **Composition of the ECN Capital Audit Committee**

On the Element Effective Date, the Audit Committee is expected to consist of David Morris (Chair), Paul Stoyan and William Lovatt. Each member of the Audit Committee is independent (as defined in National Instrument 52-110 – *Audit Committees* (“**NI 52-110**”)) and none receives, directly or indirectly, any compensation from ECN Capital other than for service as a member of the ECN Capital Board and its committees. All members of the Audit Committee are financially literate (as defined under NI 52-110).

For the relevant education and experience of each of the members of the Audit Committee, please refer to the biographies of Mr. Morris, Mr. Stoyan and Mr. Lovatt in “*Directors and Executive Officers – Biographies*” in this Appendix L.

### **Pre-Approval Policies and Procedures**

The Audit Committee will adopt requirements regarding pre-approval of non-audit services as part of its Audit Committee Mandate. The Audit Committee Mandate will require that the Audit Committee must approve in advance any retainer of the auditors to perform any non-audit service to ECN Capital (together with all non-audit service fees) that it deems advisable in accordance with applicable requirements and ECN Capital Board approved policies and procedures. The Audit Committee will consider the impact of such service and fees on the independence of the auditor. The Audit Committee may delegate pre-approval authority to a member of the Audit Committee; however, the decisions of any member of the Audit Committee to whom this authority has been delegated must be presented to the full Audit Committee at its next scheduled Audit Committee meeting.

### **External Audit Service Fees**

All audit and non-audit services to be provided by ECN Capital’s external auditor will be required to be pre-approved by the Audit Committee. As at the date of the Management Information Circular, no external auditor service fees have been paid by ECN Capital. It is expected that on an annual basis, ECN Capital’s Audit Committee will pre-approve a budget for certain specific non-audit services such as assistance with tax returns.

## **CORPORATE GOVERNANCE**

Unless otherwise indicated, the following disclosure is based on the present expectations of ECN Capital in respect of its corporate governance practices and that the formal establishment of committees of the ECN Capital Board described below (without changes to the proposed composition) and the ratification and adoption of their respective proposed mandates (without any material modifications) will occur following completion of the Element Arrangement. However, such disclosure remains subject to revision prior or subsequent to the Element Effective Date. See “*Notice to Readers*” in this Appendix L.

## Statement of Corporate Governance Practices

ECN Capital's corporate governance disclosure obligations are set out in the Canadian Securities Administrators' National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (“**NI 58-101**”), National Policy 58-201 – *Corporate Governance Guidelines* and NI 52-110. These instruments set out a series of guidelines and requirements for effective corporate governance (collectively, the “**Guidelines**”). The Guidelines address matters such as the constitution and independence of corporate boards, the functions to be performed by boards and their committees and the effectiveness and education of board members. NI 58-101 requires the disclosure by each listed corporation of its approach to corporate governance with reference to the Guidelines.

Set out below is a description of ECN Capital's anticipated approach to corporate governance in relation to the Guidelines.

### ECN Capital Board Composition

#### Board of Directors

On the Element Effective Date, it is expected that the ECN Capital Board will be comprised of seven directors: William Lovatt (Chairman), Bradley Nullmeyer (Vice-Chairman), Steven Hudson, Paul Stoyan, Pierre Lortie, Gordon Giffin and David Morris. By approving the Element Arrangement Resolution, Element Shareholders will be deemed to have approved the proposed directors of ECN Capital, which are formally appointed pursuant to the Element Arrangement.

The primary function of the ECN Capital Board will be to supervise the management of the business and affairs of ECN Capital, including the responsibility for the strategic planning process, risk management, succession planning, approving and communicating a communications policy and disclosure policy, setting internal controls, corporate governance, senior management compensation and oversight, director compensation and assessment and approving material transactions and contracts. The ECN Capital Board will also be responsible for reviewing the succession plans for ECN Capital, including appointing, training and monitoring senior management to ensure that the ECN Capital Board and management have appropriate skill and experience. The ECN Capital Board will establish an Audit Committee, the C&CG Committee and a Credit and Risk Committee (the “**Credit and Risk Committee**”). See “*Directors and Executive Officers*” in this Appendix L for a chart setting out the membership of each of the committees of the ECN Capital Board.

Following the Element Effective Date, the ECN Capital Board will be expected to adopt a majority voting policy for the election of directors. For a description of such proposed policy, see “*Directors and Executive Officers – Majority Voting Policy*” in this Appendix L.

The ECN Capital Board will delegate to the applicable committee those duties and responsibilities set out in each committee's proposed mandate. The primary mandate of the Audit Committee will be to provide assistance to the ECN Capital Board in fulfilling its responsibility to the ECN Capital Shareholders, potential shareholders and the investment community, to oversee the work and review the qualifications and independence of the external auditors of ECN Capital, to review the financial statements of ECN Capital and public disclosure documents containing financial information and to assist the ECN Capital Board with the legal compliance and ethics programs as established by management and by the ECN Capital Board and as required by law.

The primary mandate of the C&CG Committee with respect to compensation will be to approve corporate goals and objectives relevant to the compensation of the ECN Capital CEO and to make recommendations with respect to the ECN Capital's CEO compensation based on its evaluation, to recommend compensation arrangements for the directors, committee members and chairs, and the ECN Capital Chairman, to administer and interpret the incentive compensation and equity compensation plans,

and to approve the appointment, compensation and terms of employment for the ECN Capital CFO and senior management of ECN Capital. The primary mandate of the C&CG Committee with respect to corporate governance will be to assess the effectiveness of the ECN Capital Board, of committees of the ECN Capital Board and of the directors of the ECN Capital Board, to recommend to the ECN Capital Board candidates for election as directors and candidates for appointment to Board committees and to advise the ECN Capital Board on enhancing ECN Capital's corporate governance through a continuing assessment of ECN Capital's approach to corporate governance.

The primary mandate of the Credit and Risk Committee will be: (i) to review ECN Capital's portfolio and origination strategies and plans, to approve ECN Capital's credit risk assessment and management policies, to monitor interest rate risk in connection with ECN Capital's portfolio, and to provide advice and input respecting various matters relating to mergers and acquisitions and other strategic initiatives and investments; and (ii) to assist the ECN Capital Board in fulfilling its responsibilities for defining ECN Capital's risk appetite and overseeing ECN Capital's risk profile and performance against the defined risk appetite. The Credit and Risk Committee will be also responsible for overseeing the identification, measurement, monitoring and controlling of ECN Capital's principal business risks.

### ***Independence of the ECN Capital Board***

NI 58-101 defines an "independent director" as a director who has no direct or indirect material relationship with ECN Capital. A "material relationship" is in turn defined as a relationship which could, in the view of the ECN Capital Board, be reasonably expected to interfere with such member's independent judgment. In determining whether a particular director is an "independent director" or a "non-independent director", the ECN Capital Board considers the factual circumstances of each director in the context of the Guidelines.

It is expected that the ECN Capital Board will be comprised of seven members, a majority of whom are "independent directors" within the meaning of NI 58-101. The five independent proposed directors are William Lovatt (Chairman), Paul Stoyan, Pierre Lortie, Gordon Giffin, and David Morris. Mr. Hudson is not considered independent for the purposes of NI 58-101 because he will be part of management of ECN Capital. Mr. Nullmeyer is not considered independent for the purposes of NI 58-101 because he was, prior to the Element Effective Date, an executive officer of Element, ECN Capital's predecessor company.

### ***Independent Chairman***

The roles of the ECN Capital Chairman and ECN Capital CEO will be separate. William Lovatt will serve as the Chairman of ECN Capital. The ECN Capital Chairman will be independent and responsible for the management, development and effective functioning of the ECN Capital Board and will provide leadership in every aspect of its work. The position description for the ECN Capital Chairman will set out the ECN Capital Chairman's key responsibilities, which include setting the ECN Capital Board meeting agenda in consultation with the ECN Capital CEO and chairing all Board meetings. In the absence of the ECN Capital Chairman, an independent director chosen by the ECN Capital Board will assume the responsibilities of the ECN Capital Chairman. The ECN Capital Chairman will provide leadership to the directors and ensure the ECN Capital Board is independent from management. The ECN Capital Chairman and each committee can also engage outside consultants without consulting management. This helps ensure they receive independent advice as they feel necessary.

### ***Meeting in-camera***

The ECN Capital Board and committees will meet without management and non-independent directors at the end of all meetings and, in some cases, at the beginning of meetings. These discussions will generally form part of the committee chairs' reports to the ECN Capital Board. The ECN Capital Chairman will encourage open and candid discussions among the independent directors by providing them with an opportunity to express their views on key topics before decisions are taken.

## ***Succession planning***

The C&CG Committee (with the advice of the ECN Capital Chairman and the Vice-Chairman of the ECN Capital Board (the “**ECN Capital Vice-Chairman**”)) will provide primary oversight of succession planning for senior management, the performance assessment of the ECN Capital CEO, and the ECN Capital CEO’s assessments of the other senior officers. The C&CG Committee will conduct in-depth reviews of succession options relating to senior management positions and, when appropriate, will approve the rotation of senior executives into new roles to broaden their responsibilities and experiences and deepen the pool of internal candidates for senior management positions. The C&CG Committee will have an emergency succession plan and contingency plan for the ECN Capital CEO for a scenario in which the ECN Capital CEO suddenly and unexpectedly was unable to perform his duties for an extended period.

The independent directors will participate in the assessment of the ECN Capital CEO’s performance every year. The ECN Capital Board will approve all appointments of executive officers.

## **Board Mandate**

The ECN Capital Board will be responsible for the overall stewardship of ECN Capital. The ECN Capital Board will discharge this responsibility directly and through delegation of specific responsibilities to committees of the ECN Capital Board, the ECN Capital Chairman, and officers of ECN Capital, all as more particularly described in the ECN Capital Board Mandate that will be adopted by the ECN Capital Board. The proposed ECN Capital Board Mandate is attached as Schedule “A” to this Appendix L.

## **Position Descriptions**

The ECN Capital Board will have written position descriptions for the ECN Capital Chairman and ECN Capital Vice-Chairman, chairs of each of the committees of the ECN Capital Board, and the ECN Capital CEO. The ECN Capital Board Mandate and the committee mandates for the Audit Committee, C&CG Committee, and Credit and Risk Committee will set out in writing the responsibilities of the ECN Capital Board and the committees for supervising management of ECN Capital.

## **Director Term Limits/Mandatory Retirement**

The ECN Capital Board will consider the matters of term limits and mandatory retirement. At this time, ECN Capital does not expect that these types of policies would be appropriate for the ECN Capital Board. ECN Capital believes that a rigorous self-evaluation process combined with input from an external third party governance firm would be a more effective and transparent manner to ensure that ECN Capital’s directors add value and remain strong contributors.

## **Diversity**

### ***Board of Directors***

ECN Capital recognizes the benefits that diversity brings to the company. The ECN Capital Board will aim to be comprised of directors who have a range of perspectives, insights and views in relation to the issues affecting ECN Capital. This belief in diversity will be reflected in a written Diversity Policy that will be adopted by the ECN Capital Board. The Diversity Policy will state that the ECN Capital Board should include individuals from diverse backgrounds, having regard to, among other things, gender, status, age, business experience, professional expertise, education, nationality, race, culture, language, personal skills and geographic background. Accordingly, consideration of whether the diverse attributes highlighted in the policy are sufficiently represented on the ECN Capital Board will be an important component of the selection process for new ECN Capital Board members.

None of the proposed directors of ECN Capital are female. ECN Capital recognizes the value of the contribution of members with diverse attributes on the ECN Capital Board and will be committed to ensuring that there is representation of women on the ECN Capital Board. However, ECN Capital does not intend to establish a target regarding the number of women on the ECN Capital Board. ECN Capital believes a target would not be the most effective way of ensuring the ECN Capital Board is comprised of individuals with diverse attributes and backgrounds. ECN Capital will, however, evaluate the appropriateness of adopting targets in the future.

### ***Management***

ECN Capital believes that a diversity of backgrounds, opinions and perspectives and a culture of inclusion helps to create a healthy and dynamic workplace, which improves overall business performance. ECN Capital recognizes the value of ensuring that ECN Capital has leaders who are women. ECN Capital will work to develop its employees internally and provide them with opportunities to advance their careers. ECN Capital will build a strategy and execution plan to work towards increasing the representation of women in leadership roles at all levels of the organization. One of the objectives of this initiative will be to ensure that there are highly-qualified women within ECN Capital available to fill vacancies in executive officer and other leadership positions. In appointing individuals to its leadership team, both at the corporate level and business vertical level, ECN Capital will weigh a number of factors, including the skills and experience required for the position and the personal attributes of the candidates.

None of the proposed executive officers of ECN Capital are female. ECN Capital does not intend to establish a target regarding the number of women in executive officer or senior leadership positions. ECN Capital believes that the most effective way to achieve its goal of increasing the representation of women in leadership roles at all levels of the organization is to identify high-potential women within ECN Capital and work with them to ensure they develop the skills, acquire the experience and have the opportunities necessary to become effective leaders. ECN Capital will, however, evaluate the appropriateness of adopting targets in the future.

### **Orientation and Continuing Education**

As set out in the proposed ECN Capital Board Mandate, ECN Capital will have a policy of making a full initial orientation and continuing education process available to Board members. The ECN Capital Board will be responsible for director orientation and continuing education. All new directors will be provided with an initial orientation regarding the nature and operation of ECN Capital's business and the affairs of ECN Capital and as to the role of the ECN Capital Board and its committees, as well as the legal obligations of a director of ECN Capital. Existing directors will also be periodically updated on these matters.

In order to orient new directors as to the nature and operation of ECN Capital's business, they will be given the opportunity to meet with key members of the management team to discuss ECN Capital's business and activities. In addition, new directors will receive copies of Board materials, corporate policies and procedures, and other information regarding the business and operations of ECN Capital.

ECN Capital's Board members will be expected to keep themselves current with industry trends and developments and will be encouraged to communicate with management and, where applicable, auditors, advisors and other consultants of ECN Capital. Board members will have access to ECN Capital's in-house and external legal counsel in the event of any questions or matters relating to the ECN Capital Board members' corporate and director responsibilities and to keep themselves current with changes in legislation. ECN Capital's Board members have full access to ECN Capital's records.

ECN Capital will provide on-going continuous education programs through key business area presentations, business updates and operations site visits as appropriate.

## **Nomination of Directors**

The C&CG Committee will be responsible for recommending to the ECN Capital Board candidates for election as directors and candidates for appointment to ECN Capital Board committees as set out in the C&CG Committee Mandate. The ECN Capital Chairman will also be responsible for consulting with the C&CG Committee regarding candidates for nomination or appointment to the ECN Capital Board.

## **Ethical Business Conduct**

The ECN Capital Board will adopt a Code of Business Conduct and Ethics (the “**Code**”), a written code of business conduct and ethics for ECN Capital’s directors, officers and employees that sets out the ECN Capital Board’s expectations for the conduct of such persons in their dealings on behalf of ECN Capital. The ECN Capital Board will establish confidential reporting procedures in order to encourage employees, directors and officers to raise concerns regarding matters addressed by the Code on a confidential basis free from discrimination, retaliation or harassment. Employees who violate the Code may face disciplinary actions, including dismissal.

The Code will be designed to deter wrongdoing and promote honest and ethical conduct; avoidance of conflicts of interests; confidentiality of corporate information; protection and proper use of corporate assets and opportunities; compliance with applicable governmental laws, rules and regulations; prompt internal reporting of any violations of the Code; accountability for adherence to the Code; and ECN Capital’s culture of honesty and accountability. A copy of the Code may be obtained once adopted by contacting ECN Capital and requesting a copy from its investor relations contact by mail at 161 Bay Street, Suite 3600, Toronto, Ontario, M5J 2S1.

The ECN Capital Board will monitor compliance with the Code by delegating responsibility for investigating and enforcing matters related to the Code to management, who will report breaches of the Code to the Senior Vice-President, General Counsel & Corporate Secretary. Any such investigations and resolutions of complaints will be reviewed by the Senior Vice-President, General Counsel & Corporate Secretary who will report annually to the ECN Capital Board thereon. Certain of the matters covered by the Code will also be subject to Audit Committee oversight. Any employee who becomes aware of a violation of the Code will be required to report the violation to a member of management. Directors and executive officers will be required by applicable law and the Code to promptly disclose any potential conflict of interest that may arise. If a director or executive officer has a material interest in an agreement or transaction, applicable law, the Code and principles of sound corporate governance will require them to declare the interest in writing or request to have such interest entered in the minutes of meetings of directors and where required by applicable law abstain from voting with respect to the agreement or transaction. The C&CG Committee will be responsible for monitoring such conflicts of interest under the Code. The ECN Capital Board will delegate the communication of the Code to employees to management who will be expected to encourage and promote a culture of ethical business conduct.

## **Insider Trading Policy**

Following completion of the Element Arrangement, the ECN Capital Board intends to adopt a policy relating to the trading in securities of ECN Capital by directors, senior executives, employees and other insiders of ECN Capital and its subsidiaries (the “**ECN Capital Insider Trading Policy**”). Among other things, the following are expected to be prohibited by the ECN Capital Insider Trading Policy: (i) short sales of ECN Capital’s securities; (ii) transactions in puts, calls or other derivative securities, on an exchange or in any other organized market; (iii) hedging or monetization transactions that allow an individual to continue to own the covered securities, but without the full risks and rewards of ownership; and (iv) the resale of securities of ECN Capital purchased in the open market prior to the expiration of three months from the purchase date. Consequently, the foregoing prohibitions in the expected ECN Capital Insider Trading Policy will not permit a ECN Capital executive officer or director to purchase financial instruments that are designed to hedge or offset a decrease in market value of ECN Capital’s

equity securities granted as compensation or held, directly or indirectly, by a ECN Capital executive officer or director.

### **Board and Committee Assessment**

The C&CG Committee will be responsible for assessing the effectiveness of the ECN Capital Board as a whole, the committees of the ECN Capital Board and the contribution of individual directors. The assessment will include two detailed annual questionnaires that each director must complete. The annual questionnaires will cover a range of topics including: (i) individual self-assessment; (ii) assessment of the ECN Capital Board and committee performance and effectiveness; and (iii) an assessment of peer performance at the ECN Capital Board level and at the committee level. The ECN Capital Board will have an independent advisor to review and analyze the completed questionnaires and provide to the C&CG Committee a presentation and a detailed written report of the responses to the questionnaire and an analysis of those responses. Additional feedback will be regularly sought and received from directors. The independent advisor will attend meetings of the C&CG Committee to present their report, address any questions the C&CG Committee may have and make recommendations as appropriate. The written analysis from the advisor together with any issues or concerns raised by the questionnaire and during the meeting with the independent management consultant constitutes part of the report to the full ECN Capital Board. The C&CG Committee will present the detailed report to the ECN Capital Board and makes recommendations to improve the effectiveness of the ECN Capital Board in light of the results of the performance evaluation.

### **Audit Committee**

It is expected that the Audit Committee will be comprised of three directors of ECN Capital, David Morris (Chair), William Lovatt and Paul Stoyan, all of whom are independent and financially literate for purposes of NI 52-110. The responsibilities and operation of the Audit Committee are set out in ECN Capital's proposed Audit Committee Mandate, the text of which is included as Schedule "B" to this Appendix L. See "*Audit Committee*" above in this Appendix L for further information.

The members of the Audit Committee will be appointed annually by the ECN Capital Board, and each member of the Audit Committee will serve at the pleasure of the ECN Capital Board until the member resigns, is removed, or ceases to be a member of the ECN Capital Board.

### **C&CG Committee**

It is expected that the C&CG Committee will be comprised of three directors: Paul Stoyan (Chair), William Lovatt and Gordon Giffin, each of whom is considered to be "independent" as defined in NI 58-101. The C&CG Committee will conduct its business on the basis of majority approval, which encourages an objective process for determining compensation.

The members of the C&CG Committee will be appointed annually by the ECN Capital Board, and each member of the C&CG Committee will serve at the pleasure of the ECN Capital Board until the member resigns, is removed, or ceases to be a member of the ECN Capital Board.

To fulfil its responsibilities and duties in developing ECN Capital's approach to compensation issues, the C&CG Committee shall:

- (i) review and approve corporate goals and objectives relevant to ECN Capital CEO compensation;
- (ii) evaluate the ECN Capital CEO's performance in light of those corporate goals and objectives, and make recommendations to the ECN Capital Board with respect to the ECN Capital CEO's compensation level based on its evaluation;

- (iii) review the recommendations to the C&CG Committee of the ECN Capital CEO respecting the appointment, compensation and other terms of employment of the ECN Capital CFO, all senior management reporting directly to the ECN Capital CEO and all other officers appointed by the ECN Capital Board and, if advisable, approve and recommend for Board approval, with or without modifications, any such appointment, compensation and other terms of employment;
- (iv) administer and interpret ECN Capital's share compensation agreements and its policies respecting the grant of options or other share-based compensation or the sale of shares thereunder, and review and recommend for approval of the ECN Capital Board the grant of options thereunder and the terms thereof;
- (v) review ECN Capital's pension and retirement arrangements in light of the overall compensation policies and objectives of ECN Capital;
- (vi) review employment agreements between ECN Capital and the ECN Capital CEO, and between ECN Capital and executive officers, and amendments to the terms of such agreements shall be subject to review and recommendation by the C&CG Committee and approval by the ECN Capital Board;
- (vii) review management's policies and practices respecting ECN Capital's compliance with applicable legal prohibitions, disclosure requirements or other requirements on making or arranging for personal loans to senior officers or directors or amending or extending any such existing personal loans or arrangements;
- (viii) recommend to the ECN Capital Board for its approval the terms upon which directors shall be compensated, including the ECN Capital Chairman (if applicable) and those acting as committee chairs and committee members;
- (ix) review on a periodic basis the terms of and experience with ECN Capital's executive compensation programs for the purpose of determining if they are properly coordinated and achieving the purpose for which they were designed and administered;
- (x) review executive compensation disclosure before ECN Capital publicly discloses this information;
- (xi) submit a report to the ECN Capital Board on human resources matters at least annually; and
- (xii) prepare an annual report for inclusion in ECN Capital's Management Information Circular to ECN Capital Shareholders respecting the process undertaken by the committee in its review of compensation issues and prepare a recommendation in respect of ECN Capital CEO compensation.

As set out in the proposed C&CG Committee, the C&CG Committee will be responsible for, with respect to corporate governance, among other things:

- (i) developing and updating a long-term plan for the composition of the ECN Capital Board that takes into consideration the current strengths, competencies, skills and experience of the ECN Capital Board members, retirement dates and the strategic direction of ECN Capital, and reporting to the ECN Capital Board thereon at least annually;
- (ii) undertaking on an annual basis an examination of the size of the ECN Capital Board, with a view to determining the impact of the number of directors, the effectiveness of the



ECN Capital Board, and recommending to the ECN Capital Board, if necessary, a reduction or increase in the size of the ECN Capital Board;

- (iii) endeavouring, in consultation with the ECN Capital Chairman or lead director, to ensure that an appropriate system is in place to evaluate the effectiveness of the ECN Capital Board as a whole, each of the committees of the ECN Capital Board and each individual director of the ECN Capital Board with a view to ensuring that they are fulfilling their respective responsibilities and duties;
- (iv) in consultation with the ECN Capital Chairman or lead director, and the ECN Capital CEO, annually or as required, recruiting and identifying individuals qualified to become new Board members and recommending to the ECN Capital Board new director nominees for the next annual meeting of ECN Capital shareholders;
- (v) in consultation with the ECN Capital Chairman or lead director, annually or as required, recommending to the ECN Capital Board, the individual directors to serve on the various committees;
- (vi) conducting a periodic review of ECN Capital's corporate governance policies and making (policy recommendations aimed at enhancing Board and committee effectiveness;
- (vii) reviewing overall governance principles, monitoring disclosure and best practices of comparable and leading companies, and bringing forward to the ECN Capital Board a list of corporate governance issues for review, discussion or action by the ECN Capital Board or its committees;
- (viii) reviewing the disclosure in ECN Capital's public disclosure documents relating to corporate governance practices and preparing recommendations to the ECN Capital Board regarding any other reports required or recommended on corporate governance;
- (ix) proposing agenda items and content for submission to the ECN Capital Board related to corporate governance issues and providing periodic updates on recent developments in corporate governance to the ECN Capital Board;
- (x) conducting a periodic review of the relationship between management and the ECN Capital Board, particularly in connection with a view to ensuring effective communication and the provision of information to directors in a timely manner;
- (xi) reviewing annually the ECN Capital Board Mandate and the mandates for each committee of the ECN Capital Board, together with the position descriptions, if any, of each of the ECN Capital Chairman, the ECN Capital CEO, lead director, director and committee chairs, and where necessary, recommending changes to the ECN Capital Board;
- (xii) reviewing and recommending the appropriate structure, size, composition, mandate and members for the committees, and recommending for Board approval the appointment of each to Board committees;
- (xiii) recommending procedures to ensure that the ECN Capital Board and each of its committees function independently of management;
- (xiv) monitoring conflicts of interest (real or perceived) of both the ECN Capital Board and management in accordance with the Code, and other policies on conflicts of interest and ethics; and

- (xv) recommending procedures to permit the ECN Capital Board to meet on a regular basis without management or non-independent directors.

The C&CG Committee will make recommendations for candidates to the ECN Capital Board and candidates for appointment to various committees of the ECN Capital Board, and in making such recommendations will consider the competencies and skills that the ECN Capital Board considers to be necessary for the ECN Capital Board as a whole to possess, the competencies and skills that the ECN Capital Board considers each existing director to possess, and the competencies and skills each new nominee will bring to the ECN Capital boardroom. The responsibility for approving new nominees to the ECN Capital Board will fall to the full ECN Capital Board. The C&CG Committee may also make, where appropriate, recommendations for the removal of a director from the ECN Capital Board or from a committee of the ECN Capital Board if he or she is no longer qualified to serve as a director under applicable requirements or for any other reason it considers appropriate.

### **Credit and Risk Committee**

It is expected that the Credit and Risk Committee will be comprised of four directors, Pierre Lortie (Chair), William Lovatt, Bradley Nullmeyer and Steven Hudson. Pierre Lortie and William Lovatt are considered to be "independent" as defined in NI 58-101. The Credit and Risk Committee will report to and assist the ECN Capital Board in: (i) overseeing and reviewing information regarding ECN Capital's credit risk management framework, including the significant policies, procedures and practices employed to manage credit risk; and (ii) overseeing and reviewing information regarding ECN Capital's risk management framework, including the significant policies, procedures and practices employed to manage risk.

The members of the Credit and Risk Committee will be appointed annually by the ECN Capital Board, and each member of the Credit and Risk Committee will serve at the pleasure of the ECN Capital Board until the member resigns, is removed, or ceases to be a member of the ECN Capital Board.

The responsibilities, powers and operation of the Credit and Risk Committee are set out in the proposed Credit and Risk Committee Mandate, and as set out therein, with respect to the management of ECN Capital's management of credit risk, the Credit and Risk Committee will be responsible for, among other things:

- (i) reviewing and assessing the effectiveness of and compliance with ECN Capital's asset and liability management, interest rate and market risk, liquidity, investment, hedging, cash management and treasury policies and/or strategies, and other asset and liability matters as the Credit and Risk Committee deems appropriate;
- (ii) reviewing the quality of ECN Capital's investment portfolio, liquidity and cash management;
- (iii) overseeing ECN Capital's credit practices, policies and procedures;
- (iv) monitoring the development, origination and performance of ECN Capital's asset portfolio from a credit risk perspective, including taking into account existing and expected market and economic trends;
- (v) reviewing recommendations of management, and considering, evaluating and approving on behalf of the ECN Capital Board, specified transactions above the hold limits established by the ECN Capital Board as a ceiling on the approval authority of ECN Capital's Chief Credit Officer; and
- (vi) providing advice and input relating to mergers and acquisitions, the integration of acquired businesses, and other strategic initiatives and investments.

In addition, as set out in the proposed Credit and Risk Committee Mandate, the Credit and Risk Committee, with respect to ECN Capital's general management of risk, will be responsible for, among other things:

- (vii) reviewing annually the report from management identifying on an enterprise basis current and emerging material risks confronting ECN Capital in terms of gross risks, measures taken and controls being applied to mitigate risks and the net of residual risks faced and ECN Capital's responses to trends affecting those exposures;
- (viii) reviewing quarterly reports on a number of the identified material risks;
- (ix) considering emerging industry and regulatory risks issues and their potential impact on ECN Capital;
- (x) reviewing ECN Capital's Treasury and Financial Risk Management Policy and other material risk management policies annually and, if considered appropriate, recommending such policies to the ECN Capital Board for approval;
- (xi) reviewing with management the conceptual framework for the assessment of material risks and the plans and policies to mitigate their impact on ECN Capital;
- (xii) reviewing annually and approve changes when appropriate to the policies implemented for the mitigation, management and control of risk, including risk appetite, underwriting management, asset-liability risk management, capital risk, operational risk management, and mergers and acquisitions;
- (xiii) reviewing and considering with senior management ECN Capital's risk capacity, risk taking philosophy and approach to determining an appropriate balance between risk and reward;
- (xiv) reviewing and evaluating ECN Capital's current exposures to funding, currency, interest rate and other market risks in relation to its capacity to bear risk, and the management of such risks;
- (xv) reviewing and discussing with senior management ECN Capital's significant financial and non-financial risk exposures, including market, credit, liquidity, operational, reputational, strategic, regulatory, and business risks, and the steps senior management has taken to mitigate, monitor and control such risk exposures;
- (xvi) ensuring that those managing risk within ECN Capital have adequate authority, independence and resources to perform their mandates;
- (xvii) ensuring that independent reviews of the risk management functions are conducted as needed; and
- (xviii) reviewing the effectiveness of those managing risk in ECN Capital and of the risk management functions annually.

## Key Governance Documents

Following completion of the Element Arrangement, it will be expected that many policies and practices will support the corporate framework at ECN Capital. The following documents will constitute key components of ECN Capital's corporate governance system and are expected to be made available by ECN Capital subsequent to completion of the Element Arrangement:

- Code of Business Conduct and Ethics
- Board of Directors Mandate
- Audit Committee Mandate
- C&CG Committee Mandate
- Credit and Risk Committee Mandate
- Majority Voting Policy for Director Elections
- Insider Trading Policy
- Chair of the ECN Capital Board Position Description
- ECN Capital CEO Position Description
- Disclosure Policy
- Diversity Policy

## STOCK EXCHANGE LISTING

There is no current trading market for the ECN Capital Common Shares. The TSX has conditionally approved the listing on the TSX of the ECN Capital Common Shares to be issued pursuant to the Element Arrangement, the ECN Capital Option Plan, the ECN Capital DSU Plan and the ECN Capital Unit Plan (including the ECN Capital Common Shares which, as a result of the Element Arrangement, are issuable upon the exercise of ECN Capital Arrangement Options and settlement of ECN Capital DSUs, ECN Capital RSUs, and ECN Capital PSUs). See "*The Element Arrangement – TSX Approval*" in the Management Information Circular for more information. Following completion of the Element Arrangement, ECN Capital Common Shares and warrants will trade on the TSX. ECN Capital will trade on the TSX under the symbol "ECN".

Listing of the ECN Capital Common Shares on the TSX is a pre-condition to closing the Element Arrangement and will be subject to ECN Capital fulfilling all of the applicable requirements of the TSX.

The prices at which the ECN Capital Common Shares will trade following the Element Arrangement will be determined by the market and cannot be predicted. For further details on these risks and uncertainties relating to the trading prices of the ECN Capital Common Shares, see discussion in "*Risk Factors – Risks Relating to the Arrangements*" in this Appendix L. For a summary of the trading markets that are expected to develop in the ECN Capital Common Shares prior to the Element Effective Date, see "*The Element Arrangement – Trading of Shares on the TSX*" in the Management Information Circular.

The TSX will be required to approve the IAC Arrangement as the "qualifying acquisition" of IAC under the applicable TSX rules. The TSX has conditionally approved the listing of the ECN Capital Common Shares (including the ECN Capital Common Shares which, as a result of the IAC Arrangement, will be issuable upon the exercise of existing warrants to purchase shares of IAC), but the TSX's final approval will be subject to ECN Capital and IAC, as applicable, fulfilling all of the applicable requirements of the TSX. ECN Capital will be required to obtain the TSX's final approval to list these ECN Capital Common Shares

to be issued pursuant to the IAC Arrangement. See the section entitled “*The Element Arrangement – Approvals and Other Conditions Precedent to the IAC Arrangement – TSX Approval*” in the Management Information Circular.

## **RISK FACTORS**

Below are certain risk factors relating to ECN Capital that ECN Capital Shareholders should carefully consider in connection with and following the Arrangements. The following information is a summary only of certain risk factors and is qualified in its entirety by reference to, and must be read in conjunction with, the detailed information appearing elsewhere in this Appendix L and in the Management Information Circular. Additional risk factors relating to Element, Element Fleet and ECN Capital and each of their respective shareholders in connection with the Arrangements are set out in the Management Information Circular under the heading “*Risk Factors – Risks Relating to the Arrangements*”.

### **Risks Relating to ECN Capital in Connection with the Arrangements**

#### ***Following the Element Arrangement, ECN Capital will need to obtain financing on a stand-alone basis***

Following the Element Arrangement, ECN Capital will need to raise financing on a stand-alone basis without reference to Element or Element Fleet and may not be able to secure adequate debt or equity financing on desirable terms or not at all. Financing on a stand-alone basis may affect the interest rate charged on financings, as well as the amounts of indebtedness, types of financing structures, and debt markets that may be available to ECN Capital following the Element Arrangement. ECN Capital may not be able to raise the capital it requires on desirable terms following the Element Arrangement.

#### ***Following the Element Arrangement, ECN Capital may be unable to make the changes necessary to operate as an independent entity and may incur greater costs***

Following the Element Arrangement, the separation of ECN Capital from the other business of Element may materially affect ECN Capital. ECN Capital may not be able to implement successfully the changes necessary to operate independently. ECN Capital may incur additional costs relating to operating independently that could materially affect its cash flows and results of operations. ECN Capital will require Element Fleet to provide ECN Capital with certain services and facilities on a transitional basis. ECN Capital may, as a result, be dependent on such services and facilities until it is able to provide or obtain its own.

#### ***There does not exist a separate operating history of ECN Capital as a stand-alone entity***

Upon the Element Arrangement becoming effective, ECN Capital will become an independent public company. The operating history of Element in respect of the ECN Capital Assets cannot be regarded as the operating history of ECN Capital. The ability of ECN Capital to raise capital, satisfy its obligations and provide a return to its shareholders will be dependent on future performance. It will not be able to rely on the capital resources and cash flows of Element Fleet.

#### ***ECN Capital's Carve-out Combined Financial statements may not be reflect what its financial position, results of operations or cash flows would have been had ECN Capital operated as a stand-alone company or what ECN Capital's financial position, results of operations or cash flows will be in the future***

ECN Capital's Carve-out Combined Financial Statements included in Appendix M to the Management Information Circular have been prepared on a “carve-out” basis derived from the consolidated financial statements of Element as if ECN Capital had been operating as a stand-alone company for the periods presented. ECN Capital believes management has made reasonable assumptions underlying the ECN

Capital's Carve-out Combined Financial Statements, including reasonable allocations of corporate expenses from Element, such as expenses related to employee benefits, finance, human resources, legal, information technology and executive management. However, because ECN Capital's Carve-out Combined Financial Statements are based on certain assumptions and include allocations of corporate expenses from Element, ECN Capital's Carve-out Combined Financial Statements may not reflect what ECN Capital's financial position, results of operations or cash flows would have been had ECN Capital operated as a stand-alone company during the historical periods presented or what ECN Capital's financial position, results of operations or cash flows will be in the future.

### **Risks Relating to ECN Capital's Business**

#### ***ECN Capital may not achieve its business objectives and the failure to achieve such objectives may have a negative impact on ECN Capital***

As detailed previously in this Appendix L, ECN Capital intends to develop into a fee-based integrated structuring, advisory and asset management model. While ECN Capital intends to accomplish this objective, there can be no assurance that this stated business objective will be achieved. ECN Capital's successful execution of its asset management strategy will depend on factors outside of its control and is uncertain as it will require suitable opportunities, careful timing and business judgment, as well as the resources to complete asset purchases. There can be no assurance that ECN Capital will be successful in identifying appropriate assets and structuring funds on terms acceptable to it, or that ECN Capital's portfolio of assets will generate a positive return.

#### ***Global financial markets and general economic conditions may adversely affect ECN Capital's results***

ECN Capital will be exposed to local, regional, national and international economic conditions and other events and occurrences beyond its control, including, but not limited to, the following: credit and capital market volatility, business investment levels, government spending levels, consumer spending levels, changes in laws, rules or regulations, trade barriers, commodity prices, currency exchange rates and controls, national and international political circumstances (including wars, terrorist acts or security operations), changes in interest rates, inflation rates, the rate and direction of economic growth, and general economic uncertainty. Unfavourable economic conditions could affect the jurisdictions in which ECN Capital will own assets and operate businesses, and may cause a reduction in: (i) securities prices, (ii) the liquidity of investments made by ECN Capital, (iii) the value or performance of the investments made by ECN Capital, and (iv) the ability of ECN Capital to raise or deploy capital, each of which could adversely impact ECN Capital's financial condition.

In general, a decline in economic conditions, either in the markets or industries in which ECN Capital participates, or both, will result in downward pressure on its operating margins and asset values as a result of lower demand and increased price competition for the services and products that ECN Capital provides. If global economic conditions deteriorate, ECN Capital's investment performance could suffer, resulting in, decreased cash flow from operations, which could materially adversely affect ECN Capital's liquidity position and the amount of cash it has on hand to conduct its operations. A reduction in ECN Capital's cash flow from operations could, in turn, require ECN Capital to rely on other sources of cash (such as the capital markets which may not be available to ECN Capital on acceptable terms, or debt and other forms of leverage). Adverse economic conditions also may decrease the estimated value of the collateral securing some of ECN Capital's loans and leases. Further or prolonged economic slowdowns or recessions could lead to financial losses in ECN Capital's portfolio and a decrease in ECN Capital's net finance income, net income and book value. Any of these events, or any other events caused by turmoil in world financial markets, may have a material adverse effect on ECN Capital's business, operating results, and financial condition.

Moreover, a reduction in credit, combined with reduced economic activity, may materially adversely affect businesses and industries that collectively constitute a significant portion of ECN Capital's customer base and may make it more difficult for ECN Capital to maintain new business origination and the credit quality of new business at the levels currently forecast. As a result, these customers may need to reduce their purchases and reliance on ECN Capital's services or ECN Capital may experience greater difficulty in receiving payment for its services. Delinquencies, non-accruals and credit losses generally increase during economic slowdowns or recessions. Therefore, to the extent that economic and business conditions are unfavourable, ECN Capital's non-performing assets may become elevated and the value of ECN Capital's portfolio is likely to decrease.

***Lack of funding may limit ECN Capital's ability to operate and/or generate returns***

ECN Capital will employ debt and other forms of leverage in the ordinary course of business to enhance returns and finance operations. ECN Capital will attempt to match the profile of any leverage to the associated assets and therefore will be subject to the risks associated with debt financing and refinancing, including but not limited to the following: (i) ECN Capital's cash flow may be insufficient to meet required payments of principal and interest; (ii) payments of principal and interest on borrowings may leave ECN Capital with insufficient cash resources to pay operating expenses; (iii) if ECN Capital is unable to obtain committed debt financing for potential acquisitions or can only obtain debt at an increased interest rate or on unfavourable terms, ECN Capital may have difficulty completing acquisitions or may generate profits that are lower than would otherwise be the case; (iv) ECN Capital may not be able to refinance indebtedness on its assets at maturity due to company and market factors such as the estimated cash flow produced by its assets, the value of its assets, liquidity in the debt markets, and/or financial, competitive, business and other factors; and (v) if ECN Capital is unable to refinance its assets, the terms of a refinancing may not be as favourable as the original terms of the related indebtedness. If ECN Capital is unable to refinance its indebtedness on acceptable terms, or at all, ECN Capital may need to utilize available liquidity, which would reduce its ability to pursue new investment opportunities, or may require the disposal of one or more of its assets on disadvantageous terms, or raise equity causing dilution to existing shareholders. Regulatory changes may also result in higher borrowing costs and reduced access to credit.

A large proportion of ECN Capital's capital may be invested in physical assets and securities that can be hard to sell, especially if market conditions are poor. A lack of liquidity could limit ECN Capital's ability to vary its portfolio or assets promptly in response to changing economic or investment conditions.

***Concentration of debt financing sources may increase ECN Capital's funding risks***

On the Element Effective Date, ECN Capital will have access to the Senior ECN Capital Facility. ECN Capital's reliance on this facility for a significant amount of its funding exposes ECN Capital to funding risks. If the Senior ECN Capital Facility were to be terminated or not extended, ECN Capital's operations could be materially adversely affected.

***Inability to attract and retain employees may limit ECN Capital's ability to grow its business***

If ECN Capital is not able to attract and retain top employees, its ability to compete may be harmed. ECN Capital's success is also highly dependent on its continuing ability to identify, hire, train, retain and motivate highly qualified management, technical, sales and marketing personnel. In order to grow ECN Capital's business, it must attract and retain qualified personnel, especially origination and credit personnel with relationships with referral sources and an understanding of the equipment financing businesses and the industries in which ECN Capital's borrowers operate. In addition, in ECN Capital's effort to attract and retain critical personnel, ECN Capital may experience increased compensation costs that are not offset by either improved productivity or higher prices for ECN Capital's services.

Many of the financial institutions that ECN Capital competes with for experienced personnel may be able to offer more attractive terms of employment. If any of ECN Capital's key origination personnel leave, ECN Capital's new equipment finance origination volume from their business contacts may decline or cease. In addition, ECN Capital invests significant time and expense in training its employees, which increases their value to competitors who may seek to recruit them and increases the costs of replacing them. These factors may have a material adverse effect on ECN Capital's ability to grow its business.

***Loss of key personnel may significantly harm ECN Capital's business***

ECN Capital's performance is substantially dependent on the performance of its executive officers and key employees, including those referred to under the heading "*Directors and Executive Officers*" in this Appendix L. Further, ECN Capital does not maintain "key person" life insurance policies on any of its employees. The loss of the services of any of ECN Capital's executive officers or other key employees could significantly harm ECN Capital's business. ECN Capital provides a competitive compensation package, which includes profit sharing and medical benefits as it continuously seeks to align the interest of employees and shareholders.

***Competition for vendor equipment finance may affect ECN Capital's relationships with vendors***

The vendor equipment finance business of Element is dependent upon its ability to enter into and maintain exclusive or preferred relationships with vendors. This market is highly competitive and there can be no assurance that such relationships can be maintained.

***A competitive business environment may limit the growth of ECN Capital's business***

ECN Capital's market segments are highly competitive and characterized by competitive factors that vary based upon product and geographic region. ECN Capital competes with a wide variety of competitors that include independent lease finance companies, captive finance companies owned by manufacturers and distributors, banks, third-party brokers and other large and mid-sized commercial asset management companies.

***Facilities may limit ECN Capital's operation flexibility***

ECN Capital's funding arrangements, including the Senior ECN Capital Facility and certain securitization programs, are expected to contain financial and non-financial covenants such as minimum tangible net worth requirements, debt coverage and interest coverage ratios and change of control provisions in relation to ECN Capital. Such covenants could limit ECN Capital's ability to pursue future business opportunities and any non-compliance could give rise to an acceleration of related indebtedness, which in turn could have a material adverse effect on ECN Capital's business.

From time to time, ECN Capital may seek to increase its available fundings, including to fund the future growth of ECN Capital's business. Since ECN Capital's fundings will generally be collateralized and serviced by corresponding pools of income earning assets, any underperformance of such assets may result in reduced availabilities or early repayment requirements. In such circumstances, ECN Capital would require alternative or replacement sources of fundings and, if applicable, could result in ECN Capital using other available cash flow sources and capital resources to satisfy related debt service obligations. A reduction in the availability of fundings could reduce or delay ECN Capital's capital expenditures, or could lead ECN Capital to dispose of assets, issue additional equity, incur additional debt or restructure existing debt, in each case on potentially disadvantageous terms and conditions and subject to prevailing market conditions at the relevant time. Accordingly, a loss of available funding could have a material adverse effect on ECN Capital's business, financial condition and results of operations.



### ***ECN Capital is susceptible to liquidity risk***

Liquidity risk is the risk that ECN Capital will not generate sufficient cash or cash equivalents in a timely and cost effective manner to satisfy its financial obligations as they come due. Growth in ECN Capital's portfolio will require on-going availability of secured financing and funding lines sufficient to accommodate projected growth objectives.

### ***Inability to realize benefits from growth and through acquisitions may harm ECN Capital's financial condition***

ECN Capital's inability to realize the potential benefits from its growth strategy and from the integration of its acquisitions may adversely impact ECN Capital's operating results. ECN Capital's ability to realize such benefits will be based on its management of growth and its integration of acquisitions and will require it to continue to build its operational, financial and management controls, human resource policies, and reporting systems and procedures. ECN Capital's ability to manage its growth and integrate acquisitions will depend in large part upon a number of factors, including the ability of ECN Capital to:

- expand ECN Capital's internal operational and financial controls significantly, so that it can maintain control over operations and provide support to other functional areas as the number of personnel and size of its business increases;
- attract and retain qualified personnel in order to continue to develop ECN Capital's origination platforms and provide services that respond to evolving customer needs;
- develop support capacity for customers as sales increase, so that ECN Capital can provide post-sales support without diverting resources from origination efforts;
- secure additional sources of funding to undertake strategic acquisitions, while implementing a prudent capital structure for ECN Capital; and
- expand its network of vendor relationships to create an enhanced presence in the evolving marketplace for ECN Capital's services.

ECN Capital's inability to achieve any of these objectives could harm its business, financial condition and/or results of operations.

### ***Complications in managing acquisitions may negatively affect ECN Capital's operating results***

Except for the transaction contemplated pursuant to the IAC Arrangement, ECN Capital does not currently have any agreement or commitments to acquire any businesses. See "*The IAC Arrangement*" in this Appendix L for more information. ECN Capital intends to seek opportunities to acquire or invest in businesses that could expand, complement or otherwise relate to the Commercial Finance Business. ECN Capital may also consider, from time to time, opportunities to engage in joint ventures or other business collaborations with third-parties to address particular market segments. These activities create risks such as: (i) the need to integrate and manage the businesses, operations, services, personnel and systems acquired with ECN Capital's own business; (ii) additional demands on ECN Capital's resources, systems, procedures and controls; (iii) disruption of ECN Capital's on-going business; (iv) diversion of management's attention from other business concerns; and (v) potential for additional regulatory scrutiny.

Moreover, these transactions could involve: (i) substantial investment of funds or financings by issuance of debt or equity securities; (ii) substantial investment with respect to technology transfers and operational integration; and (iii) the acquisition or disposition of businesses. Also, such activities could result in one-time charges and expenses and have the potential to either dilute the interests of shareholders of ECN Capital or result in the issuance of, or assumption of, debt. Such acquisitions, investments, joint ventures

or other business collaborations may involve significant commitments of ECN Capital's financial and other resources. Any such activity may not be successful in generating revenue, income or other returns to ECN Capital, and the resources committed to such activities will not be available to ECN Capital for other purposes. Moreover, if ECN Capital is unable to access capital markets on acceptable terms or at all, ECN Capital may not be able to consummate acquisitions, or may have to do so on the basis of a less than optimal capital structure.

ECN Capital's inability to take advantage of growth opportunities for its business or to address risks associated with acquisitions or investments in businesses may negatively affect ECN Capital's operating results. Additionally, any impairment of goodwill or other intangible assets acquired in an acquisition or in an investment, or charges to earnings associated with any acquisition or investment activity, may materially reduce ECN Capital's earnings which, in turn, may have an adverse material effect on the price of ECN Capital's securities. If ECN Capital does complete such transactions, ECN Capital cannot be sure that they will ultimately strengthen its competitive position or that they will not be viewed negatively by customers, securities analysts or investors.

### ***Credit risks may lead to unexpected losses***

ECN Capital's net investment in finance assets for its own account and to be held for future term funding exposes ECN Capital to credit risk. Credit risk is the risk that ECN Capital will incur an unexpected loss because its customers and counterparties fail to discharge their contractual obligations. Credit risk arises principally through ECN Capital's finance receivables that are a result of transactions within the equipment finance industry and, as such, contain an element of credit risk in the event that obligors are unable to meet the terms of their agreements. ECN Capital is exposed to credit risk as it arises from events and circumstances outside of ECN Capital's control relating to adverse economic conditions, business failure or fraud. The types of fraud to which ECN Capital is exposed generally fall into one of three primary categories: (i) vendor/dealer fraud; (ii) customer fraud; and (iii) employee fraud. Excessive credit losses could adversely affect ECN Capital's ability to generate and fund new financings.

In order to manage credit risk, ECN Capital operates using a clearly identified set of policies and procedures throughout its business processes. This includes a detailed analysis of the value of collateral security, the applicant's financial condition and the ability to service the debt or lease obligations at inception and throughout the term of the lease or loan. ECN Capital also manages and controls credit risk by setting limits on the amount of risk it is willing to accept for individual counterparties on direct financing leases and loans.

### ***Credit ratings and credit risk may change***

ECN Capital has not been assigned a corporate credit rating. Credit ratings are not a recommendation to buy, hold or sell securities. A rating is not a comment on the market price of a security nor is it an assessment of ownership given various investment objectives. There can be no assurance that any credit rating assigned to ECN Capital will remain in effect for any given period of time and ratings may be upgraded, downgraded, placed under review, confirmed and discontinued by an applicable credit ratings agency at any time. Any credit ratings assigned to ECN Capital and any real or anticipated changes in such credit ratings may affect the market value of its securities. In addition, any credit ratings assigned to ECN Capital and any real or anticipated changes in such credit ratings may affect ECN Capital's ability to obtain short-term and long-term financing and the cost at which ECN Capital can access the capital markets.

### ***ECN Capital's provision for credit losses may prove inadequate***

ECN Capital's business depends on the creditworthiness of its customers and their ability to fulfill their obligations to ECN Capital. ECN Capital maintains a provision for credit losses that reflects management's judgment of losses inherent in the portfolio. ECN Capital periodically reviews its provision

for adequacy considering economic conditions and trends, collateral values, and credit quality indicators, including past charge-off experience and levels of past due loans, past due loan migration trends, and non-performing assets.

ECN Capital's provision for credit losses may prove inadequate and ECN Capital cannot assure that it will be adequate over time to cover credit losses in ECN Capital's portfolio because of adverse changes in the economy or events adversely affecting specific customers, industries or markets. ECN Capital credit reserves may not keep pace with changes in the creditworthiness of ECN Capital's customers or in collateral values. If the credit quality of ECN Capital's customer base declines, if the risk profile of a market, industry, or group of customers changes significantly, or if the markets for equipment or other collateral deteriorates significantly, any or all of which would adversely affect the adequacy of ECN Capital's reserves for credit losses, it could have a material adverse effect on ECN Capital's business, results of operations, and financial position.

While credit losses have been minimal to date, ECN Capital has and will continue to provide for credit losses based on industry specific historical losses considering the categories, segmentation and distribution of the assets being financed and its customer base.

***The collateral securing a loan or a lease may not be sufficient***

While most of ECN Capital's loans and leases are secured by a lien on specified collateral of the customer, there is no assurance that ECN Capital has obtained or properly perfected its liens, or that the value of the collateral securing any particular loan will protect ECN Capital from suffering a partial or complete loss if the loan or lease becomes non-performing and ECN Capital moves to foreclose on the collateral. In such event, ECN Capital could suffer loan or lease losses which could have a material adverse effect on its revenue, net income, financial condition and results of operations.

When underwriting collateral, ECN Capital makes an estimate of the value of the collateral under a distressed disposition. The estimated realization value of equipment during the life of the lease is an important element in the leasing business. A decrease in the market value of leased equipment at a rate greater than the rate ECN Capital projected, whether due to rapid technological or economic obsolescence, unusual wear and tear on the equipment, excessive use of the equipment, recession or other adverse economic conditions, or other factors, would adversely affect the current realization values of such equipment.

Further, certain equipment realization values are dependent on the manufacturers' or vendors' warranties, reputation, and other factors, including market liquidity. The degree of realization risk varies by transaction type.

***Change in interest rates may adversely affect ECN Capital's financial results***

Interest rate risk relates to the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

In order to mitigate interest rate risk, ECN Capital will structure its secured funding arrangements to maintain a fixed interest rate spread between the interest paid on both the term funding facilities and the revolving facilities and the interest received on the underlying finance receivables. This fixed interest rate spread is achieved by matching funding transactions on both a duration and interest rate basis. In some instances, matching the interest rate basis requires that ECN Capital enter into interest rate swaps in order to align the interest rate variability.

ECN Capital does experience short-term interest rate risk on these finance receivables during the period between fixing the contractual rate under the finance contracts with its customers and the locking of the interest rate under its funding facilities. During this time, an upward movement in Government of Canada

or U.S. Bond rates can negatively impact the spread on the transaction. In order to mitigate this risk, ECN Capital carefully monitors its borrowing costs to ensure its rates reflect appropriate spreads to insulate against sudden unexpected interest rate movements. In order to further mitigate risk, ECN Capital undertakes regular securitizations to ensure its finance contracts are appropriately match-funded by its secured funding arrangements, which reduces the warehouse period and the likelihood that a significant movement in bond rates will negatively impact the spreads on such transactions. ECN Capital also maintains adequate balance sheet liquidity to allow it flexibility in developing a strategy of holding versus securitizing such finance assets.

After considering the fixed interest rate spread on the secured borrowing programs and high exposure to fixed rate finance receivables described above, ECN Capital's interest rate risk is limited to cash and restricted cash, floating rate finance receivables which are neither hedged nor part of a match-funded secured borrowing arrangement, and its Senior ECN Capital Facility.

***Concentration of leases and loans with a particular industry or region may negatively impact ECN Capital's financial condition***

Following the Element Arrangement, ECN Capital will be a commercial finance business focused on the commercial and vendor, rail and aviation sectors. As a result, ECN Capital will have a significant concentration of risk exposure related to these industry segments. If these industry segments were to experience adverse economic or business conditions, ECN Capital's delinquencies, default rate and charge-offs may increase, which may negatively impact its financial condition and results of operations.

***Concentration of leases and loans to small and mid-sized companies may carry more inherent risk***

ECN Capital's portfolio includes loans and leases to small and medium-sized, privately-owned companies, most of which do not publicly report their financial condition. Compared to larger, publicly-traded firms, loans to these types of companies may carry more inherent risk. The small and mid-sized companies that ECN Capital finances generally have more limited access to capital and higher funding costs, may be in a weaker financial position, may need more capital to expand or compete, and may be unable to obtain financing from public capital markets or from traditional sources, such as commercial banks. Additionally, because many of ECN Capital's customers do not publicly report their financial condition, ECN Capital is more susceptible to a customer's misrepresentation, which could cause ECN Capital to suffer losses on its portfolio. The failure of a customer to accurately report its financial position could result in ECN Capital providing loans or leases that do not meet its underwriting criteria, defaults in loan and lease payments, the loss of some or all of the principal of a particular loan or lease or non-compliance with loan or lease covenants. Accordingly, loans and leases made to these types of customers involve higher risks than loans and leases made to companies that have larger businesses, greater financial resources or are otherwise able to access traditional credit sources. Numerous factors may make these types of companies more vulnerable to variations in results of operations, changes impacting their industry and changes in general market conditions.

***ECN Capital's results are difficult to forecast and may fluctuate substantially***

ECN Capital's quarterly and annual operating results are likely to fluctuate in the future. These fluctuations could cause ECN Capital's stock price to decline. In some future quarters or years, ECN Capital's financial or operating results may not meet the expectations of securities analysts and investors which could result in a decline in the price of the ECN Capital Common Shares. Many other different factors could cause ECN Capital's results of operations to fluctuate from quarterly and annually, including:

- the success of ECN Capital's origination activities, the timing of launch and market acceptance of ECN Capital's commercial finance products;
- credit losses and default rates;

- ECN Capital's ability to enter into financing arrangements;
- competition;
- seasonal fluctuations in ECN Capital's business, including the timing of transactions;
- costs of compliance with regulatory requirements;
- the timing and effect of any future acquisitions;
- personnel changes;
- changes in accounting rules;
- changes in prevailing interest rates and foreign exchange rates;
- general changes to the North American and global economies; and
- political conditions or events.

ECN Capital bases its current and future operating expense levels and its investment plans on estimates of future net finance income, origination activity and rate of growth. Any shortfalls in ECN Capital's net finance income and management, origination activity or in its expected growth rates could result in decreases in its share price.

The decision whether or not to pay dividends and the amount of any such dividends are subject to the discretion of the ECN Capital Board, which will regularly evaluate proposed dividend payments and the solvency test requirements of the OBCA. In addition, the level of dividends per ECN Capital Common Share will be affected by the number of outstanding ECN Capital Common Shares and other securities that may be entitled to receive cash dividends or other payments. Should ECN Capital determine to pay dividends in the future, such dividends may be increased, reduced or suspended depending on ECN Capital's operational success. The market value of ECN Capital Common Shares may deteriorate if ECN Capital is unable to meet dividend expectations in the future, and that deterioration may be material.

***ECN Capital may not pay dividends.***

Payment of any future dividends by ECN Capital depends on its cash flows. The declaration and payment of future dividends will be at the discretion of the ECN Capital Board, subject to restrictions under applicable corporate laws, and may be affected by numerous factors, including ECN Capital's revenues, financial condition, acquisitions, capital investment requirements and legal, regulatory or contractual restrictions, including restrictive covenants contained in the Senior ECN Capital Facility that may restrict ECN Capital's ability to pay dividends. ECN Capital may not be in a position to pay dividends in the future. A failure to pay dividends or a reduction or cessation of the payment of dividends could materially adversely affect the trading price of the ECN Capital Common Shares.

***Information technology infrastructure security breaches may negatively impact ECN Capital***

Despite the implementation of security measures, ECN Capital's information systems and those of its contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such events could cause interruption of its operations. ECN Capital's business depends on the efficient and uninterrupted operation of computer and communications systems and networks, hardware and software systems and

other information technology. If systems were to fail or ECN Capital was unable to successfully expand the capacity of these systems or was unable to integrate new technologies into its existing systems, its operations and financial results could suffer.

***Litigation may negatively impact ECN Capital's financial condition***

From time to time in the ordinary course of its business, ECN Capital may become involved in various legal proceedings, including commercial, employment, class action and other litigation and claims, as well as governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management's attention and resources and cause ECN Capital to incur significant expenses. Furthermore, because litigation is inherently unpredictable, the results of any such actions may have a material adverse effect on ECN Capital's business, operating results or financial condition.

***Foreign currency risk creates exposure that may negatively impact ECN Capital***

Foreign currency risk is the risk of exposure to foreign currency movements on ECN Capital's lending and/or net investment in foreign subsidiaries, whereby there is a risk the exchange rates (in particular the US dollar/Canadian dollar rate) will be materially different when a loan or finance receivable is re-measured for accounting purposes, matures or when a foreign subsidiary is divested. ECN Capital mitigates and manages this risk on ECN Capital's lending portfolio by entering into foreign exchange forward contracts to reduce or hedge its exposure to foreign currency risk. ECN Capital mitigates and manages this risk on ECN Capital's lending portfolio by entering into foreign exchange forward contracts to reduce or hedge its exposure to foreign currency risk. ECN Capital currently partially hedges its net investment in foreign subsidiaries. ECN Capital is also exposed to foreign currency risk related to net income generated from foreign currency denominated assets and operations. This risk represents the impact of fluctuations to the average Canadian and respective foreign currency exchange rate used to translate ECN Capital's foreign currency denominated net income into Canadian dollar equivalent during each period. ECN Capital may mitigate and manage this type of foreign currency risk by entering into foreign currency forward contracts to reduce or hedge this exposure to foreign currency risk.

***Taxes***

ECN Capital is a Canadian corporation which operates in multiple jurisdictions. As a result, it is subject to the tax laws and regulations of Canadian federal, provincial and local governments and of the governments of foreign jurisdictions in which ECN Capital operates, as well as to any income tax treaties between Canada and any such jurisdictions, and to the risk that those tax laws, regulations and treaties may change in the future. Any such changes could adversely affect the taxes payable, including withholding taxes, and the effective tax rate in the jurisdictions in which ECN Capital operates.

The determination of ECN Capital's provision for income taxes in Canada and elsewhere, including current and deferred tax assets and liabilities on ECN Capital's financial statements, require estimates, interpretation and significant judgment. Various internal and external factors may have favourable or unfavourable effects on future provisions for income taxes and ECN Capital's effective income tax rate. These factors include, but are not limited to, changes in tax laws, regulations and/or rates, results of audits by tax authorities, changing interpretations of existing tax laws or regulations, changes in estimates of prior years' items, and changes in overall levels of income before taxes. Furthermore, new accounting pronouncements or new interpretation of existing accounting pronouncements can have a material impact on ECN Capital's effective income tax rate.

ECN Capital could be impacted by certain tax treatments for various revenue streams in different tax jurisdictions. If a tax authority has a different interpretation from ECN Capital's, it could potentially impose additional taxes, penalties or fines. This would potentially reduce the amounts of revenue ultimately received by ECN Capital.

ECN Capital, from time to time, has executed or may execute reorganization transactions impacting its tax structure. If a tax authority has a different interpretation from ECN Capital's, it could potentially impose additional taxes, penalties or fines.

***ECN Capital may be treated as a passive foreign investment company (PFIC) for U.S. federal income tax purposes, in which case U.S. Holders would be subject to a special, generally adverse tax regime.***

Element has not made a determination as to whether ECN Capital may be a PFIC for any taxable year.

The U.S. federal income tax consequences to U.S. Holders of owning and disposing of ECN Capital Common Shares may be affected if ECN Capital were treated as a PFIC.

The PFIC rules, including the rules governing any elections that may potentially be made by a U.S. Holder, are extremely complex. Each U.S. Holder should consult its own tax advisor regarding the potential PFIC status of ECN Capital and how the PFIC rules (including elections that may be available thereunder) would affect the U.S. federal income tax consequences of the ownership and disposition of ECN Capital Common Shares.

For more information, see “*Material Income Tax Consequences - Material U.S. Federal Income Tax Consequences to Shareholders*” in the Management Information Circular.

#### ***Volatility of ECN Capital Common Share price***

Market prices for commercial finance and asset management corporations have at times been volatile and subject to substantial fluctuations. The stock market, from time-to-time, experiences significant price and volume fluctuations unrelated to the operating performance of particular companies. Future announcements concerning ECN Capital or its competitors, including those pertaining to financing arrangements, government regulations, developments concerning regulatory actions affecting ECN Capital, litigation, additions or departures of key personnel, cash flow, and economic conditions and political factors in the U.S., Canada or other regions may have a significant impact on the market price of the ECN Capital Common Shares. In addition, there can be no assurance that the ECN Capital Common Shares will continue to be listed on the TSX.

The market price of the ECN Capital Common Shares could fluctuate significantly for many other reasons, including for reasons unrelated to ECN Capital's specific performance, such as reports by industry analysts, investor perceptions, or negative announcements by its customers, competitors or suppliers regarding their own performance, as well as general economic and industry conditions. For example, to the extent that other large companies within its industry experience declines in their stock price, the share price of the ECN Capital Common Shares may decline as well. In addition, when the market price of a company's shares drops significantly, shareholders often institute securities class action lawsuits against the company. A lawsuit against ECN Capital could cause it to incur substantial costs and could divert the time and attention of its management and other resources.

***Sales of a substantial number of the ECN Capital Common Shares may cause the price of the ECN Capital Common Shares to decline.***

Any sales of substantial numbers of the ECN Capital Common Shares in the public market or the exercise of significant amounts of ECN Capital Options or the perception that such sales or exercise might occur may cause the market price of the ECN Capital Common Shares to decline.

The issuance of the ECN Capital Common Shares to ECN Capital Shareholders whose investment profile may not be consistent with ECN Capital's business may lead to significant sales of the ECN Capital

Common Shares or a perception that such sales may occur, either of which could have a material adverse effect on the market for and market price of the ECN Capital Common Shares.

### ***Management of growth may strain ECN Capital's resources***

ECN Capital's future growth, if any, may cause a significant strain on management, operational, financial and other resources. The ability to effectively manage growth will require ECN Capital to improve and/or expand its scientific, operational, financial and management information systems and to train, manage and motivate its employees. These demands may require the addition of new management personnel and the development of additional expertise by management. Any increase in resources devoted to product and business development without a corresponding increase in operational, financial and management information systems could have a material adverse effect on performance. The failure of ECN Capital's management team to effectively manage growth could have a material adverse effect on ECN Capital's business, financial condition and results of operations.

### ***Dilution from further equity financing and declining share price***

If ECN Capital raises additional financing through the issuance of equity securities (including securities convertible or exchangeable into equity securities) or completes an acquisition or merger by issuing additional equity securities, such issuance may substantially dilute the interests of shareholders of ECN Capital and reduce the value of their investment. The market price of the ECN Capital Common Shares could decline as a result of issuances of new shares or sales by ECN Capital Shareholders of Common Shares in the market or the perception that such sales could occur. Sales by ECN Capital Shareholders might also make it more difficult for ECN Capital itself to sell equity securities at a time and price that it deems appropriate.

Pursuant to the IAC Arrangement, ECN Capital will acquire all the outstanding shares (other than shares of IAC held by ECN Capital or any of its affiliates) in IAC in exchange for ECN Capital Common Shares. Such issuance of additional Common Shares by ECN Capital may dilute the value of ECN Capital's Common Shares. See "*The IAC Arrangement*" in this Appendix L and "*The IAC Arrangement*" in the Management Information Circular for more information.

### ***Issue of Preferred Shares by ECN Capital***

ECN Capital's Board has the authority to issue undesignated preferred shares and, before issue, to fix the designation of, and the rights and restrictions attached to, the preferred shares of each series, without consent from holders of ECN Capital Common Shares. Preferred shares could be issued without voting, dividend, liquidation, dissolution, winding-up and other rights superior to those of ECN Capital Common Shares.

### ***Securities industry analyst research reports***

The trading market for the ECN Capital Common Shares is influenced by the research and reports that industry or securities analysts publish about ECN Capital or any of its partners. If covered, a decision by an analyst to cease coverage of ECN Capital or fail to regularly publish reports on ECN Capital could cause ECN Capital to lose visibility in the financial markets, which in turn could cause the stock price or trading volume to decline. Moreover, if an analyst who covers ECN Capital or any of its partners downgrades its or its partner's stock, or if operating results do not meet analysts' expectations, the stock price could decline.

### ***Compliance with laws and regulations affecting public companies***

Any future changes to the laws and regulations affecting public companies, compliance with existing provisions of National Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim*



*Filings* (“NI 52-109”) and the other applicable Canadian securities laws and regulation and related rules and policies, may cause ECN Capital to incur increased costs as it evaluates the implications of new rules and implements any new requirements. Delays or a failure to comply with the new laws, rules and regulations could result in enforcement actions, the assessment of other penalties and civil suits.

Any new laws and regulations may make it more expensive for ECN Capital to provide indemnities to ECN Capital’s officers and directors and may make it more difficult to obtain certain types of insurance, including liability insurance for directors and officers. Accordingly, ECN Capital may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for ECN Capital to attract and retain qualified persons to serve on ECN Capital’s Board or as executive officers. ECN Capital may be required to hire additional personnel and utilize additional outside legal, accounting and advisory services, all of which could cause general and administrative costs to increase beyond what ECN Capital currently has planned. ECN Capital is continuously evaluating and monitoring developments with respect to these laws, rules and regulations and it cannot predict or estimate the amount of the additional costs it may incur or the timing of such costs.

ECN Capital is required annually to review and report on the effectiveness of its internal control over financial reporting in accordance with NI 52-109. The results of this review are reported in ECN Capital’s Annual Report and in its Management Discussion and Analysis of Results of Operations and Financial Condition. ECN Capital’s CEO and CFO are required to report on the effectiveness of ECN Capital’s internal control over financial reporting.

Management’s review is designed to provide reasonable assurance, not absolute assurance, that all material weaknesses existing within ECN Capital’s internal controls are identified. Material weaknesses represent deficiencies existing in ECN Capital’s internal controls that may not prevent or detect a misstatement occurring which could have a material adverse effect on the quarterly or annual financial statements of ECN Capital. In addition, management cannot provide assurance that the remedial actions being taken by ECN Capital to address any material weaknesses identified will be successful, nor can management provide assurance that no further material weaknesses will be identified within its internal controls over financial reporting in future years.

If ECN Capital fails to maintain effective internal controls over its financial reporting, there is the possibility of errors or omissions occurring or misrepresentations in ECN Capital’s disclosures which could have a material adverse effect on ECN Capital’s business, its financial statements and the value of the ECN Capital Common Shares.

### ***Public company requirements may strain ECN Capital’s resources***

As a public company, ECN Capital is subject to the reporting requirements of the *Securities Act* (Ontario), as amended, the regulations and rules thereto, including the national and multilateral instruments adopted as rules, decisions, rulings and orders promulgated under the Act and the published policy statements issued by the Ontario Securities Commission and the listing requirements of the TSX. The ever increasing obligations of operating as a public company will require significant expenditures and will place additional demands on management as ECN Capital complies with the reporting requirements of a public company. ECN Capital may need to hire additional accounting, financial and legal staff with appropriate public company experience and technical accounting and regulatory knowledge.

In addition, actions that may be taken by any significant shareholders, if any, may divert the time and attention of ECN Capital’s Board and management from its business operations. Campaigns by significant investors to effect changes at publicly traded companies have increased in recent years. If a proxy contest were to be pursued by any of ECN Capital’s shareholders, it could result in substantial expense to ECN Capital and consume significant attention of management and the ECN Capital Board. In addition, there can be no assurance that any shareholder will not pursue actions to effect changes in the

management and strategic direction of ECN Capital, including through the solicitation of proxies from ECN Capital's stockholders.

### **PROMOTER**

Under applicable Canadian securities laws, Element (and, following completion of the Element Arrangement, Element Fleet, which will continue to operate Element's existing Fleet Management Business) may be considered a promoter of ECN Capital in that it took the initiative in founding ECN Capital for the purpose of implementing the Element Arrangement. See "*The Element Arrangement*" in the Management Information Circular.

As of the date of the Management Information Circular, and as of the Element Effective Date, Element (and, following completion of the Element Arrangement, Element Fleet) does not and will not beneficially own, control or direct, directly or indirectly, any voting or other equity securities of ECN Capital or its subsidiaries.

### **LEGAL PROCEEDINGS AND REGULATORY ACTIONS**

There are no legal proceedings to which Element or ECN Capital is a party to, or in respect of which, any of the ECN Capital Assets are the subject of, which is or will be material to ECN Capital, and ECN Capital is not aware of any such legal proceedings that are contemplated.

Since incorporation, there have not been any penalties or sanctions imposed against ECN Capital by a court relating to provincial and territorial securities legislation or by a securities regulatory authority, nor have there been any other penalties or sanctions imposed by a court or regulatory body against ECN Capital, and ECN Capital has not entered into any settlement agreements before a court relating to provincial and territorial securities legislation or with a securities regulatory authority.

### **INTERESTS OF CERTAIN PERSONS IN MATERIAL TRANSACTIONS**

Except as described elsewhere in the Management Information Circular (including this Appendix L), none of the proposed directors or executive officers of ECN Capital, or any person or company that is expected to beneficially own, or control or direct more than 10% of any class or series of shares of ECN Capital, or any associate or affiliate of any of the foregoing persons, has or has had any material interest in any past transaction within the three years before the date of the Management Information Circular, or any proposed transaction, that has materially affected or would materially affect ECN Capital or any of its expected subsidiaries.

### **AUDITORS, TRANSFER AGENTS AND REGISTRARS**

Ernst & Young LLP, Chartered Accountants and Licensed Public Accountants, are ECN Capital's auditors and such firm has prepared opinions with respect to the ECN Capital Annual Carve-out Combined Financial Statements. Ernst & Young LLP has advised that they are independent with respect to ECN Capital within the meaning of the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario.

The transfer agent and registrar of the ECN Capital Common Shares is Computershare Investor Services Inc. at its principal offices in Toronto, Ontario, Canada.

## MATERIAL CONTRACTS

Following the completion of the Element Arrangement, the following will be the material contracts of ECN Capital, other than contracts entered into in the ordinary course of business:

- (a) the Arrangement Agreement. See “*Arrangements Between Element and ECN Capital*” in this Appendix L and “*The Element Arrangement – Arrangement Agreement*” in the Management Information Circular for particulars of the Arrangement Agreement; and
- (b) the Separation Agreement and the Transition Services Agreement. See “*Arrangements Between Element and ECN Capital*” in this Appendix L and “*The Element Arrangement – Separation Agreement and Ancillary Agreements*” in the Management Information Circular for particulars of the Separation Agreement and the Transition Services Agreement.

Copies of the above material contracts will be available following the completion of the Element Arrangement on ECN Capital’s SEDAR profile at [www.sedar.com](http://www.sedar.com).

## FINANCIAL STATEMENT DISCLOSURE

See Appendix M to the Management Information Circular for the ECN Capital Annual Carve-out Combined Financial Statements and the ECN Capital Interim Carve-out Combined Financial Statements.

See Appendix N to the Management Information Circular for the ECN Capital Pro Forma Financial Statements.

**SCHEDULE "A"**

**BOARD MANDATE**

## **ECN Capital Corp.**

### **BOARD MANDATE**

#### **1. Purpose**

The Board of Directors (the “**Board**”) has the duty to supervise the management of the business and affairs of ECN Capital Corp. (the “**Corporation**”). The Board, directly and through its committees and the chair of the Board (the “**Chair**”), shall provide direction to senior management, generally through the Chief Executive Officer, to pursue the best interests of the Corporation.

#### **2. Composition**

##### ***General***

The composition and organization of the Board, including the number, qualifications and remuneration of directors, the number of Board meetings, Canadian residency requirements, quorum requirements, meeting procedures and notices of meetings are governed by the *Business Corporations Act* (Ontario), applicable Canadian securities laws, applicable stock exchange rules (including the rules of the Toronto Stock Exchange) and the articles and by-laws of the Corporation, in each case as they may be amended and/or replaced from time to time, subject to any exemptions or relief that may be granted from such requirements.

Each director must have an understanding of the Corporation’s principal operational and financial objectives, plans and strategies, and financial position and performance. Directors must have sufficient time to carry out their duties and not assume responsibilities that would materially interfere with, or be incompatible with, Board membership. Directors who experience a significant change in their personal circumstances, including a change in their principal occupation, are expected to advise the chair of the Compensation and Corporate Governance Committee.

##### ***Independence***

A majority of the Board must be independent. “Independent” shall have the meaning, as the context requires, given to it in National Policy 58-201 *Corporate Governance Guidelines*, as it may be amended and/or replaced from time to time.

##### ***Chair of the Board***

If the Chair of the Board is not independent, then the independent directors shall select from among their number a director who will act as “Lead Director” and who will assume responsibility for providing leadership to enhance the effectiveness and independence of the Board. The Chair, if independent, or the Lead Director if the Chair is not independent, shall act as the effective leader of the Board and ensure that the Board’s agenda will enable it to successfully carry out its duties.

#### **3. Duties and Responsibilities**

The Board shall have the specific duties and responsibilities outlined below.

##### ***Strategic Planning***

###### **(a) Strategic Plans**

The Board shall adopt a strategic plan for the Corporation. At least annually, the Board shall review and, if advisable, approve the Corporation’s strategic planning process and the Corporation’s annual strategic plan. In discharging this responsibility, the Board shall review the plan in light of management’s

assessment of emerging trends, the competitive environment, the opportunities for the business of the Corporation, risk issues, and significant business practices and products.

(b) **Business and Capital Plans**

At least annually, the Board shall review and, if advisable, approve the Corporation's annual business and capital plans as well as policies and processes generated by management relating to the authorization of major investments and significant allocation of capital.

(c) **Monitoring**

At least annually, the Board shall review management's implementation of the Corporation's strategic, business and capital plans. The Board shall review and, if advisable, approve any material amendments to, or variances from, these plans.

***Risk Management***

(a) **General**

At least annually, the Board shall review reports provided by management and the Credit and Risk Committee of principal risks associated with the Corporation's business and operations, review the implementation by management of appropriate systems to manage these risks, and review reports by management relating to the operation of, and any material deficiencies in, these systems.

(b) **Verification of Controls**

The Board shall verify that internal, financial, non-financial and business control and management information systems have been established by management.

***Human Resource Management***

(a) **General**

At least annually, the Board shall review a report of the Compensation and Corporate Governance Committee concerning the Corporation's approach to human resource management and executive compensation.

(b) **Succession Review**

At least annually, the Board shall review the succession plans of the Corporation for the Chair, the Lead Director, the Chief Executive Officer and other executive officers, including the appointment, training and monitoring of such persons.

(c) **Integrity of Senior Management**

The Board shall, to the extent feasible, satisfy itself as to the integrity of the Chief Executive Officer and other executive officers of the Corporation and that the Chief Executive Officer and other senior officers strive to create a culture of integrity throughout the Corporation.

***Corporate Governance***

(a) **General**

At least annually, the Board shall review a report of the Compensation and Corporate Governance Committee concerning the Corporation's approach to corporate governance.

(b) **Director Independence**

At least annually, the Board shall review a report of the Compensation and Corporate Governance Committee that evaluates the director independence standards established by the Board and the Board's ability to act independently from management in fulfilling its duties.

(c) **Ethics Reporting**

The Board has adopted a written Code of Business Conduct and Ethics (the "**Code**") applicable to directors, officers and employees of the Corporation. At least annually, the Board shall review the report of the Compensation and Corporate Governance Committee relating to compliance with, or material deficiencies from, the Code and approve changes it considers appropriate. The Board shall review reports from the Compensation and Corporate Governance Committee concerning investigations and any resolutions of complaints received under the Code.

(d) **Board of Directors Mandate Review**

At least annually, the Board shall review and assess the adequacy of this Mandate to ensure compliance with any rules of regulations promulgated by any regulatory body and approve any modifications to this Mandate as considered advisable.

**Communications**

(a) **General**

The Board has adopted a Disclosure Policy for the Corporation. At least annually, the Board, in conjunction with the Chief Executive Officer, shall review the Corporation's overall Disclosure Policy, including measures for receiving feedback from the Corporation's stakeholders, and management's compliance with such policy. The Board shall, if advisable, approve material changes to the Corporation's Disclosure Policy.

(b) **Shareholders**

The Corporation endeavors to keep its shareholders informed of its progress through an annual report, annual information form, quarterly interim reports, periodic press releases and other continuous disclosure documentation, as applicable. Directors and management meet with the Corporation's shareholders at the annual meeting and are available to respond to questions at that time. In addition, the Corporation shall maintain a website that is regularly updated and provides investors with relevant information on the Corporation and an opportunity to communicate with the Corporation.

**4. Committees of the Board**

The Board has established the following committees: the Compensation and Corporate Governance Committee, the Audit Committee and the Credit and Risk Committee. Subject to applicable law and regulations, the Board may establish other Board committees or merge or dispose of any such Board committee.

**Committee Mandates**

The Board has approved mandates for each Board committee and shall approve mandates for each new Board committee. At least annually, each committee mandate shall be reviewed by the Compensation and Corporate Governance Committee and any suggested amendments brought to the Board for consideration and approval.

### ***Delegation to Committees***

The Board has delegated to the applicable committee those duties and responsibilities set out in each Board committee's mandate.

### ***Consideration of Committee Recommendations***

As required by applicable law, by applicable committee Mandate or as the Board may consider advisable, the Board shall consider for approval the specific matters delegated for review to Board committees.

### ***Board/Committee Communication***

To facilitate communication between the Board and each Board committee, each committee chair shall provide a report to the Board on material matters considered by the committee at the first Board meeting after the committee's meeting.

## **5. Meetings**

The Board will meet at least once in each quarter, with additional meetings held as deemed advisable. The Chair (in conjunction with the Lead Director, as applicable) is primarily responsible for the agenda and for supervising the conduct of the meeting. Any director may propose the inclusion of items on the agenda, request the presence of, or a report by any member of senior management, or at any Board meeting raise subjects that are not on the agenda for that meeting.

Meetings of the Board shall be conducted in accordance with the Corporation's constating documents.

### ***Secretary and Minutes***

The Corporation's Secretary, his or her designate or any other person the Board requests shall act as secretary of Board meetings. Minutes of Board meetings shall be recorded and maintained by the Secretary and subsequently presented to the Board for approval.

### ***Meetings Without Management***

The independent members of the Board shall hold regularly scheduled meetings, or portions of regularly scheduled meetings, at which non-independent directors and members of management are not present.

### ***Directors' Responsibilities***

Each director is expected to attend all meetings of the Board and any committee of which he or she is a member. Directors will be expected to have read and considered the materials sent to them in advance of each meeting and to actively participate in the meetings.

### ***Access to Management and Outside Advisors***

In discharging the forgoing duties and responsibilities, the Board shall have unrestricted access to management and employees of the Corporation and to the relevant books, records and systems of the Corporation as considered appropriate. The Board shall have the authority to retain legal counsel, consultants or other advisors to assist it in fulfilling its responsibilities. The Corporation shall provide appropriate funding, as determined by the Board, for the services of these advisors.

### ***Service on Other Boards and Audit Committees***

Directors may serve on the boards of other public companies so long as these commitments do not materially interfere and are compatible with their ability to fulfill their duties as a member of the Board.



Directors must advise the Chair in advance of accepting an invitation to serve on the board of another public corporation.

#### **6. Director development and evaluation**

Each new director shall participate in the Corporation's initial orientation program and each director shall participate in the Corporation's continuing director development programs. The Compensation and Corporate Governance Committee shall review with each new member: (i) certain information and materials regarding the Corporation, including the role of the Board and its committees; and (ii) the legal obligations of a director of the Corporation. At least annually, the Board with the assistance of the Compensation and Corporate Governance Committee, shall review the Corporation's initial orientation program and continuing director development programs.

#### **7. No Rights Created**

This Mandate is a statement of broad policies and is intended as a component of the flexible governance framework within which the Board, assisted by its committees, directs the affairs of the Corporation. While it should be interpreted in the context of all applicable laws, regulations and listing requirements, as well as in the context of the Corporation's Articles and By-laws, it is not intended to establish any legally binding obligations.

**SCHEDULE "B"**

**AUDIT COMMITTEE MANDATE**

## ECN Capital Corp.

### AUDIT COMMITTEE MANDATE

#### 1. Introduction

The Audit Committee (the “**Committee**” or the “**Audit Committee**”) of ECN Capital Corp. (the “**Corporation**”) is a committee of the Board of Directors (the “**Board**”). The Committee shall oversee the accounting and financial reporting practices of the Corporation and the audits of the Corporation’s financial statements and exercise the responsibilities and duties set out in this Audit Committee Mandate (this “**Mandate**”).

#### 2. Membership

##### *Number of Members*

The Committee shall be composed of three or more members of the Board.

##### *Independence of Members*

Each member of the Committee must be independent. “Independent” shall have the meaning, as the context requires, given to it in National Instrument 52-110 *Audit Committees*, as may be amended and/or replaced from time to time.

##### *Chair*

At the time of the annual appointment of the members of the Audit Committee, the Board shall appoint a Chair of the Audit Committee. The Chair shall be a member of the Audit Committee, preside over all Audit Committee meetings, coordinate the Audit Committee’s compliance with this Mandate, work with management to develop the Audit Committee’s annual work-plan and provide reports of the Audit Committee to the Board.

##### *Financial Literacy of Members*

At the time of his or her appointment to the Committee, each member of the Committee shall have, or shall acquire within a reasonable time following appointment to the Committee, the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the Corporation’s financial statements.

##### *Term of Members*

The members of the Committee shall be appointed annually by the Board. Each member of the Committee shall serve at the pleasure of the Board until the member resigns, is removed, or ceases to be a member of the Board. Unless a Chair is elected by the Board, the members of the Committee may designate a Chair by majority vote of the full Committee membership.

#### 3. Meetings

##### *Number of Meetings*

The Committee may meet as many times per year as necessary to carry out its responsibilities.

### ***Calling of Meetings***

The Chair, any member of the Audit Committee, the external auditors, the Chair of the Board or Lead Director, or the Chief Executive Officer or the Chief Financial Officer may call a meeting of the Audit Committee by notifying the Corporation's Secretary who will notify the members of the Audit Committee. The Chair shall chair all Audit Committee meetings that he or she attends, and in the absence of the Chair, the members of the Audit Committee present may appoint a chair from their number for a meeting.

### ***Minutes; Reporting to the Board***

The Committee shall maintain minutes or other records of meetings and activities of the Committee in sufficient detail to convey the substance of all discussions held. Upon approval of the minutes by the Committee, the minutes shall be circulated to the members of the Board. However, the Chair may report orally to the Board on any matter in his or her view requiring the immediate attention of the Board.

### ***Attendance of Non-Members***

The external auditors are entitled to attend and be heard at each Committee meeting. In addition, the Committee may invite to a meeting any officers or employees of the Corporation, legal counsel, advisors and other persons whose attendance it considers necessary or desirable in order to carry out its responsibilities. At least once per year, the Committee shall meet with management in separate sessions to discuss any matters that the Committee or such individuals consider appropriate.

### ***Meetings without Management***

The Committee shall hold unscheduled or regularly scheduled meetings, or portions of meetings, at which management is not present.

### ***Procedure***

The procedures for calling, holding, conducting and adjourning meetings of the Committee shall be the same as those applicable to meetings of the Board.

### ***Access to Management and Outside Advisors***

In discharging the forgoing duties and responsibilities, the Audit Committee shall have unrestricted access to management and employees of the Corporation and to the relevant books, records and systems of the Corporation as considered appropriate. The Audit Committee shall have the authority to retain external legal counsel, consultants or other advisors to assist it in fulfilling its responsibilities. The Corporation shall provide appropriate funding, as determined by the Board, for the services of these advisors.

## **4. Duties and Responsibilities**

The Committee shall have the functions and responsibilities set out below as well as any other functions that are specifically delegated to the Committee by the Board and that the Board is authorized to delegate by applicable laws and regulations. In addition to these functions and responsibilities, the Committee shall perform the duties required of an audit committee by any exchange upon which securities of the Corporation are traded, or any governmental or regulatory body exercising authority over the Corporation, as are in effect from time to time (collectively, the "**Applicable Requirements**").

## **Financial Reports**

### **(a) General**

The Audit Committee is responsible for overseeing the Corporation's financial statements and financial disclosures. Management is responsible for the preparation, presentation and integrity of the Corporation's financial statements and financial disclosures and for the appropriateness of the accounting principles and the reporting policies used by the Corporation. The auditors are responsible for auditing the Corporation's annual consolidated financial statements and for reviewing the Corporation's unaudited interim financial statements.

### **(b) Review of Annual Financial Reports**

The Audit Committee shall review the annual consolidated audited financial statements of the Corporation, the auditors' report thereon and the related management's discussion and analysis of the Corporation's financial condition and results of operation ("**MD&A**"). After completing its review, if advisable, the Audit Committee shall approve and recommend for Board approval the annual financial statements and the related MD&A.

### **(c) Review of Interim Financial Reports**

The Audit Committee shall review the interim consolidated financial statements of the Corporation, the auditors' review report thereon and the related MD&A. After completing its review, if advisable, the Audit Committee shall approve and recommend for Board approval the interim financial statements and the related MD&A.

### **(d) Review Considerations**

In conducting its review of the annual financial statements or the interim financial statements, the Audit Committee shall:

- (i) meet with management and the auditors to discuss the financial statements and MD&A;
- (ii) review the disclosure in the financial statements;
- (iii) review the audit report or review report prepared by the auditors;
- (iv) discuss with management, the auditors and legal counsel, as requested, any litigation claim or other contingency that could have a material effect on the financial statements;
- (v) review the accounting policies followed and critical accounting and other significant estimates and judgements underlying the financial statements as presented by management;
- (vi) review any material effects of regulatory accounting initiatives or off-balance sheet structures on the financial statements as presented by management, including requirements relating to complex or unusual transactions, significant changes to accounting principles and alternative treatments under Canadian generally accepted accounting principles applicable to publicly accountable enterprises;
- (vii) review any material changes in accounting policies and any significant changes in accounting practices and their impact on the financial statements as presented by management;

- (viii) review management's report on the effectiveness of internal controls over financial reporting;
- (ix) review the factors identified by management as factors that may affect future financial results;
- (x) review results of the Corporation's audit committee whistleblower hotline program; and
- (xi) review any other matters related to the financial statements that are brought forward by the auditors, management or which are required to be communicated to the Audit Committee under accounting policies, auditing standards or Applicable Requirements.

(e) **Approval of Other Financial Disclosures**

The Audit Committee shall review and, if advisable, approve and recommend for Board approval financial disclosure in a prospectus or other securities offering document of the Corporation, press releases disclosing, or based upon, financial results of the Corporation and any other material financial disclosure, including financial guidance provided to analysts, rating agencies or otherwise publicly disseminated.

**Auditors**

(a) **General**

The Audit Committee shall be responsible for oversight of the work of the auditors, including the auditors' work in preparing or issuing an audit report, performing other audit, review or attest services or any other related work.

(b) **Nomination and Compensation**

The Audit Committee shall review and, if advisable, select and recommend for Board approval the external auditors to be nominated and the compensation of such external auditor. The Audit Committee shall have ultimate authority to approve all audit engagement terms and fees, including the auditors' audit plan.

(c) **Resolution of Disagreements**

The Audit Committee shall resolve any disagreements between management and the auditors as to financial reporting matters brought to its attention.

(d) **Discussions with Auditors**

At least annually, the Audit Committee shall discuss with the auditors such matters as are required by applicable auditing standards to be discussed by the auditors with the Audit Committee.

(e) **Audit Plan**

At least annually, the Audit Committee shall review a summary of the auditors' annual audit plan. The Audit Committee shall consider and review with the auditors any material changes to the scope of the plan.

(f) **Quarterly Review Report**

The Audit Committee shall review a report prepared by the auditors in respect of each of the interim financial statements of the Corporation.

(g) **Independence of Auditors**

At least annually, and before the auditors issue their report on the annual financial statements, the Audit Committee shall obtain from the auditors a formal written statement describing all relationships between the auditors and the Corporation; discuss with the auditors any disclosed relationships or services that may affect the objectivity and independence of the auditors; and obtain written confirmation from the auditors that they are objective and independent within the meaning of the applicable Rules of Professional Conduct/Code of Ethics adopted by the provincial institute or order of chartered accountants to which the auditors belong and other Applicable Requirements. The Audit Committee shall take appropriate action to oversee the independence of the auditors.

(h) **Evaluation and Rotation of Lead Partner**

At least annually, the Audit Committee shall review the qualifications and performance of the lead partner(s) of the auditors and determine whether it is appropriate to adopt or continue a policy of rotating lead partners of the external auditors.

(i) **Requirement for Pre-Approval of Non-Audit Services**

The Audit Committee shall approve in advance any retainer of the auditors to perform any non-audit service to the Corporation (together with all non-audit service fees) that it deems advisable in accordance with Applicable Requirements and Board approved policies and procedures. The Audit Committee shall consider the impact of such service and fees on the independence of the auditor. The Audit Committee may delegate pre-approval authority to a member of the Audit Committee. The decisions of any member of the Audit Committee to whom this authority has been delegated must be presented to the full Audit Committee at its next scheduled Audit Committee meeting.

(j) **Approval of Hiring Policies**

The Audit Committee shall review and approve the Corporation's hiring policies regarding partners, employees and former partners and employees of the present and former external auditors of the Corporation.

(k) **Financial Executives**

The Committee shall review and discuss with management the appointment of key financial executives and recommend qualified candidates to the Board, as appropriate.

**Internal Controls**

(a) **General**

The Audit Committee shall review the Corporation's system of internal controls.

(b) **Establishment, Review and Approval**

The Audit Committee shall require management to implement and maintain appropriate systems of internal controls in accordance with Applicable Requirements, including internal controls over financial reporting and disclosure and to review, evaluate and approve these procedures. At least annually, the Audit Committee shall consider and review with management and the auditors:

- (i) the effectiveness of, or weaknesses or deficiencies in: the design or operation of the Corporation's internal controls (including computerized information system controls and security); the overall control environment for managing business risks; and accounting, financial and disclosure controls (including, without limitation, controls over financial reporting), non-financial controls, and legal and regulatory controls and the impact of any identified weaknesses in internal controls on management's conclusions;
- (ii) any significant changes in internal controls over financial reporting that are disclosed, or considered for disclosure, including those in the Corporation's periodic regulatory filings;
- (iii) any material issues raised by any inquiry or investigation by the Corporation's regulators;
- (iv) the Corporation's fraud prevention and detection program, including deficiencies in internal controls that may impact the integrity of financial information, or may expose the Corporation to other significant internal or external fraud losses and the extent of those losses and any disciplinary action in respect of fraud taken against management or other employees who have a significant role in financial reporting; and
- (v) any related significant issues and recommendations of the auditors together with management's responses thereto, including the timetable for implementation of recommendations to correct weaknesses in internal controls over financial reporting and disclosure controls.

### ***Compliance with Legal and Regulatory Requirements***

The Audit Committee shall review reports from the Corporation's Secretary and other management members on: legal or compliance matters that may have a material impact on the Corporation; the effectiveness of the Corporation's compliance policies; and any material communications received from regulators. The Audit Committee shall review management's evaluation of and representations relating to compliance with specific applicable law and guidance, and management's plans to remediate any deficiencies identified.

### ***Audit Committee Hotline Whistleblower Procedures***

The Audit Committee shall establish for (a) the receipt, retention, and treatment of complaints received by the Corporation regarding accounting, internal accounting controls, or auditing matters; and (b) the confidential, anonymous submission by employees of the Corporation of concerns regarding questionable accounting or auditing matters. Any such complaints or concerns that are received shall be reviewed by the Audit Committee and, if the Audit Committee determines that the matter requires further investigation, it will direct the Chair of the Audit Committee to engage outside advisors, as necessary or appropriate, to investigate the matter and will work with management and the general counsel to reach a satisfactory conclusion.

### ***Audit Committee Disclosure***

The Audit Committee shall prepare, review and approve any audit committee disclosures required by Applicable Requirements in the Corporation's disclosure documents.



### ***Delegation***

The Audit Committee may, to the extent permissible by Applicable Requirements, designate a sub-committee to review any matter within this Mandate as the Audit Committee deems appropriate.

#### **5. No Rights Created**

This Mandate is a statement of broad policies and is intended as a component of the flexible governance framework within which the Audit Committee, functions. While it should be interpreted in the context of all applicable laws, regulations and listing requirements, as well as in the context of the Corporation's Articles and By-laws, it is not intended to establish any legally binding obligations.

#### **6. Mandate Review**

The Committee shall review and update this Mandate annually and present it to the Board for approval.

**APPENDIX M**

**ECN CAPITAL CARVE-OUT COMBINED FINANCIAL STATEMENTS**

Interim Condensed Carve-out Combined Financial Statements

**ECN Capital Corp.**

March 31, 2016

ECN Capital Corp.

**INTERIM CARVE-OUT COMBINED STATEMENTS OF  
FINANCIAL POSITION**

[unaudited, in thousands of Canadian dollars]

	<b>As at March 31, 2016</b>	<b>As at December 31, 2015</b>
	\$	\$
<b>ASSETS</b>		
Restricted funds <i>[notes 5 and 10]</i>	189,252	222,530
Finance receivables <i>[note 3]</i>	3,104,034	3,129,794
Equipment under operating leases <i>[note 4]</i>	2,551,178	2,692,731
Accounts receivable and other assets	44,045	44,853
Notes receivable <i>[note 9]</i>	26,813	27,338
Derivative financial instruments <i>[note 10]</i>	716	4,014
Property, equipment and leasehold improvements	713	678
Intangible assets	23,406	25,565
Deferred tax assets	21,235	16,674
Goodwill	7,857	8,074
	<b>5,969,249</b>	<b>6,172,251</b>
<b>LIABILITIES AND NET INVESTMENT</b>		
<b>Liabilities</b>		
Accounts payable and accrued liabilities	49,311	57,080
Derivative financial instruments <i>[note 10]</i>	22,122	17,747
Secured borrowings <i>[note 5]</i>	4,383,876	4,471,392
Deferred tax liabilities	11,939	34,621
<b>Total liabilities</b>	<b>4,467,248</b>	<b>4,580,840</b>
<b>Net investment <i>[note 6]</i></b>	<b>1,502,001</b>	<b>1,591,411</b>
	<b>5,969,249</b>	<b>6,172,251</b>

*See accompanying notes*

**ECN Capital Corp.**

**INTERIM CARVE-OUT COMBINED STATEMENTS  
OF OPERATIONS**

[unaudited, in thousands of Canadian dollars]

	<b>Three months ended March 31, 2016 \$</b>	<b>Three months ended March 31, 2015 \$</b>
<b>NET FINANCIAL INCOME</b>		
Interest income	49,472	42,700
Rental revenue, net <i>[note 4]</i>	44,541	25,981
	<b>94,013</b>	68,681
Interest expense	40,403	27,431
Net interest income before provision for credit losses	53,610	41,250
Provision for credit losses <i>[note 3]</i>	3,861	2,963
Net interest income	49,749	38,287
Other revenues <i>[note 8]</i>	6,175	12,340
	<b>55,924</b>	50,627
<b>OPERATING EXPENSES</b>		
Salaries, wages and benefits	8,056	8,067
General and administrative expenses	7,193	4,574
Share-based compensation <i>[note 7]</i>	2,070	2,293
	<b>17,319</b>	14,934
<b>BUSINESS ACQUISITION COSTS</b>		
Amortization of intangible assets from acquisitions	650	263
Income before income taxes	37,955	35,430
Provision for (recovery of) income taxes	8,892	7,374
<b>Net income for the period</b>	<b>29,063</b>	28,056

*See accompanying notes*

**ECN Capital Corp.**

**INTERIM CARVE-OUT COMBINED STATEMENTS  
OF COMPREHENSIVE INCOME (LOSS)**

[unaudited, in thousands of Canadian dollars]

	<b>Three months ended March 31, 2016 \$</b>	<b>Three months ended March 31, 2015 \$</b>
<b>Net income for the period</b>	<b>29,063</b>	28,056
<b>OTHER COMPREHENSIVE INCOME</b>		
Income subject to reclassification:		
Cash flow and foreign exchange hedges <i>[note 10]</i>	(3,729)	(25,402)
Net unrealized foreign exchange gain	(17,877)	69,507
	<b>(21,606)</b>	44,105
Deferred tax recovery	2,776	8,552
<b>Total other comprehensive income</b>	<b>(24,382)</b>	35,553
<b>Comprehensive income for the period</b>	<b>4,681</b>	63,609

*See accompanying notes*

**ECN Capital Corp.**

**INTERIM CARVE-OUT COMBINED STATEMENTS OF  
NET INVESTMENT**

[unaudited, in thousands of Canadian dollars]

	<b>Element's net investment</b>	<b>Accumulated other comprehensive income</b>	<b>Total net investment</b>
	\$	\$	\$
Balance, December 31, 2015	<b>1,403,325</b>	<b>188,086</b>	<b>1,591,411</b>
Comprehensive income for the period	<b>29,063</b>	<b>(24,382)</b>	<b>4,681</b>
Net adjustments to owner's net investment	<b>(95,735)</b>	—	<b>(95,735)</b>
Employee stock option expense <i>[note 7]</i>	<b>1,644</b>	—	<b>1,644</b>
Balance, March 31, 2016	<b>1,338,297</b>	<b>163,704</b>	<b>1,502,001</b>
Balance, December 31, 2014	938,638	46,855	985,493
Comprehensive income for the period	28,056	35,553	63,609
Net adjustments to owner's net investment	292,021	—	292,021
Employee stock option expense <i>[note 7]</i>	1,826	—	1,826
Balance, March 31, 2015	1,260,541	82,408	1,342,949

*See accompanying notes*

**ECN Capital Corp.**

**INTERIM CARVE-OUT COMBINED STATEMENTS OF CASH FLOWS**

[unaudited, in thousands of Canadian dollars]

	<b>Three months ended March 31, 2016 \$</b>	<b>Three months ended March 31, 2015 \$</b>
<b>OPERATING ACTIVITIES</b>		
<b>Net income for the year</b>	<b>29,063</b>	28,056
Items not affecting cash		
Share-based compensation	1,644	1,826
Depreciation of property, equipment and leasehold improvements	71	44
Amortization of intangible assets, including from acquisitions	724	276
Amortization of deferred lease costs	3,138	3,004
Amortization of deferred financing costs	2,829	1,860
Amortization of equipment under operating leases	16,822	8,671
Provision for credit losses	3,861	2,963
	<b>58,152</b>	46,700
Changes in non-cash operating asset and liabilities		
Accounts receivable and other assets	(35)	(16,599)
Accounts payable and accrued liabilities	(4,456)	(61,268)
Investment in finance receivables	(426,010)	(473,746)
Repayments of finance receivables	313,255	273,819
Investment in equipment under operating leases	(51,317)	(174,090)
Proceeds on disposals of equipment under operating leases	9,608	91
Syndications of finance receivables	2,635	6,259
Deferred tax assets	5,297	10,880
Deferred tax liabilities	(21,230)	3,425
Derivative financial instruments	(6,482)	(6,943)
<b>Cash used in operating activities</b>	<b>(120,583)</b>	<b>(391,472)</b>
<b>INVESTING ACTIVITIES</b>		
Increase in restricted funds	29,686	18,390
Increase in notes receivable	525	(1,883)
Purchase of property, equipment and leasehold	(153)	(81)
Proceeds on disposals of property, equipment and leasehold improvements, and intangible assets	75	—
Purchase of intangible assets	(119)	(38)
<b>Cash used in investing activities</b>	<b>30,014</b>	16,388
<b>FINANCING ACTIVITIES</b>		
Change in owner's net investment	(95,735)	292,021
Issuance of secured borrowings, net	198,062	89,590
Increase in deferred financing costs	(11,758)	(6,527)
<b>Cash provided by financing activities</b>	<b>90,569</b>	375,084
<b>Net increase (decrease) in cash during the year</b>	<b>—</b>	<b>—</b>
Cash, beginning of year	—	—
<b>Cash, end of year</b>	<b>—</b>	<b>—</b>

*See accompanying notes*



## **NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### **1. BACKGROUND AND BASIS OF PRESENTATION**

On February 16, 2016, the Board of Directors of Element Financial Corporation ["Element"] approved a plan to separate Element into two publicly-traded companies. The plan involves the separation of the portion of Element and its subsidiaries comprising Commercial and Vendor ["C&V"] Finance, Rail Finance, and Aviation Finance verticals from the existing corporate structure into ECN Capital Corp. ["ECN Capital" or the "Company"], a newly created publicly traded company. The Fleet Management vertical will be renamed Element Fleet Management Corp. ["Element Fleet"] and will continue to operate within the existing corporate structure.

The proposed separation of Element into ECN Capital and Element Fleet [the "Arrangement"] would be implemented through a court approved plan of arrangement and is subject to regulatory, court and shareholder approvals. Upon completion of the Arrangement, Element shareholders would receive one ECN Capital common share for each Element common share held.

The carve-out combined financial statements of ECN Capital have been prepared in connection with the Arrangement and present the carve-out combined financial position, results of operations, changes in Element's net investment and cash flows of the C&V Finance, Rail Finance, and Aviation Finance verticals as if they had operated as a stand-alone entity. The carve-out combined financial statements have been derived from the accounting records of Element on a carve-out basis and should be read in conjunction with Element's annual audited consolidated financial statements and the notes thereto for the year ended December 31, 2015 and Element's interim condensed consolidated financial statements and the notes thereto for the 3-month period ending March 31, 2016.

The carve-out combined financial statements have been prepared by management in accordance with International Accounting Standard 34, *Interim Financial Reporting* as issued by the International Accounting Standards Board. As the carve-out combined financial statements represent portions of Element's business, which were not previously organized into a single legal entity, the net assets of ECN Capital have been reflected as Element's net investment.

Element has organized its activities and operations around four verticals: [i] Fleet Management; [ii] Rail Finance; [iii] Commercial and Vendor Finance; and [iv] Aviation Finance. The majority of the assets and liabilities in the carve-out combined statement of financial position of ECN Capital have been derived from this vertical organization. Element does not specifically distinguish payments due to or due from operations, but rather considers all such amounts, including retained earnings, to be part of a capital pool that is allocated between Element's net investment and the

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

allocated portion of secured borrowing on the basis of a computed financial leverage ratio in the carve-out combined financial statements. Element uses a centralized approach to cash management under which cash deposits are transferred to Element on a daily basis and are pooled with other Element entities. As a result, none of Element's cash has been allocated to the carve-out combined financial statements and changes in net cash usage have been reflected in net adjustments to owner's net investment in the carve-out combined statements of net investment. Additionally, certain corporate assets of Element that related to ECN Capital have been included in the carve-out combined statement of financial position of ECN Capital.

The carve-out combined statements of operations reflect intercompany expense allocations made to the Company by Element for certain corporate functions, shared services, and employee related costs. Where possible, these allocations were made on a specific identification basis, and when specific identification was not possible, these expenses were allocated by Element based on relative percentages of net average earning assets or some other basis depending on the nature of the allocated cost. The carve-out combined statements of operations reflect an allocation of interest expense based upon the funding cost attributable to the allocated portion of secured borrowing, which was determined on the basis of the financial leverage ratio referenced above.

Management believes both the assumptions and the allocations underlying the carve-out combined financial statements of ECN Capital are reasonable. However, as a result of the basis of presentation described above, the carve-out combined financial statements may not be indicative of ECN Capital's results of operations, financial position and cash flows in the future or of what ECN Capital's operations, financial position and cash flows would have been if ECN Capital had operated as a stand-alone company.

The carve-out combined financial statements were authorized for issuance by the Board of Directors of Element on July 21, 2016.

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

These statements have been prepared in conformity with accounting policies disclosed in the carve-out combined financial statements for the year ended December 31, 2015. These interim condensed carve-out combined financial statements should be read in conjunction with the carve-out combined financial statements of the Company as at and for the year ended December 31, 2015, which include information necessary or useful to understanding the Company's business and financial statement presentation. The results reported in these interim condensed carve-out combined financial statements should not be regarded as necessarily indicative of results that may be expected for the entire year.

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### 3. FINANCE RECEIVABLES

The following tables present finance receivables based on the type of contract:

	March 31, 2016		
	Leases	Loans	Total
	\$	\$	\$
Minimum lease payments	1,389,719	2,016,662	3,406,381
Unguaranteed residual values	225,107	—	225,107
Gross investment	1,614,826	2,016,662	3,631,488
Unearned income	(289,791)	(234,458)	(524,249)
<b>Net investment</b>	<b>1,325,035</b>	<b>1,782,204</b>	<b>3,107,239</b>
Net realizable value of impaired receivables	2,862	4,460	7,322
Unamortized deferred costs and subsidies	12,541	6,862	19,403
Security deposits	(19,483)	(2,039)	(21,522)
Other receivables	8,617	830	9,447
Allowance for credit losses	(8,539)	(9,316)	(17,855)
<b>Total</b>	<b>1,321,033</b>	<b>1,783,001</b>	<b>3,104,034</b>

	December 31, 2015		
	Leases	Loans	Total
	\$	\$	\$
Minimum lease payments	1,466,475	2,029,985	3,496,460
Unguaranteed residual values	215,879	—	215,879
Gross investment	1,682,354	2,029,985	3,712,339
Unearned income	(298,886)	(255,374)	(554,260)
<b>Net investment</b>	<b>1,383,468</b>	<b>1,774,611</b>	<b>3,158,079</b>
Net realizable value of impaired receivables	3,581	448	4,029
Unamortized deferred costs and subsidies	10,700	9,022	19,722
Security deposits	(32,228)	(1,357)	(33,585)
Other receivables	1,105	838	1,943
Allowance for credit losses	(8,332)	(12,062)	(20,394)
<b>Total</b>	<b>1,358,295</b>	<b>1,771,500</b>	<b>3,129,794</b>

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

The following table presents delinquency status of the net investment in finance receivables by contract balance:

	<b>March 31, 2016</b>		<b>December 31, 2015</b>	
	\$	%	\$	%
31-60 days past due	13,132	0.42	8,952	0.28
61-90 days past due	4,018	0.13	2,612	0.08
Greater than 90 days past due	2,136	0.07	3,030	0.10
Total past due	<b>19,286</b>	<b>0.62</b>	14,594	0.46
Current	<b>3,087,953</b>	<b>99.38</b>	3,143,485	99.54
	<b>3,107,239</b>	<b>100.00</b>	3,158,079	100.00

**Selected characteristics of the finance receivables**

	<b>March 31, 2016</b>		<b>December 31, 2015</b>	
	Leases	Loans	Leases	Loans
Net investment	\$ 1,325,035	\$ 1,782,204	\$ 1,383,468	\$ 1,774,611
Weighted average fixed interest rate	7.37 %	6.28 %	7.46 %	6.35 %
Weighted average floating interest rate	n/a %	5.05 %	n/a %	5.10 %
Percentage of portfolio with fixed interest rate	<b>100.00 %</b>	<b>76.80 %</b>	100.00 %	76.08 %

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**Allowance for credit losses**

An analysis of the Company's allowance for credit losses is as follows for the periods ended:

	<b>Three-month period ended March 31, 2016</b>	<b>Year ended December 31, 2015</b>
	\$	\$
<b>Allowance for credit losses, beginning of period</b>	<b>20,394</b>	14,120
Provision for credit losses	<b>3,861</b>	17,730
Charge-offs, net of recoveries	<b>(5,458)</b>	(13,559)
Impact of foreign exchange rates	<b>(942)</b>	2,103
<b>Allowance for credit losses, end of period</b>	<b>17,855</b>	20,394
Allowance as a percentage of finance receivables	<b>0.57%</b>	0.65%
Finance receivables in arrears [90 days and over]	<b>2,136</b>	3,030
Arrears [90 days and over] as a percentage of net investment in finance receivables	<b>0.07%</b>	0.10%
Impaired receivables, at estimated net realizable value	<b>7,322</b>	4,029

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### 4. EQUIPMENT UNDER OPERATING LEASES

The Company acts as a lessor in connection with operating leases and continues to recognize the leased assets in its carve-out combined statements of financial position. The lease payments received, net of depreciation, are recognized in net income as rental revenue, net.

	<b>March 31, 2016</b>		
	<b>Railcar</b>	<b>Aviation</b>	<b>Total</b>
	\$	\$	\$
<b>Cost</b>	2,287,342	350,364	2,637,706
<b>Accumulated depreciation</b>	56,917	29,611	86,528
<b>Net carrying amount</b>	2,230,425	320,753	2,551,178
	<b>December 31, 2015</b>		
	<b>Railcar</b>	<b>Aviation</b>	<b>Total</b>
	\$	\$	\$
<b>Cost</b>	2,390,989	376,283	2,767,272
<b>Accumulated depreciation</b>	48,931	25,610	74,541
<b>Net carrying amount</b>	2,342,058	350,673	2,692,731

Rental revenue, net, consists of the following for the three-month period ended March 31:

	<b>March 31, 2016</b>	<b>March 31, 2015</b>
	\$	\$
Rental revenue	61,363	34,652
Amortization of equipment under operating leases	(16,822)	(8,671)
	44,541	25,981

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### 5. SECURED BORROWINGS

Secured borrowings outstanding were as follows:

March 31, 2016				
	Balance outstanding	Weighted average interest rate (1)	Pledged finance receivables and equipment under operating leases	Cash reserves
	\$	%	\$	\$
Life insurance company term funding facilities	390,462	3.19%	380,587	42,376
Securitization programs	1,060,113	2.26%	1,355,828	40,163
Asset-backed securities	1,458,562	3.92%	1,816,573	43,623
Term senior credit facility (2)	1,504,501	2.52%	—	—
	<b>4,413,648</b>	<b>3.01%</b>	<b>3,552,988</b>	<b>126,162</b>
Deferred financing costs	<u>(29,762)</u>			
	<b>4,383,876</b>			
December 31, 2015				
	Balance outstanding	Weighted average interest rate (1)	Pledged finance receivables and equipment under operating leases	Cash reserves
	\$	%	\$	\$
Life insurance company term funding facilities	444,128	3.21%	426,699	45,921
Securitization programs	1,038,048	2.30%	1,325,814	41,621
Asset-backed securities	980,503	3.41%	1,185,449	25,140
Term senior credit facility (2)	2,029,816	2.60%	—	—
	<b>4,492,495</b>	<b>2.79%</b>	<b>2,937,962</b>	<b>112,682</b>
Deferred financing costs	<u>(21,103)</u>			
	<b>4,471,392</b>			

(1) Represents the weighted average stated interest rate of outstanding debt at year end, and excludes amortization of deferred financing costs, premiums or discounts, stand-by fees and the effects of hedging.

(2) Revolving senior credit facility is secured by a general security agreement in favour of the lenders consisting of a first priority interest on all property.

The Company was in compliance with all financial and reporting covenants with all of its lenders as at March 31, 2016.



## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### **Life insurance company term funding facilities**

During the first quarter of 2016 and as a result of a similar increase in the Company's term revolving senior credit facility, the Company reduced the size of its unutilized commitment from the Canadian life insurance companies by \$100 million subject to further reset as the commitment is utilized.

As at March 31, 2016, the Company has access to committed lines of funding of \$470,390 from four Canadian life insurance companies [December 31, 2015 – \$470,091 from four Canadian life insurance companies]. As at March 31, 2016, the Company has access to \$227,643 [December 31, 2015 – \$245,855] of available financing under its life insurance company term funding facilities.

### **Securitization programs**

During the first quarter of 2016, the Company increased its program with a Canadian bank to a committed facility of \$250,000, an increase of \$100,000.

As at March 31, 2016, the Company has available capacity of \$329,934 [December 31, 2015 – \$336,986] from these securitization programs.

### **Asset-backed securities**

During the first quarter of 2016, the Company entered into a secured borrowing agreement for US \$422,841 to fund eligible pools of assets in the Rail Finance vertical. These asset-backed securities were issued in three tranches and have a weighted average fixed interest rate of 4.76% and a weighted average life of 5.9 years. Of the total notes issued, US \$142,486 are due to a subsidiary of Element as at March 31, 2016.

### **Term senior credit facility**

The term senior credit facility represents the Company's allocated portion of Element's \$7,379,222 senior revolving facility. Element will retain the legal obligations associated with the facility and, as a result, the amounts presented on the Company's carve-out combined statement of financial position represent intercompany balances between the Element and the Company with the same terms and conditions as Element's facility. The Company's allocated portion of the drawn amount, and the associated interest expense, has been calculated based on the Company's unencumbered assets that constituted its average borrowing base during the respective period. If

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

the Arrangement is approved, the Company's allocated portion of Element's facility is expected to be replaced with the Company's own term credit facility.

Element's facility has been syndicated to a group 24 Canadian, US and international banks and has a maturity date of August 31, 2018. The facility bears interest at the prime rate plus 0.45% or 1-month bankers' acceptance rate plus 1.45% per annum on outstanding Canadian denominated balances and US base rate plus 0.45% per annum or 1-month LIBOR rate plus 1.45% per annum on outstanding US denominated balances. The term senior credit facility is secured by a general security agreement in favour of the lenders consisting of a first priority interest on all property.

### **Restricted funds**

Restricted funds include [i] cash reserves of \$126,162 as at March 31, 2016 [December 31, 2015 – \$112,682], which represents collateral for secured borrowing arrangements; and [ii] cash accumulated in the collection account of \$37,073 as at March 31, 2016 [December 31, 2015 – \$93,755], which represents repayments received on assets financed pursuant to the secured borrowing facilities, which are subsequently remitted back to the facilities on specific dates.

## **6. NET INVESTMENT**

Element's investment in the operations of ECN Capital is presented as net investment in the carve-out combined financial statements. Element's net investment represents capital invested, accumulated retained earnings of the operations less the accumulated net distributions to Element, and accumulated other comprehensive income of the operations.

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**7. SHARE-BASED COMPENSATION**

Share-based compensation expense consists of the following for the three-month period ended March 31:

	2016 \$	2015 \$
[a] Stock options	1,644	1,826
[b] Deferred share units ["DSUs"]	—	—
[c] Performance share units ["PSUs"]	426	467
	<b>2,070</b>	<b>2,293</b>
Allocated as:		
Share-based compensation	2,070	2,293
Transaction and integration costs	—	—
	<b>2,070</b>	<b>2,293</b>

Element grants stock options, deferred share units and performance share units to employees of the Company, the stock-based compensation recognized on the combined statements of operations of the Company represent the stock-based compensation for grants to a direct employee of the Company for services provided to the Company, and exclude grants to employees of the Company that relate to services provided to Element. DSU and PSUs are shown net of Element hedged amounts.

**8. OTHER REVENUES**

Other revenues consist of the following for the three-month periods ended March 31:

	2016 \$	2015 \$
Syndication fees	1,498	1,209
Capital advisory fees	1,316	6,419
Prepayment charges	1,539	1,727
Other	1,822	2,984
	<b>6,175</b>	<b>12,340</b>

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**9. RELATED PARTY TRANSACTIONS**

**Corporate allocations**

Element utilizes a centralized corporate platform to provide shared services for general and administrative functions to the Company. These shared services include, but are not limited to, remuneration of directors and key management personnel of Element and support associated with information technology, enterprise risk management, internal audit, human resources, accounting and communications. The Company is also allocated expenses for insurance, bank fees, external audit fees and for costs to manage the overall corporate function of Element. Where possible, these allocations were made on a specific identification basis. Where specific identification was not possible, these expenses were allocated by Element based on relative percentages of net average earning assets. Corporate overhead allocations and allocated expenses recorded within salaries, wages and benefits for the three-month period ended March 31, 2016 were \$1,322 [2015 – \$471]. Corporate overhead allocations and allocated expenses recorded within general and administrative expense for the three-month period ended March 31, 2016 were \$1,046 [2015 – \$892].

**C&V and Aviation Allocations**

The majority of the assets and liabilities in the carve-out combined statement of financial position of the Company have been derived from Element's vertical organization. However, selected assets that have historically been managed within the C&V Finance and Aviation Finance verticals are expected to be retained by Element as part of the Arrangement. These assets, which had a March 31, 2016 carrying value of \$945,359 [December 31, 2015 – \$986,457], have been excluded from the carve-out combined statement of financial position of the Company. In addition, certain direct and indirect operating costs associated with these assets have been excluded from the carve-out combined statement of operations, including both direct costs identified by management and an allocation of certain indirect costs based on net average earning assets. The operating costs excluded from the carve-out statement of operations include salaries, wages and benefits of \$2,760 [March 31, 2015 – \$1,016] and general and administration expenses of \$920 [March 31, 2015 – \$339].

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**Notes receivable**

Notes receivable of \$26,813 as at March 31, 2016 [December 31, 2015 - \$27,338] represent loans to certain employees and officers of the Company. These loans bear interest at a rate of 3% per annum. Interest is payable monthly or annually, and the principal is payable on demand in the event of non-payment of interest. The loans were granted in order to help finance the purchase of the Element's shares and are secured by the shares purchased with full recourse to the employee.

**10. DERIVATIVE FINANCIAL INSTRUMENTS**

In the normal course of business, and consistent with its risk management program, the Company enters into interest rate derivatives to manage interest rate risk, foreign exchange forward agreements to manage foreign currency exposure, and total return swaps to manage exposure to share-based compensation.

**Cash flow hedging relationships**

The following table presents the fair value changes related to the cash flow hedges included in the Company's results for the three-month periods ended March 31:

	2016 \$	2015 \$
Foreign exchange agreements recorded in other revenue	<b>43,370</b>	(12,422)
Fair value changes recorded in other comprehensive loss	<b>(3,729)</b>	(25,402)

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**Notional amounts and fair values of derivative instruments**

The following table summarizes the notional principal and fair values of the derivative financial instruments outstanding:

	<b>March 31, 2016</b>	<b>December 31, 2015</b>
	\$	\$
<b>Notional principal</b>		
Derivative assets		
Interest rate contracts	42,644	1,097,076
Foreign exchange agreements	367,848	6,755
	410,492	1,103,831
Derivative liabilities		
Interest rate contracts	1,897,599	1,291,669
Foreign exchange agreements	149,213	488,000
	2,046,812	1,779,669
<b>Fair values</b>		
Restricted funds – collateral posted	23,361	16,072
Derivative assets		
Interest rate contracts	110	3,939
Foreign exchange agreements	606	75
	716	4,014
Derivative liabilities		
Interest rate contracts	21,618	11,291
Foreign exchange agreements	504	6,456
	22,122	17,747

**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**Fair values of derivatives designated in hedging relationships**

The following table summarizes the fair values of the derivative financial instruments designated in an accounting hedging relationships, as at:

	<b>March 31, 2016 \$</b>	<b>December 31, 2015 \$</b>
Interest rate contracts		
Foreign exchange agreements	(21,508)	(7,352)
Total return swaps	101	(6,381)
	<b>(21,407)</b>	<b>(13,733)</b>

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### Offsetting of Derivative Assets and Liabilities

The following tables present a summary of the Company's derivative portfolio, which includes the gross amounts of recognized financial assets and liabilities; the amounts offset in the carve-out combined statements of financial position; the net amounts presented in the carve-out combined statements of financial position; the amounts subject to an enforceable master netting arrangement or similar agreement that were not included in the offset amount above; and the amount of cash collateral received or pledged.

	Gross amounts of recognized financial instruments before netting on the Statements of Financial Position	Gross amounts of recognized financial instruments set-off in the Statements of Financial Position	Net amount of financial instruments presented in the Statements of Financial Position	Amounts subject to an enforceable master netting arrangement or similar agreement that are not set-off in the Statements of Financial Position		
				Amounts subject to an enforceable master netting agreement	Collateral	Net Amount
<b>As at March 31, 2016</b>						
Derivative financial instrument assets	716	—	716	716	—	—
Derivative financial instrument liabilities	22,122	—	22,122	716	23,361	(1,955)
<b>As at December 31, 2015</b>						
Derivative financial instrument assets	4,014	—	4,014	1,042	—	2,972
Derivative financial instrument liabilities	17,747	—	17,747	1,052	16,072	623



**NOTES TO INTERIM CONDENSED CARVE-OUT  
COMBINED FINANCIAL STATEMENTS**

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

**11. CAPITAL DISCLOSURES**

The Company's objectives when managing capital are to ensure sufficient liquidity to support its financial objectives and strategic plans, to ensure its financial covenants are met and to maximize shareholder value. The Company defines capitals as the aggregate of Element's net investment, debt, and accounts payable and accrued liabilities.

The Company's capitalization is as follows:

	<b>March 31, 2016</b>	<b>December 31, 2014</b>
	\$	\$
Total debt		
Secured borrowings	4,383,876	4,471,392
Accounts payable and accrued liabilities	49,311	57,080
	<b>4,433,187</b>	<b>4,528,472</b>
Element's net investment	<b>1,502,001</b>	<b>1,591,411</b>
	<b>5,935,188</b>	<b>6,119,883</b>

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

### 12. SEGMENTED INFORMATION

For management purposes, the Company is organized into one business segment, which primarily operates in Canada, the US and Other.

Geographic information as at and for the three-month periods ended March 31, is as follows:

	<b>2016</b>			
	Canada \$	US \$	Other \$	Total \$
<b>Financial revenue</b>	<b>35,578</b>	<b>59,711</b>	<b>1,038</b>	<b>96,327</b>
<b>Interest expense</b>				<b>40,403</b>
<b>Net financial income</b>				<b>55,924</b>
<b>Select assets</b>				
Finance receivables	1,271,383	1,836,830	(4,179)	3,104,034
Equipment under operating leases	392,705	2,094,810	63,663	2,551,178
Goodwill	4,560	3,297	—	7,857
Other	38	24,081	—	24,119
	<b>1,668,686</b>	<b>3,959,018</b>	<b>59,484</b>	<b>5,687,188</b>
	<b>2015</b>			
	Canada \$	US \$	Other \$	Total \$
<b>Financial revenue</b>	<b>41,703</b>	<b>35,063</b>	<b>1,292</b>	<b>78,058</b>
<b>Interest expense</b>				<b>27,431</b>
<b>Net financial income</b>				<b>50,627</b>
<b>Select assets</b>				
Finance receivables	1,518,822	1,603,586	75,676	3,198,084
Equipment under operating leases	207,399	1,394,172	22,482	1,624,053
Goodwill	4,560	1,267	—	5,827
Other	32	23,666	—	23,698
	<b>1,730,813</b>	<b>3,022,691</b>	<b>98,158</b>	<b>4,851,662</b>

## NOTES TO INTERIM CONDENSED CARVE-OUT COMBINED FINANCIAL STATEMENTS

[unaudited, in thousands of Canadian dollars, except where otherwise noted]

March 31, 2016

Geographic net financial income, excluding interest expense ["Financial revenue"] is based on the location of customers and non-current assets are based on the location of the assets.

### 13. FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company estimates the fair value of the following financial instruments using the methodology described below.

#### Valuation methods and assumptions

##### Finance receivables and secured borrowings on finance receivables

The carrying value of finance receivables and secured borrowings approximates fair value. The assertion that the carrying value of the finance receivables approximates fair value requires the use of estimates and significant judgment. The finance receivables were credit-scored based on an internal model which is not used in market transactions. They comprise a large number of transactions with commercial customers in different businesses, are secured by liens on various types of equipment and may be guaranteed by third parties and cross-collateralized. The fair value of any receivable would be affected by a potential buyer's assessment of the transaction's credit quality, collateral value, guarantees, payment history, yield, term, documents and other legal matters, and other subjective considerations. Value received in a fair market sale transaction would be based on the terms of the sale, the buyer's views of the economic and industry conditions, the Company's and the buyer's tax considerations, and other factors.

##### Derivatives

The fair values of derivatives are presented in note 11 and are determined by the derivative counterparty using the related interest rate swap curves, foreign exchange forward values, intrinsic values and/or the Company's stock price for the total return swaps. Derivatives are classified as Level 2 financial instruments, whereby fair value is determined using valuation techniques and observable inputs.

Carve-out Combined Financial Statements

**ECN Capital Corp.**

December 31, 2015

# INDEPENDENT AUDITORS' REPORT

To the Directors of  
**Element Financial Corporation**

We have audited the accompanying carve-out combined financial statements of **ECN Capital Corp.**, which comprise the carve-out combined statements of financial position as at December 31, 2015 and 2014, and the carve-out combined statements of operations, comprehensive income, net investment and cash flows for the years ended December 31, 2015, 2014 and 2013, and a summary of significant accounting policies and other explanatory information.

## **Management's responsibility for the combined carve-out financial statements**

Management of Element Financial Corporation is responsible for the preparation and fair presentation of combined carve-out financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of combined carve-out financial statements that are free from material misstatement, whether due to fraud or error.

## **Auditors' responsibility**

Our responsibility is to express an opinion on these combined carve-out financial statements based on our audits. We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the combined-carve-out financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined carve-out financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the combined carve-out financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the combined carve-out financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the combined carve-out financial statements.

We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the combined carve-out financial statements present fairly, in all material respects, the financial position of **ECN Capital Corp.** as at December 31, 2015 and 2014, and its financial performance and its cash flows for the years ended December 31, 2015, 2014 and 2013 in accordance with International Financial Reporting Standards.

The logo for Ernst & Young LLP is written in a black, cursive script font.

Chartered Professional Accountants  
Licensed Public Accountants

Toronto, Canada  
July 28, 2016

**ECN Capital Corp.**

**CARVE-OUT COMBINED STATEMENTS OF  
FINANCIAL POSITION**

[in thousands of Canadian dollars]

	<b>As at December 31, 2015</b>	<b>As at December 31, 2014</b>
	\$	\$
<b>ASSETS</b>		
Restricted funds <i>[notes 9 and 16]</i>	222,530	186,486
Finance receivables <i>[notes 4]</i>	3,129,794	2,577,845
Equipment under operating leases <i>[note 5]</i>	2,692,731	1,279,670
Accounts receivable and other assets	44,853	21,496
Notes receivable <i>[note 15]</i>	27,338	23,925
Derivative financial instruments <i>[note 16]</i>	4,014	1,702
Property, equipment and leasehold improvements <i>[note 6]</i>	678	374
Intangible assets <i>[note 7]</i>	25,565	21,524
Deferred tax assets <i>[note 13]</i>	16,674	14,571
Goodwill <i>[note 8]</i>	8,074	5,720
	<b>6,172,251</b>	<b>4,133,313</b>
<b>LIABILITIES AND NET INVESTMENT</b>		
<b>Liabilities</b>		
Accounts payable and accrued liabilities	57,080	83,084
Derivative financial instruments <i>[note 16]</i>	17,747	9,985
Secured borrowings <i>[note 9]</i>	4,471,392	3,047,300
Deferred tax liabilities <i>[note 13]</i>	34,621	7,451
<b>Total liabilities</b>	<b>4,580,840</b>	<b>3,147,820</b>
<b>Net investment <i>[note 10]</i></b>	<b>1,591,411</b>	<b>985,493</b>
	<b>6,172,251</b>	<b>4,133,313</b>

*See accompanying notes*

On behalf of the Board:

"William Lovatt"  
Director

"Harold Bridge"  
Director

**ECN Capital Corp.**

**CARVE-OUT COMBINED STATEMENTS  
OF OPERATIONS**

[in thousands of Canadian dollars]

Year ended December 31

	<b>2015</b>	<b>2014</b>	<b>2013</b>
	\$	\$	\$
<b>NET FINANCIAL INCOME</b>			
Interest income	<b>178,557</b>	142,666	89,060
Rental revenue, net <i>[note 5]</i>	<b>133,833</b>	62,645	1,058
	<b>312,390</b>	205,311	90,118
Interest expense	<b>128,843</b>	85,412	36,874
Net interest income before provision for credit losses	<b>183,547</b>	119,899	53,244
Provision for credit losses <i>[note 4]</i>	<b>17,730</b>	14,462	6,301
Net interest income	<b>165,817</b>	105,437	46,943
Other revenues <i>[note 12]</i>	<b>51,851</b>	36,576	17,976
	<b>217,668</b>	142,013	64,919
<b>OPERATING EXPENSES</b>			
Salaries, wages and benefits	<b>32,799</b>	29,280	17,399
General and administrative expenses	<b>24,058</b>	16,043	8,069
Share-based compensation <i>[note 11]</i>	<b>10,366</b>	5,659	1,708
	<b>67,223</b>	50,982	27,176
<b>BUSINESS ACQUISITION COSTS</b>			
Amortization of intangible assets from acquisitions	<b>1,719</b>	305	—
Transaction and integration costs <i>[note 19]</i>	—	3,077	17,366
	<b>1,719</b>	3,382	17,366
Income before income taxes	<b>148,726</b>	87,649	20,377
Provision for (recovery of) income taxes <i>[note 13]</i>	<b>32,530</b>	22,233	5,914
<b>Net income for the year</b>	<b>116,196</b>	65,416	14,463

*See accompanying notes*



**ECN Capital Corp.**

**CARVE-OUT COMBINED STATEMENTS OF  
COMPREHENSIVE INCOME**

[in thousands of Canadian dollars]

Year ended December 31

	<b>2015</b>	<b>2014</b>	<b>2013</b>
	\$	\$	\$
<b>Net income for the year</b>	<b>116,196</b>	65,416	14,463
<b>OTHER COMPREHENSIVE INCOME</b>			
Income subject to reclassification:			
Cash flow and foreign exchange hedges <i>[note 16]</i>	<b>(22,470)</b>	(9,250)	(1,526)
Net unrealized foreign exchange gain	<b>156,238</b>	52,739	2,537
	<b>133,768</b>	43,489	1,011
Deferred tax recovery <i>[note 13]</i>	<b>(7,463)</b>	(2,480)	(398)
<b>Total other comprehensive income</b>	<b>141,231</b>	45,969	1,409
<b>Comprehensive income for the year</b>	<b>257,427</b>	111,385	15,872

*See accompanying notes*

**ECN Capital Corp.**

**CARVE-OUT COMBINED STATEMENTS OF  
NET INVESTMENT**

[in thousands of Canadian dollars]

	Element's net investment	Accumulated other comprehensive income	Total Net investment
	\$	\$	\$
Balance, December 31, 2014	<b>938,638</b>	<b>46,855</b>	<b>985,493</b>
Comprehensive income for the year	<b>116,196</b>	<b>141,231</b>	<b>257,427</b>
Net adjustments to owner's net investment	<b>340,238</b>	—	<b>340,238</b>
Employee stock option expense <i>[note 11]</i>	<b>8,253</b>	—	<b>8,253</b>
Balance, December 31, 2015	<b>1,403,325</b>	<b>188,086</b>	<b>1,591,411</b>
Balance, December 31, 2013	857,409	886	858,295
Comprehensive income for the year	65,416	45,969	111,385
Net adjustments to owner's net investment	11,297	—	11,297
Employee stock option expense <i>[note 11]</i>	4,516	—	4,516
Balance, December 31, 2014	938,638	46,855	985,493
Balance, December 31, 2012	172,916	(523)	172,393
Comprehensive income for the year	14,463	1,409	15,872
Net adjustments to owner's net investment	668,489	—	668,489
Employee stock option expense <i>[note 11]</i>	1,541	—	1,541
Balance, December 31, 2013	857,409	886	858,295

*See accompanying notes*

**ECN Capital Corp.**

**CARVE-OUT COMBINED STATEMENTS OF CASH FLOWS**

[in thousands of Canadian dollars]

Year ended December 31

	<b>2015</b>	<b>2014</b>	<b>2013</b>
	\$	\$	\$
<b>OPERATING ACTIVITIES</b>			
<b>Net income for the year</b>	<b>116,196</b>	65,416	14,463
Items not affecting cash			
Share-based compensation <i>[note 11]</i>	<b>8,253</b>	4,516	1,541
Depreciation of property, equipment and leasehold improvements	<b>283</b>	232	703
Amortization of intangible assets, including from acquisitions	<b>550</b>	(3,534)	171
Amortization of deferred lease costs	<b>9,984</b>	12,589	6,591
Amortization of deferred financing costs	<b>10,448</b>	7,056	704
Amortization of equipment under operating leases	<b>48,147</b>	19,995	475
Write-off of intangible assets and other assets	<b>—</b>	—	—
Provision for credit losses	<b>17,730</b>	14,462	6,301
	<b>211,591</b>	120,732	30,949
Changes in non-cash operating asset and liabilities			
Accounts receivable and other assets	<b>(20,435)</b>	26,770	(42,484)
Accounts payable and accrued liabilities	<b>(34,528)</b>	50,497	12,265
Investment in finance receivables	<b>(1,940,626)</b>	(2,006,987)	(1,550,874)
Repayments of finance receivables	<b>1,537,729</b>	1,066,968	558,978
Investment in equipment under operating leases	<b>(1,084,076)</b>	(1,005,443)	(239,234)
Proceeds on disposals of equipment under operating leases	<b>63,614</b>	4,543	—
Syndications of finance receivables	<b>34,799</b>	259,996	—
Deferred tax assets	<b>(2,417)</b>	12,939	1,695
Deferred tax liabilities	<b>26,757</b>	5,016	1,708
Derivative financial instruments	<b>7,388</b>	6,474	(12,396)
<b>Cash used in operating activities</b>	<b>(1,200,204)</b>	(1,458,495)	(1,239,393)
<b>INVESTING ACTIVITIES</b>			
Business acquisition	<b>(1,890)</b>	(1,120)	(17,603)
Increase in restricted funds	<b>(20,667)</b>	(94,120)	(24,361)
Increase in notes receivable	<b>(3,413)</b>	(4,753)	(13,807)
Purchase of property, equipment and leasehold improvements	<b>(501)</b>	(337)	(235)
Proceeds on disposals of property, equipment and improvements, and intangible assets	<b>—</b>	159	—
Purchase of intangible assets	<b>(492)</b>	(410)	(15,902)
<b>Cash used in investing activities</b>	<b>(26,963)</b>	(100,581)	(71,908)
<b>FINANCING ACTIVITIES</b>			
Change in net investment	<b>340,238</b>	11,297	668,489
Issuance of secured borrowings, net	<b>895,730</b>	1,556,214	642,812
Increase in deferred financing costs	<b>(8,801)</b>	(8,435)	—
<b>Cash provided by financing activities</b>	<b>1,227,167</b>	1,559,076	1,311,301
<b>Net increase (decrease) in cash during the year</b>	<b>—</b>	—	—
Cash, beginning of year	<b>—</b>	—	—
<b>Cash, end of year</b>	<b>—</b>	—	—

*See accompanying notes*

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 1. BACKGROUND AND BASIS OF PRESENTATION

On February 16, 2016, the Board of Directors of Element Financial Corporation [“Element”] approved a plan to separate Element into two publicly-traded companies. The plan involves the separation of the portion of Element and its subsidiaries comprising Commercial and Vendor [“C&V”] Finance, Rail Finance, and Aviation Finance verticals from the existing corporate structure into ECN Capital Corp. [“ECN Capital” or the “Company”], a newly created publicly traded company. The Fleet Management vertical will be renamed Element Fleet Management Corp. [“Element Fleet”] and will continue to operate within the existing corporate structure.

The proposed separation of Element into ECN Capital and Element Fleet [the “Arrangement”] would be implemented through a court approved plan of arrangement and is subject to regulatory, court and shareholder approvals. Upon completion of the Arrangement, Element shareholders would receive one ECN Capital common share for each Element common share held.

The carve-out combined financial statements of ECN Capital have been prepared in connection with the Arrangement and present the carve-out combined financial position, results of operations, changes in Element’s net investment and cash flows of the C&V Finance, Rail Finance, and Aviation Finance verticals as if they had operated as a stand-alone entity. The carve-out combined financial statements have been derived from the accounting records of Element on a carve-out basis and should be read in conjunction with Element’s annual audited consolidated financial statements and the notes thereto for the year ended December 31, 2015.

The carve-out combined financial statements have been prepared by management in accordance with International Financial Reporting Standards [“IFRS”] using the historical cost basis for assets and liabilities and the historical results of operations of ECN Capital. As the carve-out combined financial statements represent portions of Element’s business, which were not previously organized into a single legal entity, the net assets of ECN Capital have been reflected as Element’s net investment.

Element has organized its activities and operations around four verticals: [i] Fleet Management; [ii] Rail Finance; [iii] Commercial and Vendor Finance; and [iv] Aviation Finance. The majority of the assets and liabilities in the carve-out combined statements of financial position of ECN Capital have been derived from this vertical organization. Element does not specifically distinguish payments due to or due from operations, but rather considers all such amounts, including retained earnings, to be part of a capital pool that is distributed between Element’s net investment and the allocated portion of Element’s secured borrowing on the basis of a computed financial leverage

## **NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS**

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

ratio in the carve-out combined financial statements. Element uses a centralized approach to cash management under which cash deposits are transferred to Element on a daily basis and are pooled with other Element entities. As a result, none of Element's cash has been allocated to the carve-out combined financial statements and changes in net cash usage have been reflected in net adjustments to owner's net investment in the carve-out combined statements of net investment. Additionally, certain corporate assets of Element that related to ECN Capital have been included in the carve-out combined statements of financial position of ECN Capital.

The carve-out combined statements of operations reflect intercompany expense allocations made to the Company by Element for certain corporate functions, shared services, and employee-related costs. Where possible, these allocations were made on a specific identification basis, and when specific identification was not possible, these expenses were allocated by Element based on relative percentages of net average earning assets. The carve-out combined statements of operations reflect an allocation of interest expense based upon the funding cost attributable to the allocated portion of secured borrowing, which was determined on the basis of the financial leverage ratio described above.

Management believes both the assumptions and the allocations underlying the carve-out combined financial statements of ECN Capital are reasonable. However, as a result of the basis of presentation described above, the carve-out combined financial statements may not be indicative of ECN Capital's results of operations, financial position and cash flows in the future or of what ECN Capital's operations, financial position and cash flows would have been if ECN Capital had operated as a stand-alone company.

The carve-out combined financial statements were authorized for issuance by the Board of Directors of Element on July 21, 2016.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### **Finance receivables**

The Company provides financing to customers through direct financing leases and loans.

Direct financing leases, which are contracts under terms that provide for the transfer of substantially all the benefits and risks of the equipment ownership to customers, are carried at amortized cost. These leases are recorded at the aggregate minimum payments plus residual values accruing to the Company less unearned finance income. Unearned finance income includes origination fees earned.

Loans are recorded at amortized cost using the effective interest rate method. Interest income is allocated over the expected term of the loan by applying the effective interest rate to the carrying amount of the loan. Unearned finance income includes loan origination fees earned.

Initial direct costs that relate to the origination of the finance receivables are deferred and recognized as yield adjustments using the effective interest method over the term of the related financial asset. These costs are incremental to individual leases or loans and comprise certain specific activities related to processing requests for financing, such as the costs to underwrite the transaction and commission payments.

Direct financing leases and loans are recognized as being impaired when the Company is no longer reasonably assured of the timely collection of the full amount of principal and interest. As a matter of practice, a direct financing lease or a loan is deemed to be impaired at the earlier of the date it has been individually provided for when timely collection is not assured or when it has been in arrears for 120 days. When amounts receivable are considered impaired, their book value is adjusted to their estimated realizable value based on the fair value of any collateral underlying the receivable, net of any costs of realization, by totally or partially writing off the loan and/or establishing an allowance for credit losses.

#### **Equipment under operating leases**

The Company determines the classification of a lease at its lease inception date.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

An operating lease is one that does not transfer substantially all of the risks and rewards of ownership to the lessee.

Equipment related to operating leases entered into by the Company are reported as “Equipment under operating leases” and are carried at cost less accumulated depreciation and are being depreciated to their estimated residual values using the straight-line method over the lease term or estimated useful life of the asset as follows:

- Aviation assets - up to 30 years from the date of manufacture to an approximate 30% salvage value
- Railcar assets - up to 50 years from the date of manufacture to an approximate 10% salvage value

Rental revenue on operating leases is recognized on a straight-line basis over the lease term and is being reported net of depreciation as “Rental revenue, net”.

Equipment under operating leases is reviewed for impairment when events or changes in circumstances indicate that the carrying amount of those assets may not be recoverable. An impairment loss is recognized for the amount by which the asset’s carrying amount exceeds the higher of the asset’s fair value less costs to sell and its value in use.

### **Revenue recognition**

Interest income relates to finance receivables as described above. This income is recognized on an accrual basis using the effective interest rate method for leases and loans that are not considered impaired.

Syndication fees represent commissions received when the Company facilitates a lease arrangement between a lessee and a third party lessor. Syndication fees are recognized as income when the lease syndication has been completed.

Other revenue is recorded on an accrual basis as earned.

### **Allowance for credit losses**

The Company reviews its individually significant finance leases and loans at each carve-out combined statement of financial position date to assess the adequacy of the allowance for credit

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

losses and to determine whether an impairment loss should be recorded in the carve-out combined statements of operations. In particular, management's judgment is required in the estimation of the amount and timing of future cash flows when determining the allowance. These estimates are based on assumptions on a number of factors and actual results may differ, resulting in future changes to the allowance. Leases and loans that have been assessed individually and found not to be impaired and all individually insignificant leases are then assessed collectively, in groups of assets with similar risk characteristics, to determine whether an allowance should be made due to incurred loss events for which there is objective evidence but whose effects are not yet evident. The collective assessment takes account of data from the lease and loan portfolio, such as levels of arrears and credit utilization, and judgments to the effect of concentrations of risks.

### **Restricted funds**

Restricted funds represent cash reserve accounts held in trust as security for secured borrowings and cash collection accounts required by the lenders of certain financial assets that can only be used to repay these debts.

Restricted funds also include amounts posted as collateral for derivative contracts.

### **Derivative financial instruments and hedge accounting**

The Company utilizes derivatives to manage interest rate risk and foreign currency exposure, as well as equity price risk exposure related to Element's stock compensation plans that are accounted for as liabilities. Derivatives are carried at fair value and are reported as assets if they have a positive fair value and as liabilities if they have a negative fair value.

The Company applies hedge accounting to derivatives that meet the criteria for hedge accounting in IAS 39, *Financial Instruments: Recognition and Measurement* ["IAS 39"].

In order to qualify for hedge accounting, a hedge relationship must be designated and formally documented in accordance with IAS 39. The Company's documentation, in accordance with the requirements, includes the specific risk management objective and strategy being applied, the specific financial asset or liability or cash flow being hedged and how hedge effectiveness is assessed. Hedge effectiveness is assessed at the inception of the hedge and on an ongoing basis, which is at least quarterly. Hedge ineffectiveness is recognized immediately in income.



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### **Cash flow hedges**

The effective portion of the change in fair value of the derivative instrument is recognized in other comprehensive income until the forecasted cash flows being hedged are recognized in income in future accounting periods. When forecasted cash flows are recognized in income, an appropriate amount of fair value changes of the derivative instrument in accumulated other comprehensive income ["AOCI"] is reclassified to income. Any hedge ineffectiveness is immediately recognized in other income. If a forecasted issuance of fixed rate debt or a forecasted acquisition of fixed rate assets is no longer expected to occur, the related cumulative gain or loss in AOCI is immediately recognized in income.

The Company uses interest rate swaps and foreign exchange forward agreements to hedge its exposure to changes in future cash flows due to interest rate risk and foreign currency risk in forecasted highly probable transactions.

The Company also uses interest rate derivatives, mainly interest rate swap agreements, to hedge its exposure to changes in future cash flows due to interest rate risk on its floating rate debt.

### **Fair value hedges**

The effective portion of the change in fair value of derivative instruments is recognized in net income and is offset against any gains or losses on changes in fair value of the hedged item. The ineffective portion of the change in fair value is recorded in other revenue.

The Company uses total return swaps to hedge its exposure to changes in the Company's share price on the its deferred share unit liabilities.

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### Hedges of a net investment

Hedges of a net investment in a foreign operation are accounted for in a way similar to cash flow hedges. Gains or losses on a hedging instrument relating to the effective portion of the hedge are recognized as other comprehensive income while any gains or losses relating to the ineffective portion are recognized in the carve-out combined statements of operations. On disposal of the foreign operation, the cumulative value of any such gains or losses recorded in equity is transferred to the carve-out combined statements of operations.

The Company may use foreign currency forward agreements or foreign currency denominated debt as a hedge of its exposure to foreign exchange risk on its investments in foreign subsidiaries.

### Secured borrowings

The Company periodically transfers pools of finance receivables to third parties, including structured entities. Transfers of pools of finance receivables under certain arrangements, including transfers where a security interest or legal ownership is transferred, do not result in derecognition of the finance receivables from the Company's carve-out combined statements of financial position and continue to be recognized on the Company's carve-out combined statements of financial position and accounted for as finance receivables, as described above. As such, these transactions result in the recognition of secured borrowings when cash is received from the third party or structured entity.

The secured borrowings are recorded at amortized cost using the effective interest rate method. Interest expense is allocated over the expected term of the borrowing by applying the effective interest rate to the carrying amount of the liability. The effective interest rate is the rate that exactly discounts estimated future cash outflows over the expected life of the liability. Transaction costs are applied to the carrying amount of the liability.

Deferred financing costs are presented as a reduction of secured borrowings and relate to costs incurred to obtain funding agreements that result in these arrangements. These amounts are accreted to income over a period matching the repayment terms of the secured borrowing obtained during the initial commitment period.

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### Property, equipment and leasehold improvements

Property, equipment and leasehold improvements are recorded at cost. The Company provides for depreciation using the declining balance method for equipment at annual rates designed to depreciate the cost of the equipment over their estimated useful lives. Leasehold improvements are depreciated on a straight-line basis over the underlying lease terms. Buildings, vehicles and computer servers are depreciated using the straight-line method over their estimated useful life. Land is not depreciated. The rates of amortization are as follows:

Office equipment	30% per annum
Computer equipment	55% per annum for general equipment 5 years for servers
Leasehold improvements	Lease term
Vehicles	4 years
Buildings	25 years

### Business combinations and goodwill

Business combinations are accounted for using the purchase method of accounting. This involves recognizing identifiable assets, including previously unrecognized intangible assets and liabilities, including contingent liabilities but excluding future restructuring of the acquired business, at fair value.

Goodwill is initially measured at cost and is calculated as the excess of the purchase price for an acquired business over the fair value of acquired net identifiable assets and liabilities and is allocated to the cash-generating units ["CGU"] to which it relates. Goodwill is not amortized but is evaluated for impairment against the carrying amount of the CGU annually or more often if events or circumstances indicate that there may be an impairment. The carrying amount of a CGU includes the carrying amount of assets, liabilities and goodwill allocated to the CGU. If the recoverable amount is less than the carrying value, the impairment loss is first allocated to reduce the carrying amount of any goodwill allocated to the CGU and then to the other non-financial assets of the CGU proportionately based on the carrying amount of each asset. Any impairment loss is charged to income in the period in which the impairment is identified. Goodwill is stated at cost less accumulated impairment losses. Subsequent reversals of goodwill impairment are prohibited.

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### **Intangible assets**

The Company's intangible assets include computer software and customer relationships and are measured at cost. All of the Company's intangible assets have a finite life, are amortized over their useful economic lives, and are assessed for impairment at each reporting period. Changes in the expected useful life are accounted for by changing the amortization period or method, as appropriate, and they are treated as changes in accounting estimates. The amortization expense is recognized in the carve-out combined statements of operations.

### **Share-based payments**

#### **Stock options**

Certain employees and directors of the Company participate in Element's stock option plan. The awards are comprised of equity-settled stock options and the related cost is measured based on the estimated fair value on the date the awards are granted. The fair value of the stock options is estimated using the Black-Scholes option valuation model. The cost of the stock options issued to employees is recognized on a proportionate basis consistent with the vesting features of each tranche of the grant.

For the presentation of these carve-out combined financial statements, a portion of the share-based compensation arising from Element's stock option plan has been allocated to ECN Capital and has recorded in the statements of operations and in net adjustments to owner's net investment in the statements of net investment.

#### **Deferred share unit plan**

Element has established a Deferred Share Unit ["DSU"] plan for executives and directors whereby the Element's Board of Directors [the "Board"] may award DSUs as compensation for services rendered. Certain employees and directors of the Company participate in Element's DSU plan. The plan is intended to promote a greater alignment of long-term interests between executives and directors and the shareholders of Element. The Board determines the amount, timing, and vesting conditions associated with each award of DSUs.

For the presentation of these carve-out combined financial statements, a portion of the share-based compensation arising from Element's DSU plan has been allocated to ECN Capital.

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### **Performance share unit plan**

Element has established a Performance Share Unit [“PSU”] plan for employees of Element and its subsidiaries, whereby the Board may award PSUs as compensation for services rendered. The Board determines the amount, timing, and vesting conditions associated with each award of PSUs. Certain employees and directors of the Company participate in Element’s PSU plan. The plan is intended to promote a greater alignment of long-term interests between employees and the shareholders of Element.

For the presentation of these carve-out combined financial statements, a portion of the share-based compensation arising from Element’s PSU plan has been allocated to ECN Capital.

### **Other financial instruments**

Other financial instruments held or issued by the Company include cash, restricted funds, finance receivables, accounts receivable, notes receivable, accounts payable and accrued liabilities, and secured borrowings. All of these financial instruments are initially recorded at cost and subsequently measured at amortized cost.

### **Translation of foreign currencies**

The carve-out combined financial statements of the Company are presented in Canadian dollars, which is the Company’s functional and presentation currency. Foreign currency denominated monetary assets and liabilities of the Company and its subsidiaries that have the same functional currency are translated using the closing rate and non-monetary assets and liabilities measured at fair value are translated at the rate of exchange prevailing at the date when the fair value was determined. Revenue and expense items are measured at average exchange rates during the year. Realized and unrealized gains and losses arising from translation into the functional currency are included in the carve-out combined statements of operations. Foreign currency denominated non-monetary assets and liabilities, measured at historical cost, are translated at the rate of exchange in effect at the transaction date.

Assets and liabilities of foreign operations with a functional currency other than the Canadian dollar, including goodwill and fair value adjustments arising on acquisition, are translated into Canadian dollars at the exchange rates prevailing at year end, while revenue and expenses of these foreign operations are translated into Canadian dollars at the average exchange rates for the year. Exchange gains and losses arising from the translation of these foreign operations and from the

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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results of hedging the net investment in these foreign operations, net of applicable taxes, are included in net foreign currency translation adjustments, which is included in accumulated other comprehensive income. A deferred tax asset or liability is not recognized in respect of a translation gain or loss arising from the Company's investment in its foreign operations as it is not expected that such a gain or loss would be realized for tax purposes in the foreseeable future.

Upon disposition of a foreign operation, any cumulative translation adjustment gain or loss, including the impact of hedging, will be reclassified from other comprehensive income to the carve-out combined statements of operations.

### **Income taxes**

Current and deferred income tax expense have been recorded in the carve-out combined financial statements as though the Company was a separate taxable entity, using the stand alone taxpayer approach.

The Company follows the liability method to provide for income taxes on all transactions recorded in its carve-out combined financial statements. The liability method requires that income taxes reflect the expected future tax consequences of temporary differences between the carrying amounts of assets and liabilities and their tax bases. Deferred tax assets and liabilities are determined for each temporary difference and for unused losses, as applicable, at rates expected to be in effect when the asset is realized or the liability is settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income or equity in the period that includes the substantive enactment date. Deferred tax assets are recognized to the extent that it is probable that the assets can be recovered.

### **Future accounting changes**

The following new IFRS pronouncements have been issued but are not yet effective and may have a future impact on the Company's consolidated financial statements.

IFRS 9, *Financial Instruments* ["IFRS 9"], was issued in November 2009 and amended in October 2010, November 2013, and July 2014, and is effective for years beginning on or after January 1, 2018, to be applied retrospectively, or on a modified retrospective basis. It is intended to replace IAS 39. The project has been divided into three phases: classification and measurement, impairment of financial assets, and hedge accounting. IFRS 9's classification and measurement methodology provides that financial assets are measured at either amortized cost or fair value on

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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the basis of the entities business model for managing the financial assets and the contractual cash flow characteristics of the financial assets. The classification and measurement for financial liabilities remains generally unchanged. The new standard replaces the existing incurred loss model used for measuring the allowance for credit losses with an expected loss model. The standard introduces a new hedge accounting model, together with corresponding disclosures about risk management activity for those applying hedge accounting. Management is currently evaluating the potential impact that the adoption of IFRS 9 will have on the Company's carve-out combined financial statements.

IFRS 15, *Revenue from Contracts with Customers* ["IFRS 15"], was issued in May 2014 and is effective for years beginning on or after January 1, 2018, to be applied retrospectively or on a modified retrospective basis. IFRS 15 clarifies revenue recognition principles, provides a robust framework for recognizing revenue and cash flows arising from contracts with customers and enhances qualitative and quantitative disclosure requirements. IFRS 15 does not apply to lease contracts, financial instruments and other related contractual rights and obligations and insurance contracts. Management is currently evaluating the potential impact that the adoption of IFRS 15 will have on the Company's carve-out combined financial statements.

IFRS 16, *Leases* ["IFRS 16"], will replace IAS 17, *Leases* ["IAS 17"]. IFRS 16 substantially carries forward IAS 17 accounting requirements for lessor accounting, with additional disclosure requirements. For lessee accounting, the new standard will result in almost all leases being accounted for similar to finance leases under IAS 17, including leases previously accounted for as operating leases. IFRS 16 is to be effective for fiscal years beginning on or after January 1, 2019. Management is currently evaluating the potential impact that the adoption of IFRS 16 will have on the Company's carve-out combined financial statements.

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### 3. CRITICAL ACCOUNTING ESTIMATES AND USE OF JUDGMENTS

The preparation of carve-out combined financial statements in accordance with IFRS requires management to make estimates and exercise judgments that affect the reported amounts of assets and liabilities at the date of the carve-out combined financial statements and the reported amounts of revenue and expenses during the reporting period. The estimates and judgments are made based on information available as at the date the carve-out combined financial statements are issued. Accordingly, actual results may differ from those recorded amounts. Areas of financial reporting that require management's estimates and judgments are discussed below.

#### **Allowance for credit losses**

Judgment is required as to the timing of establishing an allowance for credit losses and the amount of the required allowance taking into consideration counterparty creditworthiness, the fair value of underlying collateral, current economic trends, the expected residual value of the underlying leased assets and past experience.

#### **Deferred tax assets**

Deferred tax assets are recognized for unused income tax losses to the extent that it is probable that taxable income will be available against which the losses can be utilized. Judgment is required to determine the amount of deferred tax assets that can be recognized based upon the likely timing and level of future taxable profits together with future tax-planning strategies.

#### **Stock option expense**

Compensation expense relating to stock option awards granted by Element to employees and non-employees in exchange for services rendered is based on the fair value of the option. The stock option fair value is determined using the Black-Scholes option valuation model which requires the use of assumptions and is, by its nature, subject to measurement uncertainty.



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### **Useful lives and residual values of equipment under operating leases**

The Company's equipment under operating leases are recorded at cost and depreciated over their estimated useful lives to an estimated residual value using the straight-line method. The Company determines the economic useful life based on management's estimate of the period which the asset will generate revenue. The residual values are based on historical experience and economic factors. Management will periodically review the appropriateness of the estimated useful lives and residual values based on changes in economic circumstances and other factors. Changes in these estimates would result in a change in future depreciation expense.

### **Allocation methodology**

Management has prepared the carve-out combined financial statements on the allocation methodology described in note 1.

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### 4. FINANCE RECEIVABLES

The following tables present finance receivables based on the type of contract:

	December 31, 2015		
	Leases	Loans	Total
	\$	\$	\$
Minimum lease payments	1,466,475	2,029,985	3,496,460
Unguaranteed residual values	215,879	—	215,879
Gross investment	1,682,354	2,029,985	3,712,339
Unearned income	(298,886)	(255,374)	(554,260)
<b>Net investment</b>	<b>1,383,468</b>	<b>1,774,611</b>	<b>3,158,079</b>
Net realizable value of impaired receivables	3,581	448	4,029
Unamortized deferred costs and subsidies	10,700	9,022	19,722
Security deposits	(32,228)	(1,357)	(33,585)
Other receivables	1,105	838	1,943
Allowance for credit losses	(8,332)	(12,062)	(20,394)
<b>Total</b>	<b>1,358,295</b>	<b>1,771,500</b>	<b>3,129,794</b>

	December 31, 2014		
	Leases	Loans	Total
	\$	\$	\$
Minimum lease payments	1,419,566	1,413,039	2,832,605
Unguaranteed residual values	212,239	—	212,239
Gross investment	1,631,805	1,413,039	3,044,844
Unearned income	(279,448)	(170,543)	(449,991)
<b>Net investment</b>	<b>1,352,357</b>	<b>1,242,496</b>	<b>2,594,853</b>
Net realizable value of impaired receivables	5,003	448	5,451
Unamortized deferred costs and subsidies	9,262	6,068	15,330
Security deposits	(26,114)	(1,093)	(27,207)
Other receivables	2,724	814	3,538
Allowance for credit losses	(6,886)	(7,234)	(14,120)
<b>Total</b>	<b>1,336,346</b>	<b>1,241,499</b>	<b>2,577,845</b>

The following table presents delinquency status of the net investment in finance receivables by contract balance:

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	December 31, 2015		December 31, 2014	
	\$	%	\$	%
31-60 days past due	8,952	0.28	5,476	0.21
61-90 days past due	2,612	0.08	1,846	0.07
Greater than 90 days past due	3,030	0.10	1,282	0.05
Total past due	14,594	0.46	8,604	0.33
Current	3,143,485	99.54	2,586,249	99.67
	<b>3,158,079</b>	<b>100.00</b>	2,594,853	100.00

### Selected characteristics of the finance receivables

	December 31, 2015		December 31, 2014	
	Leases	Loans	Leases	Loans
Net investment	\$ 1,383,468	\$ 1,774,611	\$ 1,352,357	\$ 1,242,496
Weighted average fixed interest rate	7.46 %	6.35 %	7.67 %	6.56 %
Weighted average floating interest rate	n/a %	5.10 %	n/a %	5.72 %
Percentage of portfolio with fixed interest rate	100.00 %	76.08 %	100.00 %	78.99 %

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### Allowance for credit losses

An analysis of the Company's allowance for credit losses is as follows for the years ended December 31:

	2015	2014
	\$	\$
<b>Allowance for credit losses, beginning of year</b>	<b>14,120</b>	9,950
Provision for credit losses	17,730	14,462
Charge-offs, net of recoveries	(13,559)	(10,913)
Impact of foreign exchange rates	2,103	621
<b>Allowance for credit losses, end of year</b>	<b>20,394</b>	14,120
Allowance as a percentage of finance receivables	0.65%	0.54%
Finance receivables in arrears [90 days and over]	3,030	1,282
Arrears [90 days and over] as a percentage of net investment in finance receivables	0.10%	0.05%
Impaired receivables, at estimated net realizable value	4,029	5,451

### Contractual maturities

The contractual maturity of the portfolio outstanding as at December 31, excluding impaired receivables and assuming no prepayments, is as follows:

	2015			2014		
	Gross investment	Unearned income	Net investment	Gross investment	Unearned income	Net investment
	\$	\$	\$	\$	\$	\$
<b>Maturity</b>						
Within 1 year	1,007,134	(144,404)	862,730	919,977	(141,736)	778,241
In 1 to 3 years	1,528,168	(225,231)	1,302,937	1,236,057	(180,121)	1,055,936
In 3 to 5 years	769,467	(116,553)	652,914	620,503	(87,071)	533,432
After 5 years	407,570	(68,072)	339,498	268,307	(41,063)	227,244
	<b>3,712,339</b>	<b>(554,260)</b>	<b>3,158,079</b>	<b>3,044,844</b>	<b>(449,991)</b>	<b>2,594,853</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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### 5. EQUIPMENT UNDER OPERATING LEASES

The Company acts as a lessor in connection with operating leases and continues to recognize the leased assets in its carve-out combined statements of financial position. The lease payments received, net of depreciation, are recognized in net income as rental revenue, net.

	December 31, 2015		
	Railcar	Aviation	Total
	\$	\$	\$
<b>COST</b>			
<b>At January 1, 2015</b>	1,168,265	132,483	1,300,748
Additions	992,354	91,722	1,084,076
Transfers	—	108,622	108,622
Disposals	(59,074)	(6,887)	(65,961)
Foreign exchange rate adjustments	289,444	50,343	339,787
<b>At December 31, 2015</b>	<b>2,390,989</b>	<b>376,283</b>	<b>2,767,272</b>
<b>ACCUMULATED DEPRECIATION</b>			
<b>At January 1, 2015</b>	14,593	6,485	21,078
Depreciation charge for the year	31,470	16,677	48,147
Disposals	(2,347)	—	(2,347)
Foreign exchange rate adjustments	5,215	2,448	7,663
<b>At December 31, 2015</b>	<b>48,931</b>	<b>25,610</b>	<b>74,541</b>
<b>Net carrying amount</b>	<b>2,342,058</b>	<b>350,673</b>	<b>2,692,731</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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	December 31, 2014		
	Railcar	Aviation	Total
	\$	\$	\$
<b>COST</b>			
<b>At January 1, 2014</b>	111,685	127,845	239,530
Additions	1,005,443	—	1,005,443
Disposals	(701)	(3,879)	(4,580)
Foreign exchange rate adjustments	51,838	8,517	60,355
<b>At December 31, 2014</b>	1,168,265	132,483	1,300,748
<b>ACCUMULATED DEPRECIATION</b>			
<b>At January 1, 2014</b>	—	475	475
Depreciation charge for the year	14,128	5,867	19,995
Disposals	(8)	(29)	(37)
Foreign exchange rate adjustments	473	172	645
<b>At December 31, 2014</b>	14,593	6,485	21,078
<b>Net carrying amount</b>	1,153,672	125,998	1,279,670

The future minimum lease payments arising from non-cancellable operating leases as at December 31, are shown in the following table:

	2015	2014
	\$	\$
Within 1 year	262,785	129,554
In 1 to 3 years	450,556	235,425
In 3 to 5 years	289,946	165,055
After 5 years	198,681	135,442
	1,201,968	665,476

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Rental revenue, net, consists of the following for the years ended December 31:

	<b>2015</b>	<b>2014</b>	<b>2013</b>
	\$	\$	\$
Rental revenue	<b>179,774</b>	82,640	1,533
Amortization of equipment under operating leases	(45,941)	(19,995)	(475)
	<b>133,833</b>	62,645	1,058

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### 6. PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

	2015			
	Leasehold improvements	Computer equipment	Office equipment	Total
	\$	\$	\$	\$
<b>COST</b>				
<b>At January 1, 2015</b>	27	119	689	834
Additions	37	189	274	501
Disposals	(26)	—	—	(26)
Foreign exchange rate adjustments	4	25	158	187
<b>At December 31, 2015</b>	<b>43</b>	<b>333</b>	<b>1,121</b>	<b>1,496</b>
<b>ACCUMULATED DEPRECIATION</b>				
<b>At January 1, 2015</b>	23	53	383	459
Disposals	(25)	—	—	(25)
Depreciation charge for the year	2	86	195	283
Foreign exchange rate adjustments	2	9	90	101
<b>At December 31, 2015</b>	<b>2</b>	<b>148</b>	<b>668</b>	<b>818</b>
<b>Net carrying amount</b>	<b>41</b>	<b>184</b>	<b>453</b>	<b>678</b>
<b>2014</b>				
	Leasehold improvements	Computer equipment	Office equipment	Total
	\$	\$	\$	\$
<b>COST</b>				
<b>At January 1, 2014</b>	22	44	694	760
Additions	3	68	266	337
Disposals	—	—	(336)	(336)
Foreign exchange rate adjustments	2	1	70	73
<b>At December 31, 2014</b>	<b>27</b>	<b>113</b>	<b>694</b>	<b>834</b>
<b>ACCUMULATED DEPRECIATION</b>				
<b>At January 1, 2014</b>	22	31	298	351
Disposals	—	—	(177)	(177)
Depreciation charge for the year	—	11	221	232
Foreign exchange rate adjustments	2	—	52	54
<b>At December 31, 2014</b>	<b>24</b>	<b>42</b>	<b>394</b>	<b>460</b>
<b>Net carrying amount</b>	<b>3</b>	<b>71</b>	<b>301</b>	<b>374</b>



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### 7. INTANGIBLE ASSETS

	Computer software			Customer relationships			Total
	Cost	Accumulated amortization	Net book value	Cost	Accumulated amortization	Net book value	Net book value
	\$	\$	\$	\$	\$	\$	\$
<b>December 31, 2013</b>	—	—	—	15,922	—	15,922	15,922
Additions	336	—	336	74	—	74	410
Amortization	—	(194)	(194)	—	3,727	3,727	3,533
Foreign exchange rate adjustments	2	(1)	1	1,448	210	1,658	1,659
<b>December 31, 2014</b>	338	(195)	143	17,444	3,937	21,378	21,524
Additions	492	—	492	—	—	—	492
Amortization	—	(223)	(223)	—	(327)	(327)	(550)
Foreign exchange rate adjustments	114	(52)	62	3,367	670	4,037	4,099
<b>December 31, 2015</b>	<b>944</b>	<b>(470)</b>	<b>474</b>	<b>20,811</b>	<b>4,280</b>	<b>25,090</b>	<b>25,565</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 8. GOODWILL

	2015	2014
	\$	\$
<b>Balance, beginning of year</b>	5,720	4,560
Additions from new acquisitions	1,890	1,120
Foreign exchange rate adjustments	464	40
<b>Balance, end of year</b>	<b>8,074</b>	<b>5,720</b>

Goodwill is initially measured at cost and is calculated as the excess of the purchase price for an acquired business over the fair value of the acquired net identifiable assets and liabilities. As at December 31, 2015, goodwill was \$8,074 and was allocated to the carve-out combined assets and liabilities of the Company for impairment testing purposes. The recoverable amount of the Company's carve-out combined assets and liabilities is determined based on the greater of the estimated fair value less cost to sell or the value in use. For the years ended December 31, 2015 and 2014, the significant inputs and assumptions used to determine the recoverable amount of the carve-out combined assets and liabilities of the Company were those observable in the Company's recent arms-length business acquisitions. For the impairment testing during the years ended December 31, 2015 and 2014, the Company determined that the estimated recoverable amount of the carve-out combined assets and liabilities of the Company was in excess of its carrying value. As a result, no impairment charge was recognized during the years.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 9. SECURED BORROWINGS

Secured borrowings outstanding as at December 31 were as follows:

December 31, 2015				
	Balance outstanding	Weighted average interest rate (1)	Pledged finance receivables and equipment under	Cash reserves
	\$	%	\$	\$
Life insurance company term funding facilities	444,128	3.21%	426,699	45,921
Securitization programs	1,038,048	2.30%	1,325,814	41,621
Asset-backed securities	980,503	3.41%	1,185,449	25,141
Term senior credit facility (2)	2,029,816	2.60%	—	—
	<b>4,492,495</b>	<b>2.79%</b>	<b>2,937,962</b>	<b>112,683</b>
Deferred financing costs	<b>(21,103)</b>			
	<b>4,471,392</b>			
December 31, 2014				
	Balance outstanding	Weighted average interest rate (1)	Pledged finance receivables and equipment under operating leases	Cash reserves
	\$	\$	\$	\$
Life insurance company term funding facilities	572,956	3.42%	544,683	56,531
Securitization programs	706,366	2.35%	906,420	38,583
Asset-backed securities	505,824	3.37%	679,390	14,520
Term senior credit facility (2)	1,280,800	2.83%	—	—
	<b>3,065,946</b>	<b>2.93%</b>	<b>2,130,493</b>	<b>109,634</b>
Deferred financing costs	<b>(18,646)</b>			
	<b>3,047,300</b>			

(1) Represents the weighted average stated interest rate of outstanding debt at year end, and excludes amortization of deferred financing costs, premiums or discounts, stand-by fees and the effects of hedging.

(2) Revolving senior credit facility is secured by a general security agreement in favour of the lenders consisting of a first priority interest on all property.

The Company was in compliance with all financial and reporting covenants with all of its lenders at December 31, 2015 and December 31, 2014.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### Life insurance company term funding facilities

Life insurance company term funding facilities are advanced to the Company on a tranche-by-tranche basis, with each tranche collateralized by a specific group of underlying finance receivables, with the terms of repayment designed to match the payment terms of the underlying finance receivables. These lenders receive either a security interest and/or legal ownership in direct financing leases. In addition, the Company must maintain certain cash reserves as credit enhancements. Interest rates are fixed at the time of each advance and are based on Government of Canada Bond yields with maturities comparable to the term of the underlying leases plus a premium ranging from 2.20% to 2.80% [December 31, 2014 - 2.15% to 2.80%]. At December 31, 2015, life insurance company term funding facilities had a weighted average fixed interest rate of 3.21%, which ranged from 2.99% to 3.92%, with tranche maturities ranging from 2016 to 2022 [December 31, 2014 - the weighted average interest was 3.42%, which ranged from 3.37% to 3.96%].

The Company has access to committed lines of funding of \$470,091 from four Canadian life insurance companies [December 2014 - \$600,000 from four Canadian life insurance companies]. As at December 31, 2015, the Company had access to \$245,856 [December 31, 2014 - \$318,376] of available financing under its life insurance company term funding facilities.

### Securitization programs

Securitization programs are secured borrowings collateralized by a specific group of financial assets, through a security interest in the financial assets, and are repayable on the basis of the amounts collected from the related securitized finance receivables. These facilities consist of both variable- funding notes and term facilities, in amortizing periods.

Variable-funding notes provide a committed capacity which may be drawn upon as needed during a commitment period, which is primarily 364 days in duration. The monthly collection of lease payments creates availability to fund the acquisition of equipment to be leased to customers. Available committed capacity under variable-funding notes may be used to fund growth in net investment in finance leases during the term of the commitment. At December 31, 2015, there were \$878,322 variable-funding notes outstanding at a weighted average floating interest rate of 2.07%, which ranged from 1.78% to 3.22% with expected final maturities in 2022 [December 31, 2014 - \$540,383 and, a weighted average interest rate of 2.06%, which ranged from 1.67% to 3.41%].

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

For term facilities in amortization period, the monthly collection of lease payments allocable to the facility balance is used in repayment of principal until the facilities are paid in full. At December 31, 2015, there were \$159,726 term facilities in amortization period outstanding at a weighted average interest rate of 3.62%, which ranged from 3.61% to 4.30% with tranche maturities ranging from 2016 to 2019 [December 31, 2014 - \$165,983 and a weighted average interest rate of 3.29%, which ranged from 3.26% to 4.12%].

As at December 31, 2015, the Company had access to \$336,986 [December 31, 2014 - \$360,085] of available financing from these securitization programs.

### **Asset-backed securities**

Asset-backed securities are secured borrowings that are collateralized by a specific group of financial assets, through a security interest in the financial assets, and are repayable on the basis of the amounts collected from the related securitized finance receivables. Asset-backed securities debt consist of term notes in revolving period and term notes in amortization period.

Term notes in revolving period contain provisions that allow the outstanding debt to revolve for a specified period of time. During the revolving period, the monthly collection of lease payments allocable to each outstanding note creates availability to fund the acquisition of equipment to be leased to customers. Upon expiration of the revolving period, notes begin amortizing. At December 31, 2015, there were no term notes in revolving period outstanding [December 31, 2014 - \$120,906 and a weighted average interest rate of 3.21%].

For term notes in amortization period, the monthly collection of lease payments allocable to the series is used in repayment of principal until the notes are paid in full. At December 31, 2015, there were \$980,502 of term notes in amortization period outstanding at a weighted average fixed interest rate of 3.41%, with an expected final maturity in 2035 [December 31, 2014 - \$384,919, at a weighted average interest rate of 3.41%].

As at December 31, 2015, the Company had access to \$0 [December 31, 2014 - \$499] of available financing from asset-backed securities debt.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### **Term senior credit facility**

The term senior credit facility represents the Company's allocated portion of Element's \$7,379,222 senior revolving facility. Element will retain the legal obligations associated with the facility and, as a result, the amounts presented on the Company's carve-out combined statement of financial position represent intercompany balances between the Element and the Company with the same terms and conditions as Element's facility. The Company's allocated portion of the drawn amount, and the associated interest expense, has been calculated based on the Company's unencumbered assets that constituted its average borrowing base during the respective year. If the Arrangement is approved, the Company's allocated portion of Element's facility is expected to be replaced with the Company's own term credit facility.

Element's facility has been syndicated to a group of 24 Canadian, US and international banks and has a maturity date of August 31, 2018. The facility bears interest at the prime rate plus 0.45% or 1-month bankers' acceptance rate plus 1.45% per annum on outstanding Canadian denominated balances and US base rate plus 0.45% per annum or 1-month LIBOR rate plus 1.45% per annum on outstanding US denominated balances. The term senior credit facility is secured by a general security agreement in favour of the lenders consisting of a first priority interest on all property.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### Restricted funds

Restricted funds include [i] cash reserves of \$113,701 as at December 31, 2015 [December 31, 2014 - \$110,243], which represents collateral for secured borrowing arrangements; and [ii] cash accumulated in the collection account of \$93,755 as at December 31, 2015 [December 31, 2014 - \$68,759], which represents repayments received on assets financed pursuant to the secured borrowing facilities, which are subsequently remitted back to the facilities on specific dates.

### Contractual maturity of secured borrowings

The contractual maturity of the secured borrowings outstanding as at December 31, compared to the maturity of the finance receivables and future minimum payments received on equipment under operating leases, is as follows:

Maturity	2015			2014		
	Finance receivables and equipment under operating leases (1)		%	Finance receivables and equipment under operating leases (1)		%
	Secured borrowings			Secured borrowings		
	\$	\$		\$	\$	
Within 1 year	581,009	1,269,919	45.8%	472,304	1,049,531	45.0%
In 1 to 3 years	929,246	1,978,724	47.0%	762,941	1,471,482	51.8%
In 3 to 5 years	384,001	1,059,413	36.2%	291,024	785,558	37.0%
After 5 years	973,169	606,251	160.5%	479,047	403,749	118.6%
	<b>2,867,425</b>	<b>4,914,307</b>	<b>58.3%</b>	2,005,316	3,710,320	54.0%
Interest costs	(404,746)			(220,170)		
Revolving senior credit facility	2,029,816			1,280,800		
	<b>4,492,495</b>			<b>3,065,946</b>		

(1) Maturity schedule for finance receivables is based on the net investment balance. For equipment under operating leases, the schedule is based on the existing contractual future minimum lease payments.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 10. NET INVESTMENT

Element's investment in the operations of ECN Capital is presented as Net Investment in the carve-out combined financial statements. Element's Net Investment represents capital invested, accumulated retained earnings of the operations less the accumulated net distributions to Element, and accumulated other comprehensive income of the operations.

### 11. SHARE-BASED COMPENSATION

Share-based compensation expense consists of the following for the year ended December 31:

	2015 \$	2014 \$	2013 \$
[a] Stock options	8,253	4,516	1,541
[b] Deferred share units	—	439	237
[c] Performance share units	2,113	704	—
	<b>10,366</b>	5,659	1,778
Allocated as:			
Share-based compensation	10,366	5,659	1,708
Transaction and integration costs	—	—	70
	<b>10,366</b>	5,659	1,778

Element grants stock options, deferred share units and performance share units to employees of the Company, the stock-based compensation recognized on the combined statement of operations of the Company represent the stock-based compensation for grants to a direct employee of the Company for services provided to the Company, and exclude grants to employees of the Company that relate to services provided to Element. DSU and PSUs are shown net of Element hedged amounts.



## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### [a] Stock options

The changes in the number of Element stock options granted to employees of the Company during the years were as follows:

	Number of options #	Weighted average exercise price \$
	#	\$
<b>Outstanding, December 31, 2013</b>	1,557,834	8.62
Granted	1,584,056	13.68
Exercised (1)	(22,979)	3.32
<b>Outstanding, December 31, 2014</b>	3,118,911	11.23
Granted	<b>1,919,246</b>	<b>16.21</b>
Forfeited	<b>(107,250)</b>	<b>14.45</b>
Expired	<b>(23,336)</b>	<b>11.49</b>
Exercised (1)	<b>(136,818)</b>	<b>7.29</b>
<b>Outstanding, December 31, 2015</b>	<b>4,770,753</b>	<b>13.27</b>

(1) Weighted average share price of options exercised during the year ended December 31, 2015 was \$17.29 [year ended December 31, 2014 – \$13.52].

The fair value of the Element options granted during the years was determined using the Black-Scholes option valuation model with inputs to the model as follows:

	Unit	2015	2014
Weighted average share price	\$	16.21	13.68
Average term to exercise	Years	7.00	7.00
Share price volatility	%	27.60	33.00
Weighted average expected annual dividend yield	%	0.00	0.00
Risk-free interest rate	%	1.00	1.84
Forfeiture rate	%	1.02	1.02

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 12. OTHER REVENUES

Other revenues consist of the following for the years ended December 31:

	<b>2015</b>	<b>2014</b>	<b>2013</b>
	\$	\$	\$
Syndication fees	<b>14,025</b>	17,479	1,362
Capital advisory fees	<b>16,912</b>	—	—
Prepayment charges	<b>10,404</b>	6,211	3,968
Wholesale program fees	—	2,225	2,594
Other	<b>10,510</b>	10,661	10,052
	<b>51,851</b>	36,576	17,976

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 13. INCOME TAXES

**[a] The major components of income tax expense for the years ended December 31 are as follows:**

	2015	2014	2013
	\$	\$	\$
<b>Carve-out combined statements of operations</b>			
Current income tax expense	—	—	—
Deferred income tax benefit			
Origination and reversal of temporary differences	32,530	22,233	5,914
<b>Income tax expense (benefit) reported in the carve-out combined statements of operations</b>	<b>32,530</b>	<b>22,233</b>	<b>5,914</b>
<b>Income tax benefit reported in the carve-out combined statements of changes in shareholders' equity</b>	<b>—</b>	<b>—</b>	<b>—</b>

**[b] Reconciliation of effective tax rate for the years ended December 31:**

	2015	2014	2013
	\$	\$	\$
Income before income taxes	148,728	87,650	20,377
Combined statutory Canadian federal and provincial tax rate	26.49%	26.36%	26.56%
Income tax expense based on statutory rate	39,398	23,104	5,412
Income taxes adjusted for the effect of:			
Non-deductible and non-taxable items	(12,936)	(5,599)	62
Foreign rate differential	5,842	4,357	562
Adjustments of prior year taxes and other	226	371	(122)
<b>Total income tax expense (benefit)</b>	<b>32,530</b>	<b>22,233</b>	<b>5,914</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

**[c] Deferred taxes:**

[i] Deferred taxes relate to the following:

	Year ended December 31, 2015	Change through net income or loss	Change through OCI	Year ended December 31, 2014
	\$	\$	\$	\$
<b>Deferred tax assets</b>				
Finance receivables	15,364	2,635	—	12,729
Tax loss carry forwards	378,037	256,721	—	121,316
Transaction and integration costs	2,853	462	—	2,391
Capital assets, intangibles, and other	4,776	1,268	—	3,508
Unrealized foreign exchange gains and losses	9,578	55	7,463	2,060
	<b>410,608</b>	<b>261,141</b>	<b>7,463</b>	<b>142,004</b>
<b>Deferred tax liabilities</b>				
Finance receivables	426,819	296,120	—	130,699
Intangible assets arising from acquisitions			—	
Capital assets, intangibles, and other	1,627	(1,801)	—	3,428
Unrealized foreign exchange gains and losses	109	(648)	—	757
	<b>428,555</b>	<b>293,671</b>	<b>—</b>	<b>134,884</b>
<b>Net deferred tax asset (liability) position</b>	<b>(17,947)</b>	<b>(32,530)</b>	<b>7,463</b>	<b>7,120</b>
<b>Reported in</b>				
Deferred tax assets <sup>[1]</sup>	16,674			14,571
Deferred tax liabilities <sup>[1]</sup>	34,621			7,451

<sup>[1]</sup> Deferred tax assets and liabilities are presented on the carve-out combined statements of financial position net by entity.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

	Year ended December 31, 2014	Change through net income or loss	Change through net investment	Change through OCI	Acquisitions	Year ended December 31, 2013
	\$	\$	\$	\$	\$	\$
<b>Deferred tax assets</b>						
Finance receivables	12,729	(2,092)	—	—	6,891	7,930
Tax loss carry forwards	121,316	84,565	—	—	—	36,751
Transaction and integration costs	2,391	(979)	—	—	—	3,370
Capital assets, intangibles, and other	3,508	87	—	—	315	3,106
Unrealized foreign exchange gains and losses	2,060	(435)	—	2,480	—	15
	<u>142,004</u>	<u>81,146</u>	<u>—</u>	<u>2,480</u>	<u>7,206</u>	<u>51,172</u>
<b>Deferred tax liabilities</b>						
Finance receivables	130,699	103,218	—	—	5,282	22,199
Capital assets, intangibles, and other	3,428	(216)	—	—	—	3,644
Unrealized foreign exchange gains and losses	757	377	—	—	—	380
	<u>134,884</u>	<u>103,379</u>	<u>—</u>	<u>—</u>	<u>5,282</u>	<u>26,223</u>
<b>Net deferred tax asset (liability) position</b>	<u>7,120</u>	<u>(22,233)</u>	<u>—</u>	<u>2,480</u>	<u>1,924</u>	<u>24,949</u>
<b>Reported in</b>						
Deferred tax assets <sup>[1]</sup>	14,571					26,657
Deferred tax liabilities <sup>[1]</sup>	<u>7,451</u>					<u>1,708</u>

<sup>[1]</sup> Deferred tax assets and liabilities are presented on the carve-out combined statements of financial position net by entity.

Management has concluded the deferred tax asset of \$410,608 meets the relevant recognition criteria under IFRS. Management's conclusion is supported by embedded profits in existing finance receivables and the future reversal of existing taxable temporary differences which are expected to produce sufficient taxable income to realize the deferred tax asset.

[ii] There are no unused tax losses and temporary differences that have not been recognized for the year ended December 31, 2015.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 14. SUBSIDIARIES

#### [a] List of significant subsidiaries

The table below provides details of the significant subsidiaries of the Company, all of which are wholly-owned:

	<b>Principal place of business</b>
Element Financial Corp.	US
Element Funding U.S. LLC	US
Element Rail Leasing I LLC	US
Element Rail Leasing II LLC	US
HeliFleet 2013-01 LLC	US
Element Aviation Inc.	Canada
Element Commercial Finance LP	Canada
Element Finance Inc.	Canada
Element Rail Leasing Canada LP	Canada
Element Capital Advisory LLC	US

#### [b] Subsidiaries with restrictions

The Company has restrictions on its ability to access or use its assets and settle its liabilities in Element Funding U.S. LLC, Element Rail Leasing I LLC, Element Rail Leasing II LLC, HeliFleet 2013-01 LLC, Element Commercial Finance LP, and Element Rail Leasing Canada LP. These subsidiaries facilitate the transfer of certain financial assets and related property or interests, in connection with funding facilities, and the activities of these entities are governed by their constituting agreements and debt agreements. Assets held as collateral by these subsidiaries for such funding facilities are not available to satisfy the claims of creditors of the Company. The carrying amounts of assets and liabilities in subsidiaries with significant restrictions as at December 31, 2015 were \$1,676,424 and \$1,256,785, respectively [2014 - \$234,757 and \$147,389, respectively].

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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December 31, 2015

### 15. RELATED PARTY TRANSACTIONS

#### Compensation of directors and key management

The following is the allocation to the Company of the remuneration of Element's directors and key management personnel for the years ended December 31:

	2015	2014	2013
	\$	\$	\$
Salaries, bonuses and benefits	4,668	2,066	10,382
Share-based compensation	7,412	2,555	25,254
	12,080	4,621	35,636

#### Corporate Allocations

Element utilizes a centralized corporate platform to provide shared services for general and administrative functions to the Company. These shared services include, but are not limited to, support associated with information technology, enterprise risk management, internal audit, human resources, accounting and communications. The Company is also allocated expenses for insurance, bank fees, external audit fees and for costs to manage the overall corporate function of Element. Where possible, these allocations were made on a specific identification basis. Where specific identification was not possible, these expenses were allocated by Element based on relative percentages of net average earning assets. Corporate overhead allocations and allocated expenses recorded within salaries and benefits for 2015 were \$4,821 [2014 – \$6,208; 2013 – \$5,021]. Corporate overhead allocations and allocated expenses recorded within general and administrative expense for 2015 were \$4,211 [2014 – \$3,736; 2013 – \$3,749].

#### C&V and Aviation Allocations

The majority of the assets and liabilities in the carve-out combined statement of financial position of the Company have been derived from Element's vertical organization. However, selected assets that have historically been managed within the C&V and Aviation Finance verticals are expected to be retained by Element as part of the Arrangement. These assets, which had a December 31, 2015 carrying value of \$986,457 (2014 – \$254,760), have been excluded from the carve-out combined statement of financial position of the Company. In addition, certain direct and indirect operating costs associated with these assets have been excluded from the carve-out combined statement of operations, including both direct costs identified by management and an allocation of

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

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certain indirect costs based on net average earning assets. The operating costs excluded from the carve-out statement of operations include salaries, wages and benefits of \$7,446 (2014 – \$1,199; 2013 – nil) and general and administration expenses of \$2,482 (2014 – \$400; 2013 – nil).

### Notes receivable

Notes receivable of \$27,338 as at December 31, 2015 [2014 - \$23,925] represent loans to certain employees and officers of the Company. These loans bear interest at a rate of 3% per annum. Interest is payable monthly or annually, and the principal is payable on demand in the event of non-payment of interest. The loans were granted in order to help finance the purchase of the Element's shares and are secured by the shares purchased with full recourse to the employee.

The changes in the notes receivable during the years ended December 31, were as follows:

	2015 \$	2014 \$
<b>Notes receivable, beginning of year</b>	<b>23,925</b>	19,172
Additions	<b>5,614</b>	4,312
Interest income	<b>718</b>	585
Repayments [interest and principal]	<b>(2,919)</b>	(144)
<b>Notes receivable, end of year</b>	<b>27,338</b>	23,925



## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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December 31, 2015

### 16. DERIVATIVE FINANCIAL INSTRUMENTS

In the normal course of business, and consistent with its risk management program, the Company enters into interest rate derivatives to manage interest rate risk, foreign exchange forward agreements to manage foreign currency exposure, and total return swaps to manage exposure to share-based compensation.

#### Cash flow hedging relationships

The Company has entered into interest rate swap agreements whereby the Company pays a fixed rate of interest based on the proportion of the fixed rate finance receivables collateralized in secured borrowing arrangements and receives a floating rate of interest based on the Canadian bankers' acceptance rate or US LIBOR rate, depending on the currency of the secured borrowings. Similarly, the Company has entered into interest rate cap contracts whereby the Company will receive payments if the floating rate exceeds the cap strike price.

These hedge transactions are designed to provide the Company with a fixed rate of return on its finance receivables, net of interest paid on secured borrowing agreements.

To mitigate the foreign exchange risk on finance receivables denominated in US dollars and other foreign currencies, the Company may use foreign exchange forward agreements, foreign exchange flat forward agreements and/or foreign denominated debt.

The following table presents the fair value changes related to the cash flow hedges included in the Company's results for the year ended December 31:

	2015	2014	2013
	\$	\$	\$
Foreign exchange agreements recorded in other revenue	<b>(21,939)</b>	(13,677)	960
Fair value change recorded in other revenue from hedge ineffectiveness	—	18	—
Fair value changes recorded in other comprehensive income	<b>(22,470)</b>	(9,250)	(1,526)

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

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### **Hedges of net investment in foreign operations**

The Company may use foreign exchange forward agreements, foreign exchange option collars, and/or foreign denominated debt to hedge its net investment in foreign subsidiaries. Gains or losses on the hedging instrument are transferred to equity to offset any gains or losses on the translation of the net investment in foreign subsidiaries. During the year ended December 31, 2015, foreign exchange losses of \$245 on hedging instruments were recognized in other comprehensive income (loss) [2014 – nil; 2013 - nil].

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### Notional amounts and fair values of derivative instruments

The following table summarizes the notional principal and fair values of the derivative financial instruments outstanding:

	Remaining term to maturity				December 31, 2015	December 31, 2014
	Within 1 year	1 to 3 years	3 to 5 years	Greater than 5 years		
	\$	\$	\$	\$	\$	\$
<b>Notional principal</b>						
Derivative assets						
Interest rate contracts	155,014	460,290	340,230	141,542	1,097,076	189,377
Foreign exchange agreements	684	1,526	1,684	2,861	6,755	35,875
	<b>155,698</b>	<b>461,816</b>	<b>341,914</b>	<b>144,403</b>	<b>1,103,831</b>	<b>225,252</b>
Derivative liabilities						
Interest rate contracts	272,395	396,586	268,836	353,852	1,291,669	1,414,815
Foreign exchange agreements	486,709	1,291	—	—	488,000	172,227
	<b>759,104</b>	<b>397,877</b>	<b>268,836</b>	<b>353,852</b>	<b>1,779,669</b>	<b>1,587,042</b>
<b>Fair values</b>						
Restricted funds - collateral posted					16,072	7,962
Derivative assets						
Interest rate contracts	(2,483)	3,528	2,383	511	3,939	277
Foreign exchange agreements	7	17	19	32	75	1,425
	<b>(2,476)</b>	<b>3,545</b>	<b>2,402</b>	<b>543</b>	<b>4,014</b>	<b>1,702</b>
Derivative liabilities						
Interest rate contracts	1,129	2,335	3,268	4,559	11,291	9,566
Foreign exchange agreements	5,906	550	—	—	6,456	419
	<b>7,035</b>	<b>2,885</b>	<b>3,268</b>	<b>4,559</b>	<b>17,747</b>	<b>9,985</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### Fair values of derivatives designated in hedging relationships

The following table summarizes the fair values of the derivative financial instruments designated in an accounting hedging relationships, as at December 31:

	2015 \$	2014 \$
Interest rate contracts	(7,352)	(9,289)
Foreign exchange agreements	(6,381)	1,006
	(13,733)	(8,283)

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### Offsetting of Derivative Assets and Liabilities

The following tables present a summary of the Company's derivative portfolio, which includes the gross amounts of recognized financial assets and liabilities; the amounts offset in the carve-out combined statements of financial position; the net amounts presented in the carve-out combined statements of financial position; the amounts subject to an enforceable master netting arrangement or similar agreement that were not included in the offset amount above; and the amount of cash collateral received or pledged.

	Gross amounts of recognized financial instruments before netting on the Statements of Financial Position	Gross amounts of recognized financial instruments set-off in the Statements of Financial Position	Net amount of financial instruments presented in the Statements of Financial Position	Amounts subject to an enforceable master netting arrangement or similar agreement that are not set-off in the Statements of Financial Position		
				Amounts subject to an enforceable master netting agreement	Collateral	Net Amount
<b>As at December 31, 2015</b>						
Derivative financial instrument assets	4,014	—	4,014	1,042	—	2,972
Derivative financial instrument liabilities	17,747	—	17,747	1,052	16,072	623
<b>As at December 31, 2014</b>						
Derivative financial instrument assets	1,702	—	1,702	605	—	2,307
Derivative financial instrument liabilities	9,985	—	9,985	605	7,962	1,418

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 17. CAPITAL DISCLOSURES

The Company's objectives when managing capital are to ensure sufficient liquidity to support its financial objectives and strategic plans, to ensure its financial covenants are met and to maximize shareholder value. The Company defines capital as the aggregate of Element's net investment, debt, and accounts payable and accrued liabilities.

The Company's capitalization is as follows:

	<b>December 31, 2015</b>	<b>December 31, 2014</b>
	\$	\$
Total debt		
Secured borrowings	4,471,392	3,047,300
Accounts payable and accrued liabilities	57,080	83,084
	<u>4,528,472</u>	<u>3,130,384</u>
Element's net investment	1,591,411	985,493
	<u>6,119,883</u>	<u>4,115,877</u>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 18. SEGMENTED INFORMATION

For management purposes, the Company is organized into one business segment, which primarily operates in Canada, US and Other.

Geographic information as at and for the years ended December 31 is as follows:

	2015			Total \$
	Canada \$	US \$	Other \$	
<b>Financial revenue</b>	<b>150,387</b>	<b>186,767</b>	<b>9,357</b>	<b>346,511</b>
<b>Interest expense</b>				<b>128,843</b>
<b>Net financial income</b>				<b>217,668</b>
<b>Select assets</b>				
Finance receivables	1,299,361	1,834,886	(4,453)	3,129,794
Equipment under operating leases	422,284	2,202,352	68,095	2,692,731
Goodwill	4,560	3,514	—	8,074
Other	40	26,203	—	26,243
	<b>1,726,245</b>	<b>4,066,955</b>	<b>63,642</b>	<b>5,856,842</b>
	2014			Total \$
	Canada \$	US \$	Other \$	
<b>Financial revenue</b>	119,601	101,851	5,974	227,425
<b>Interest expense</b>				85,412
<b>Net financial income</b>				<b>142,013</b>
<b>Select assets</b>				
Finance receivables	1,469,676	1,020,602	87,567	2,577,845
Equipment under operating leases	112,990	1,145,774	20,906	1,279,670
Goodwill	4,560	1,160	—	5,720
Other	31	21,865	—	21,898
	<b>1,587,259</b>	<b>2,189,401</b>	<b>108,473</b>	<b>3,885,133</b>

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

	<b>2013</b>			Total \$
	Canada \$	US \$	Other \$	
<b>Financial revenue</b>	71,727	30,066	—	101,793
<b>Interest expense</b>				36,874
<b>Net financial income</b>				64,919
 <b>Select assets</b>				
Finance receivables	1,174,619	534,303	99,981	1,808,903
Equipment under operating leases	—	224,250	14,805	239,055
Goodwill	4,560	—	—	4,560
Other	13	16,318	—	16,331
	1,179,192	774,871	114,786	2,068,849

Geographic net financial income, excluding interest expense [“Financial revenue”] is based on the location of customers and non-current assets are based on the location of the assets.



## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 19. COMMITMENTS

The Company's subsidiaries lease their offices under operating leases expiring on various dates through 2023. As at December 31, the remaining future minimum lease payments are as follows:

	2015 \$	2014 \$
Within one year	1,255	684
After one year but not more than five years	4,417	3,528
More than five years	948	1,260
	<b>6,620</b>	<b>5,472</b>

Element and the Company enter into commitments to extend credit and provide lease or loan financing to its customers in the ordinary course of business, or commits to purchase equipment for leases. The funding of these commitments is subject to the customer satisfying various conditions and contractual requirements prior to funding. As a result, the total commitments outstanding do not necessarily reflect actual future cash flow requirements. As at December 31, 2015, the Company had \$770,383 of direct and allocated commitments outstanding to provide financing or purchase equipment; \$610,782 of these commitments expire or settle on various dates through to December 31, 2016, and \$159,601 expire or settle on various dates through to December 31, 2017.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 20. FINANCIAL INSTRUMENTS RISK

#### Credit risk

Credit risk is the risk that the Company will incur a loss because its customers and counterparties fail to discharge their contractual obligations. The Company manages and controls credit risk by setting limits on the amount of risk it is willing to accept for individual counterparties on direct financing leases and loans. Counterparty limits are established by the use of both external and internal credit risk classification systems, which assign each counterparty a risk rating. The Company also manages credit risk through the existence of asset collateral held against both direct financing leases and loans. The Company maintains insurance coverage over these assets to further mitigate risk of loss. In situations where the Company takes possession of collateral under the terms of the direct finance lease or loan agreement, the asset is sold and a gain or loss on disposal is recognized.

The Company also monitors the diversification of its lending across asset class, geography and transaction size. As at December 31, 2015, the top three asset classes underlying the lending portfolio were aircrafts, vehicles and construction equipment with concentrations of 34.3%, 15.0% and 14.4%, respectively [2014 – aircrafts, vehicles and construction equipment with concentrations of 36.9%, 11.3 and 10.7%, respectively]. Also, as at December 31, 2015, 41.3% of the finance receivable portfolio was issued to customers in Canada and 58.7% to customers in the United States, of which 20.1%, 10.5% and 5.7% of finance leases and loans were issued to customers located in Ontario, Minnesota, British Columbia, respectively [2014 – 22.9%, 10.0% and 8.2% of finance leases and loans were issued to customers located in Ontario, Quebec and Alberta, respectively]. As a result of transaction sizes and collateral arrangements, no individual customer represents a significant credit risk to the Company.

The Company's maximum exposure to credit risk for components of the carve-out combined statements of financial position as at December 31, 2015 and 2014 is the carrying amounts as disclosed on the statement of financial position.

#### Liquidity risk

Liquidity risk is the risk that the Company cannot meet a demand for cash or fund its obligations as they come due. The Company's management oversees the Company's liquidity to ensure the Company has access to enough readily available funds to cover its financial obligations as they come due and sustain and grow its assets and operations under both normal and stress conditions.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

The most significant exposure to liquidity risk relates to the repayment of secured borrowings [note 9]. This exposure is managed as the cash flows generated by the Company's net investment in leases and loans, and future minimum payments on equipment under operating leases are term matched to meet the repayment requirements.

### Interest rate risk

Interest rate risk relates to the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. In order to mitigate interest rate risk, the Company structures its secured borrowing arrangements to maintain a fixed interest rate spread between the interest paid on both the term funding facilities and the revolving loan facilities and the interest received on the underlying finance receivables. This fixed interest rate spread is achieved by match funding transactions on both a duration and interest rate basis. In some instances the Company enters into interest rate swaps in order to align the interest rate variability.

The Company does experience short-term interest rate risk on these finance receivables during the year between fixing the contractual rate under the finance contracts with its customers and the locking of the interest rate under its funding facilities. During this time, an upward movement in benchmark rates can negatively impact the spread on the transaction. In order to mitigate this risk, the Company carefully monitors its borrowing costs to ensure its rates reflect appropriate spreads to insulate against sudden unexpected interest rate movements. In order to further mitigate risk, the Company undertakes regular securitizations under its secured borrowing arrangements to ensure its finance contracts are appropriately match-funded by its secured borrowings, which reduces the warehouse period and the likelihood that a significant movement in bond rates will negatively impact the spreads on such transactions. The Company also maintains adequate balance sheet liquidity to allow it flexibility in developing a strategy of holding versus securitizing such finance assets.

After considering the fixed interest rate spread on the secured borrowing programs and high exposure to fixed rate finance receivables described above, the Company's interest rate risk is limited to cash and restricted cash, floating-rate finance receivables which are neither hedged nor part of a match-funded secured borrowing arrangement, senior revolving credit facility, and floating-rate finance receivables that are hedged with interest rate caps and these interest rate caps are out-of-the-money. Based on its exposure as at December 31, 2015, the Company estimates that a 50 basis point increase or decrease in interest rates [subject to a floor of 1 basis point] would not have a significant impact on the Company's earnings.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### **Foreign currency risk**

Foreign currency risk is the risk of exposure to foreign currency movements on the Company's lending and/or net investment in foreign subsidiaries, whereby there is a risk the exchange rates will be materially different when a loan or finance receivable is remeasured for accounting purposes, matures or when a foreign subsidiary is divested. The Company mitigates and manages this risk on the Company's lending portfolio by entering into foreign exchange forward contracts to reduce or hedge its exposure to foreign currency risk. The Company currently partially hedges its net investment in foreign subsidiaries. As at December 31, 2015, the Company did not have a significant un-hedged exposure to this type of foreign currency risk that would have an impact to net income.

The Company is also exposed to foreign currency risk related to net income generated from foreign currency denominated assets and operations. This risk represents the impact of fluctuations to the average Canadian and foreign currency exchange rate used to translate the Company's foreign currency denominated net income into Canadian dollar equivalent during each year. The Company may mitigate and manage this type of foreign currency risk by entering into foreign currency forward contracts to reduce or hedge this exposure to foreign currency risk. If future net income before business acquisition costs and income taxes is consistent with the results generated in 2015, each one cent increase (decrease) in the average Canadian/foreign currency exchange rates would be expected to increase/decrease net income before business acquisition costs and income taxes for the year by approximately \$805 [2014 – \$540] in the absence of hedging transactions.

## NOTES TO CARVE-OUT COMBINED FINANCIAL STATEMENTS

[in thousands of Canadian dollars, except where otherwise noted]

December 31, 2015

### 21. FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company estimates the fair value of the following financial instruments using the methodology described below.

#### Valuation methods and assumptions

##### Finance receivables and secured borrowings on finance receivables

The carrying value of finance receivables and secured borrowings approximates fair value. The assertion that the carrying value of the finance receivables approximates fair value requires the use of estimates and significant judgment. The finance receivables were credit-scored based on an internal model which is not used in market transactions. They comprise a large number of transactions with commercial customers in different businesses, are secured by liens on various types of equipment and may be guaranteed by third parties and cross-collateralized. The fair value of any receivable would be affected by a potential buyer's assessment of the transaction's credit quality, collateral value, guarantees, payment history, yield, term, documents and other legal matters, and other subjective considerations. Value received in a fair market sale transaction would be based on the terms of the sale, the buyer's views of the economic and industry conditions, the Company's and the buyer's tax considerations, and other factors.

##### Notes receivable

The carrying value of the notes receivable approximates their fair value, as the interest rate on this asset is commensurate with market interest rates for this type of asset with similar duration and credit risk

##### Derivatives

The fair values of derivatives are presented in note 16 and are determined by the derivative counterparty using the related interest rate swap curves, foreign exchange forward values, intrinsic values and/or the Company's stock price for the total return swaps. Derivatives are classified as Level 2 financial instruments, whereby fair value is determined using valuation techniques and observable inputs.

**APPENDIX N**  
**ECN CAPITAL PRO FORMA FINANCIAL STATEMENTS**

Pro Forma Consolidated Financial Statements

**ECN Capital Corp.**

Unaudited

Statement of Financial Position as at March 31, 2016

Statements of Operations for the three-month period ended  
March 31, 2016 and for the year ended December 31, 2015

**ECN Capital Corp.**

**PRO FORMA CONSOLIDATED STATEMENT OF FINANCIAL POSITION**

[In thousands of Canadian dollars]

As at March 31, 2016

Unaudited

	ECN Capital Corp. \$	Assumptions relating to INFOR Acquisition Corp. \$	[a] \$	[b] \$	[c] \$	Pro forma consolidated \$
	<i>Add/(Deduct) Pro Forma Adjustments [note 2]</i>					
<b>ASSETS</b>						
Cash and cash equivalents	—	2,013	—	—	194,086	196,099
Restricted funds	189,252	—	—	—	—	189,252
Investments in Canadian Government securities held in escrow	—	231,012	—	—	(231,012)	—
Finance receivables	3,104,034	—	—	—	—	3,104,034
Equipment under operating leases	2,551,178	—	—	—	—	2,551,178
Accounts receivable and other assets	44,045	3	—	—	(2,640)	41,408
Notes receivable	26,813	—	—	—	—	26,813
Derivative financial instruments	716	—	—	—	—	716
Property, equipment and leasehold improvements	713	—	—	—	—	713
Deferred tax assets	21,235	—	—	—	—	21,235
Intangible assets	23,406	—	—	—	—	23,406
Goodwill	7,857	—	—	—	—	7,857
	<b>5,969,249</b>	<b>233,028</b>	<b>—</b>	<b>—</b>	<b>(39,566)</b>	<b>6,162,711</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>						
<b>Liabilities</b>						
Accounts payable and accrued liabilities	49,311	49	20,000	—	3,750	73,110
Derivative financial instruments	22,122	—	—	—	—	22,122
Secured borrowings	4,383,876	—	—	—	—	4,383,876
Deferred Underwriters' Commission	—	8,050	—	—	(8,050)	—
Class A Restricted Voting Shares subject to Redemption	—	226,550	—	—	(226,550)	—
Deferred tax liabilities	11,939	—	—	—	—	11,939
<b>Total liabilities</b>	<b>4,467,248</b>	<b>234,649</b>	<b>20,000</b>	<b>—</b>	<b>(230,850)</b>	<b>4,491,047</b>
<b>SHAREHOLDERS' EQUITY</b>						
Shareholders' equity	—	(1,621)	(20,000)	1,502,001	191,284	1,671,664
Net investment	1,502,001	—	—	(1,502,001)	—	—
<b>Total shareholder's equity</b>	<b>1,502,001</b>	<b>(1,621)</b>	<b>(20,000)</b>	<b>—</b>	<b>191,284</b>	<b>1,671,664</b>
	<b>5,969,249</b>	<b>233,028</b>	<b>—</b>	<b>—</b>	<b>(39,566)</b>	<b>6,162,711</b>

See accompanying notes



**ECN Capital Corp.**

**PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS**

[In thousands of Canadian dollars]

Three-month period ended March 31, 2016

Unaudited

	ECN Capital Corp. \$	Assumptions relating to INFOR Acquisition Corp. \$	Adjustments [d] \$	Pro forma consolidated \$
<b>NET FINANCIAL INCOME</b>				
Interest income	49,472	244	—	49,716
Rental revenue, net	44,541	—	—	44,541
	94,013	244	—	94,257
Interest expense	40,403	—	—	40,403
Net interest income before provision for credit losses	53,610	244	—	53,854
Provision for credit losses	3,861	—	—	3,861
Net interest income	49,749	244	—	49,993
Other revenue items	6,175	—	—	6,175
Net unrealized loss on changes in the fair value of financial liabilities	—	(460)	460	—
Net financial income (loss)	55,924	(216)	460	56,168
<b>OPERATING EXPENSES</b>				
Salaries, wages and benefits	8,056	—	—	8,056
General and administrative expenses	7,193	137	—	7,330
Share-based compensation	2,070	—	—	2,070
	17,319	137	—	17,456
<b>BUSINESS ACQUISITION COSTS</b>				
Amortization of intangible assets from acquisitions	650	—	—	650
	650	—	—	650
Income before income taxes	37,955	(353)	460	38,062
Provision for income taxes	8,892	—	—	8,892
<b>Net income for the period</b>	29,063	(353)	460	29,170
<b>Earnings (loss) per share</b>				
Basic	0.08	(0.07)	—	0.07
Fully diluted	0.07	(0.07)	—	0.07
<b>Weighted average shares outstanding</b>				
Basic [note 3]	386,134,550	5,352,000	—	436,797,550
Fully diluted [note 3]	390,552,940	5,352,000	—	441,215,940

See accompanying notes

**ECN Capital Corp.**

**PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS**

[In thousands of Canadian dollars]

Twelve-month period ended December 31, 2015

Unaudited

	ECN Capital Corp. \$	Assumptions relating to INFOR Acquisition Corp. \$	[d] \$	Pro forma consolidated \$
	<i>Adjustments</i>			
<b>NET FINANCIAL INCOME</b>				
Interest income	178,557	768	—	179,325
Rental revenue, net	133,833	—	—	133,833
Interest expense	312,390	768	—	313,158
Net interest income before provision for credit losses	128,843	—	—	128,843
Provision for credit losses	183,547	768	—	184,315
Net interest income	17,730	—	—	17,730
Other revenue items	165,817	768	—	166,585
Net unrealized loss on changes in the fair value of financial liabilities	51,851	—	—	51,851
Net financial income	—	1,610	(1,610)	—
	<b>217,668</b>	<b>2,378</b>	<b>(1,610)</b>	<b>218,436</b>
<b>OPERATING EXPENSES</b>				
Salaries, wages and benefits	32,799	—	—	32,799
General and administrative expenses	24,058	565	—	24,623
Share-based compensation	10,366	—	—	10,366
	<b>67,223</b>	<b>565</b>	<b>—</b>	<b>67,788</b>
<b>BUSINESS ACQUISITION COSTS</b>				
Amortization of intangible assets from acquisitions	1,719	—	—	1,719
Transaction and integration costs	—	13,523	—	13,523
	<b>1,719</b>	<b>13,523</b>	<b>—</b>	<b>15,242</b>
Income before income taxes	148,726	(11,710)	(1,610)	135,406
Provision for income taxes	32,530	—	—	32,530
<b>Net income for the period</b>	<b>116,196</b>	<b>(11,710)</b>	<b>(1,610)</b>	<b>102,876</b>
<b>Earnings (loss) per share</b>				
Basic	0.38	(2.53)	—	0.29
Fully diluted	0.37	(2.53)	—	0.28
<b>Weighted average shares outstanding</b>				
Basic [note 3]	305,230,121	4,633,000	—	355,893,121
Fully diluted [note 3]	311,381,330	4,633,000	—	362,044,330

See accompanying notes

## **ECN Capital Corp.**

# **NOTES TO PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS**

[in millions of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

## **1. BACKGROUND AND BASIS OF PRESENTATION**

On February 16, 2016, the Board of Directors of Element Financial Corporation ["Element"] approved a plan to separate Element into two publicly traded companies. The plan involves the separation of Element and a portion of its subsidiaries comprising Commercial and Vendor Finance, Rail Finance, and Aviation Finance verticals from the existing corporate structure into ECN Capital Corp. ["ECN Capital"], a newly created publicly traded company. Element's Fleet Management vertical will be renamed Element Fleet Management Corp. ["Element Fleet"] and will continue to operate within the existing corporate structure.

The proposed separation of Element into ECN Capital and Element Fleet [the "Arrangement"] would be implemented through a court approved plan of arrangement and is subject to regulatory, court and shareholder approvals. Upon completion of the Arrangement, Element shareholders would receive one ECN Capital common share for each Element common share held.

On July 25, 2016, Element announced that ECN Capital will acquire all the shares of INFOR Acquisition Corp ["IAC"] (other than the shares of IAC held by ECN Capital and its affiliates) in exchange for common shares of ECN Capital [the "IAC Acquisition"]. The IAC Acquisition is expected to close after the completion of the Arrangement.

We have made certain reasonable assumptions in respect of IAC and ECN Capital's related acquisition of all of IAC's outstanding shares (other than those shares owned by ECN Capital or any of its affiliates) relating to these pro forma financial statements of ECN Capital based on certain publicly available information in respect of IAC, which include IAC's unaudited Condensed Interim Financial Statements for the period ended March 31, 2016 ["IAC unaudited Financial Statements"] and IAC's audited Financial Statements for the period ended December 31, 2015 ["IAC audited Financial Statements"].

The unaudited pro forma consolidated statement of financial position as at March 31, 2016 gives effect to the Arrangement and the IAC Acquisition as if they had occurred on March 31, 2016, and has been prepared from the ECN Capital unaudited Carve-out Combined Financial Statements for the period ended March 31, 2016, as well as the IAC unaudited Financial Statements.

The unaudited pro forma consolidated statement of operations for the three-month period ended March 31, 2016 gives effect to the Arrangement as if it had occurred on January 1, 2015 and gives effect to the IAC Acquisition as if it had occurred on April 17, 2015 (the date of IAC's formation), and has been prepared from the ECN Capital unaudited Carve-out Combined Financial Statements for the period ended March 31, 2016, as well as the IAC unaudited Financial Statements.

## **ECN Capital Corp.**

# **NOTES TO PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS**

[in millions of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

The unaudited pro forma consolidated statement of operations for the year ended December 31, 2015 gives effect to the Arrangement as if it had occurred on January 1, 2015 and gives effect to the IAC Acquisition as if it had occurred on April 17, 2015 (the date of IAC's formation), and has been prepared from the ECN Capital Carve-out Combined Financial Statements for the year ended December 31, 2015, the IAC audited Financial Statements.

The ECN Capital Carve-out Combined Financial Statements were derived from the accounting records of Element on a carve-out basis and therefore include allocated costs, which may not be representative of the costs that may be incurred in the future as an independent, publicly-traded company.

These unaudited Pro Forma Consolidated Financial Statements should be read in conjunction with the Element Consolidated Financial Statements for the year ended December 31, 2015 and the related Management Discussion and Analysis, which are incorporated by reference in the Management Information Circular.

These unaudited Pro Forma Consolidated Financial Statements are for illustrative and information purposes only and may not be indicative of the operating results or financial condition that actually would have been achieved if the Arrangement and the IAC Acquisition had been in effect on the dates indicated or of the results that may be obtained in the future. In addition to the pro forma adjustments to the historical carve-out combined financial statements, various other factors may have an effect on the financial condition and results of operations after the completion of the Arrangement and the IAC Acquisition.

## **2. PRO FORMA ADJUSTMENTS**

The pro forma adjustments contained in these unaudited pro forma consolidated financial statements reflect estimates and assumptions by management of Element based on currently available information.

- [a] The adjustment to increase accounts payable to accrue for ECN Capital's share of the estimated transaction costs incurred to complete the Arrangement. No adjustment has been made to the pro forma statements of operations for this additional expense because it is considered to be non-recurring.
- [b] The adjustment to reclassify the amount of Element's net investment in ECN Capital, which was recorded in ECN Capital as net investment in its Carve-Out Combined Financial Statements.

## ECN Capital Corp.

# NOTES TO PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

[in millions of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

- [c] This adjustment relates to the closing of the IAC Acquisition. The adjustment has been presented assuming a redemption of 12.5% of IAC Class A Restricted Voting Shares, comprising of the IAC Class A Restricted Voting Shares and IAC warrants [“IAC Class A shares”], prior to closing of the IAC Acquisition. The adjustment includes the following elements: [i] the investment in Canadian Government securities of \$231,012 is released from escrow with \$202,136 converted into cash or cash equivalents and \$28,876 used to settle the assumed redemption of 12.5% of the IAC Class A shares; [ii] the elimination of fully paid class B common shares, and founder Class B common shares which had a March 31, 2016 book value of \$2,640; [iii] a portion of the funds released from escrow are used to pay accrued underwriters’ commissions of \$8,050; [iv] an increase in accounts payable to accrue for the estimated acquisition-related transaction costs of \$3,750; [vi] the remaining liability associated with the IAC Class A shares is settled with the issuance of ECN Capital in accordance with the terms of the IAC Acquisition.

The actual redemption of IAC Class A shares that will occur prior to the IAC Acquisition cannot be known until the time that the IAC Acquisition is effected. The 12.5% redemption rate used in the pro forma financial statements is an assumption for illustrative purposes.

From a sensitivity perspective, if this adjustment had been presented assuming a redemption of nil IAC Class A shares, then the investment in Canadian Government securities of \$231,012 would have been released from escrow with the full \$231,012 converted into cash or cash equivalents. If this adjustment had been presented assuming a redemption of 25% of the IAC Class A shares, then the investment in Canadian Government securities of \$231,012 would have been released from escrow with the full \$173,259 converted into cash or cash equivalents and \$57,753 used to settle the assumed redemptions of IAC Class A share.

- [d] The adjustment to remove the change in fair value of IAC Class A shares, which following the close of the IAC Acquisition are reclassified to equity.

### 3. EARNINGS (LOSS) PER SHARE

The basic and diluted weighted average shares outstanding for ECN Capital presented in the pro forma financial statements have been assumed to be the same as Element for the respective periods presented. This assumption is materially consistent with the terms of the Arrangement, whereby Element shareholders would receive one ECN Capital common share for each Element common share held.

**ECN Capital Corp.**

**NOTES TO PRO FORMA CONSOLIDATED  
FINANCIAL STATEMENTS**

[in millions of Canadian dollars unless otherwise noted]

March 31, 2016

Unaudited

The pro forma financial statements reflect the issuance of 50,663,000 ECN Capital Common Shares upon closing of the IAC Acquisition. The number of ECN Capital shares issued reflects (a) an assumed redemption rate of 12.5% by the Class A shareholders and (b) an exchange ratio of 2.3 ECN Capital common shares for each IAC Class A share and fully paid Class B common shares outstanding on March 31, 2016 and an exchange ratio of 0.6 ECN Capital common shares for each IAC founder Class B common share outstanding on March 31, 2016. The exchange ratio for the IAC Class A Restricted Voting Shares and the fully paid Class B common shares is based on the current per share fair value of IAC divided by the estimated per share fair value of ECN Capital. The exchange ratio for the IAC founder Class B common shares outstanding is based on the current estimation of a negotiated amount.

From a sensitivity perspective, if no IAC Class A shares are redeemed prior to closing of the IAC Acquisition, then the estimated number of ECN Capital Common Shares to be issued would increase to 57,579,000. If 25% of the IAC Class A shares are redeemed prior to the closing of the IAC Acquisition, then the estimated number of ECN Capital Common Shares to be issued would decrease to 43,747,000.

**APPENDIX O**  
**FORM OF ECN CAPITAL OPTION PLAN**

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## 1. GENERAL PROVISIONS

### 1.1 Interpretation

For the purposes of the Plan (defined below), unless otherwise defined herein, the following terms have the following meanings:

- (a) “**affiliate**” has the meaning attributed to that term in the *Business Corporations Act* (Ontario);
- (b) “**Applicable Law**” means any applicable provision of law, domestic or foreign, including, without limitation, applicable securities legislation, together with all regulations, rules, policy statements, rulings, notices, orders or other instruments promulgated thereunder, and Stock Exchange Rules;
- (c) “**Black-Out Period**” means a period of time imposed pursuant to the Insider Trading Policy of the Corporation upon certain designated persons during which those persons may not trade in any securities of the Corporation;
- (d) “**Board**” means the board of directors of the Corporation;
- (e) “**Cashless Exercise**” has the meaning attributed to that term in Section 2.9(b);
- (f) “**Cause**” in respect of a Participant has the meaning ascribed thereto in Participant’s written employment agreement with the Corporation, or, in the event the Participant is not party to any such written employment agreement, means “just cause” or “cause” for termination of the Participant’s employment by the Corporation as determined under Applicable Law;
- (g) “**Change of Control**” means:
  - (i) the consummation of any transaction or series of transactions including any consolidation, amalgamation, arrangement, merger or issue of voting shares in the capital of the Corporation, the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly or indirectly, of more than 50% of the voting shares in the capital of the Corporation, measured by voting power rather than number of shares (but shall not include the creation of a holding company or similar transaction that does not involve any material change in the indirect beneficial ownership of the shares in the capital of the Corporation);
  - (ii) the direct or indirect sale, transfer or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation, taken as a whole, to any Person or group of Persons acting jointly or in concert for purposes of such transaction (other than to any affiliates of the Corporation);
  - (iii) the election at a meeting of the Corporation’s shareholders of that number of individuals that would represent a majority of the Board as directors of the Corporation, who are not included in the slate for election as directors proposed to the Corporation’s shareholders by management of the Corporation or a transaction or series of transactions as a result of which a majority of the directors of the Corporation are removed from office at any annual or special meeting of shareholders or as a result of a transaction referred to in clause (i) immediately above, or a majority of the directors of the Corporation resign from office over a period of 60 days or less, and the vacancies created thereby are filled by nominees proposed by any Person other than directors or management of the Corporation in place immediately prior to the removal or resignation of the directors; or

- (iv) the completion of any transaction or the first of a series of transactions which would have the same or similar effect as any transaction or series of transactions referred to in clauses (i), (ii) or (iii) referred to immediately above;
- (h) “**Code**” means the United States Internal Revenue Code of 1986, as amended, and any applicable United States Treasury Regulations and other binding regulatory guidance thereunder;
- (i) “**Combination**” has the meaning attributed to that term in Section 2.11(d);
- (j) “**Committee**” has the meaning attributed to that term in Section 1.3(a);
- (k) “**Corporation**” means ECN Capital Corp., a corporation incorporated under the laws of Ontario, and includes: (i) any successor to ECN Capital Corp. resulting from any amalgamation, arrangement or other reorganization of, or involving, ECN Capital Corp. or any continuance under the laws of another jurisdiction and (ii) any affiliate of ECN Capital Corp. or any such successor;
- (l) “**Disability**” means the mental or physical state of the Participant such that, as a result of illness, disease, mental or physical disability or similar cause, the Participant has been unable to fulfil his or her obligations as an employee of the Corporation either for any consecutive six-month period or for any period of twelve months (whether or not consecutive) in any consecutive 24-month period, provided that, where the Participant has entered into a Participant Services Agreement with the Corporation, “Disability” will have the meaning attributed to that term, or the term equivalent in concept, contained in that Participant Services Agreement, and provided that the term “Disabled” has the same meaning with necessary grammatical changes;
- (m) “**Eligible Person**” means any Employee, officer, director and consultant (including any advisor) of the Corporation; a Participant will cease to be an Eligible Person on his Termination Date;
- (n) “**Employee**” means any Person treated as an employee in the records of the Corporation;
- (o) “**Fair Market Value**” means, at any date in respect of the Shares, the closing sale price of such Shares on the Stock Exchange (with the greatest volume of securities traded) on the trading day immediately preceding such date. In the event that such Shares did not trade on such trading day, the Fair Market Value shall be the average of the bid and ask prices in respect of such Shares at the close of trading on such trading day. If no quotation is made for the applicable day, the Fair Market Value on such day shall be determined in the manner set forth in the preceding sentence for the next preceding trading day. Notwithstanding the foregoing, if there is no reported closing price or high bid/low asked price that satisfies the preceding sentences, the Fair Market Value on any day shall be determined by such methods and procedures as shall be established from time to time by the Board in its sole discretion. If any Stock Exchange, other than the Toronto Stock Exchange, requires a different formula for the calculation of “Fair Market Value”; the definition of Fair Market Value shall be amended accordingly. For purposes of Options granted to or held by U.S. Taxpayers, Fair Market Value shall have the meaning provided in Exhibit A to the Plan;
- (p) “**Insider**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (q) “**Non-Employee Director**” means a director of the Corporation, other than a director of the Corporation that is an Employee;

- (r) “**Option**” means a right granted to an Eligible Person to purchase Shares on the terms of the Plan;
- (s) “**Option Agreement**” has the meaning attributed to that term in Section 2.3;
- (t) “**Participant**” means any Eligible Person to whom an Option has been granted or, in the case of such person’s death, his legal representative(s);
- (u) “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (v) “**Plan**” means this share option plan of the Corporation, as the same may be supplemented and amended from time to time;
- (w) “**Proposed Transaction**” has the meaning attributed to that term in Section 2.10;
- (x) “**Regulations**” means the regulations governing the Plan and made by the Board from time to time, including the regulations set out in Schedule 1.1(x) as the same may be amended or supplemented from time to time;
- (y) “**Security Based Compensation Arrangement**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (z) “**Share**” means a common share of the Corporation and such other share as may be substituted for it as a result of any amendments to the articles of the Corporation, or consolidation, merger, amalgamation, arrangement, reorganization or otherwise involving the Corporation, including any rights that form a part of the common share or substituted share;
- (aa) “**Stock Exchange**” means the Toronto Stock Exchange, or if the Shares are not listed on the Toronto Stock Exchange, such other stock exchange on which the Shares are listed, or if the Shares are not listed on any stock exchange, then on the over-the-counter market;
- (bb) “**Stock Exchange Rules**” means the applicable rules of any stock exchange upon which shares of the Corporation are listed;
- (cc) “**Termination Date**” means the last date on which a Participant provides services to the Corporation and not the last day upon which the Corporation pays wages or salaries in lieu of notice of termination, whether statutory, contractual or otherwise;
- (dd) “**Transfer**” means any disposition, transfer, sale, exchange, assignment, gift, bequest, disposition, hypothecation, mortgage, charge, pledge, encumbrance, grant of security interest, or any arrangement by which possession, legal title or beneficial ownership passes, directly or indirectly, from one Person or entity to another, or to the same Person or entity in a different capacity, whether or not voluntary and whether or not for value, and includes any agreement to effect the foregoing; and the words “Transferred”, “Transferring” and similar words have corresponding meanings; and
- (ee) “**U.S. Taxpayer**” means a Participant who is a citizen or permanent resident of the United States for purposes of the Code or a Participant for whom the amounts payable or Shares issued or issuable under the Plan are subject to taxation under the Code.

Words importing the singular number include the plural and vice versa, and words indicating gender include all genders. The term “**including**” means “including without limitation”.

The Plan will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **1.2 Purpose**

The purpose of the Plan is to advance the interests of the Corporation through the motivation, attraction and retention of officers, directors and employees of the Corporation and such other key individuals as the Board deems reasonably appropriate.

## **1.3 Administration**

- (a) The Plan will be administered by the Board or a committee of the Board duly appointed for such purpose by the Board. To the extent permitted by Applicable Law, the Board may delegate any or all of the powers under the Plan to one or more committees or subcommittees of the Board (a “**Committee**”). Except as otherwise noted, all references in the Plan to the “Board” will mean the Board or a Committee of the Board to the extent that the Board’s power or authority under the Plan has been delegated to such Committee.
- (b) Subject to the limitations of the Plan (including Section 3.3), Applicable Law and the requirements of each applicable Stock Exchange, the Board has the authority: (i) to grant to Eligible Persons Options to purchase Shares, (ii) to determine the terms, limitations, restrictions and conditions upon such grants, including the nature and duration of any restrictions applicable to a sale or other disposition of Shares acquired upon exercise of an Option and the nature of events, if any, that may cause any Participant’s rights in respect of Shares acquired upon exercise of an Option to be forfeited and the duration of the period of such forfeiture, (iii) to interpret the Plan and to adopt, amend and rescind such administrative guidelines and other rules and Regulations relating to the Plan as the Board may from time to time deem advisable, subject to required prior approval by any applicable regulatory authority or Stock Exchange; (iv) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Option Agreement; and (v) to make all other determinations and to take all other actions in connection with the implementation and administration of the Plan as the Board may deem necessary or advisable. The Board’s interpretation and determination of the Plan, its guidelines and rules and the Regulations will be conclusive and binding upon all parties concerned.
- (c) Every director of the Corporation will at all times be indemnified and saved harmless by the Corporation from and against all costs, charges and expenses whatsoever including any income tax liability arising from any such indemnification, which such director may sustain or incur by reason of any action, suit or proceeding, taken or threatened against such director, otherwise than by the Corporation, for or in respect of any act done or omitted in good faith by the director in respect of the Plan in the director’s capacity as a director of the Corporation, such costs, charges and expenses to include any amount paid to settle such action, suit or proceeding or in any satisfaction of any judgment rendered therein.

## **1.4 Shares Issuable under the Plan**

The maximum number of Shares that may be issued under the Plan shall be a number equal to 10% of the number of issued and outstanding Shares on a non-diluted basis at any time, provided that the number of Shares issued or issuable under all Security Based Compensation Arrangements of the Corporation shall not exceed 10% of the issued and outstanding Shares, calculated from time to time at the date at which the rights to acquire Shares under such Security Based Compensation Arrangements are granted. Any Shares subject to an Option that has been granted under the Plan and that is subsequently cancelled or terminated for any reason without having been exercised will again be

available for grants under the Plan. No fractional Shares may be issued, and the Board may determine the manner in which any fractional Share value will be treated.

## **2. OPTIONS**

### **2.1 Grants**

- (a) An Eligible Person may receive Options on one or more occasions under the Plan and may receive separate Options on any one occasion.
- (b) Options may be granted only to those consultants who meet the following requirements:
  - (i) the consultant must be engaged to provide on a *bona fide* basis consulting, technical, management, advisory or other services to the Corporation under a written contract between the Corporation and either the consultant or a company or partnership employing the consultant or of which the consultant is a shareholder or partner; and
  - (ii) the consultant provides such services on a continuous basis for an initial, renewable or extended period of twelve (12) months or more.
- (c) The following Insider participation limits shall apply:
  - (i) the number of Shares issuable to Insiders, at any time, pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 10% of the issued and outstanding Shares;
  - (ii) the number of Shares issued to Insiders, within a one-year period, pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 10% of the issued and outstanding Shares;
  - (iii) the number of Shares issuable to Non-Employee Directors pursuant to the Plan and other Security Based Compensation Arrangements shall not exceed 1% of the issued and outstanding Shares; and
  - (iv) the equity value of Options granted to a Non-Employee Director, within a one-year period, pursuant to the Plan shall not exceed \$100,000; and
  - (v) the aggregate equity value of all awards, that are eligible to be settled in Shares, granted to a Non-Employee Director, within a one year-period, pursuant to all Security Based Compensation Arrangements (including, for greater certainty, the Plan), and subject to the limitations set forth in Section 2.1(c)(iv), shall not exceed \$150,000.

### **2.2 Option Exercise Price**

The Board will establish the exercise price of an Option at the time that the Option is granted, which exercise price must be in all cases not less than the price required by applicable regulatory authorities or any applicable Stock Exchange, which in the case of (a) the Toronto Stock Exchange or (b) any Option granted to a U.S. Taxpayer, is the Fair Market Value.

### **2.3 Option Agreements**

Each Option must be confirmed by an agreement in substantially the form attached hereto as Schedule 2.3 or in such other form as is approved of by the Board from time to time (each, an “**Option Agreement**”) signed by the Corporation and by the Participant.

## **2.4 Prohibition on Transfer of Options**

Options are personal to the Participant and are non-transferable except as provided herein. No Participant may Transfer any Option or any interest in any Option now or hereafter held by the Participant except in accordance with the Plan. A purported Transfer of any Option in violation of the Plan will not be valid, and the Corporation will not issue any Shares upon the attempted exercise of an improperly Transferred Option. Subject to Applicable Law and upon notice to the Corporation, substantially in the form set forth in Schedule 2.4, a Participant may Transfer Options, or Shares received under the exercise of Options, to any RRSP, RRIF, TFSA or similar retirement or investment fund established by and for the Participant or under which the Participant is the beneficiary. Upon death of a Participant, the Participant's Option(s) will become part of the Participant's estate, and any right of the Participant may be exercised by the deceased Participant's legal representatives in accordance with the Plan, provided the legal representatives comply with all obligations of the deceased Participant. If the legal representatives of a deceased Participant exercise a Participant's Option in accordance with the terms of the Plan, the Corporation will have no obligation to issue any Shares until evidence satisfactory to the Corporation has been provided by the legal representatives that they are entitled to purchase Shares under the Plan.

## **2.5 Prohibition on Pledge of Options**

For greater certainty, a Participant may not mortgage, hypothecate, pledge or grant a security interest in any Option.

## **2.6 Termination, Death or Disability of a Participant**

- (a) If a Termination Date occurs in respect of a Participant for any reason whatsoever other than death, Disability or termination with Cause and subject to any determination to the contrary by the Board, each Option held by the Participant will cease to be exercisable on the earlier of (i) the expiry date of the Option and (ii) 12 months after the Termination Date. For greater certainty, the Participant will be entitled to exercise the Option only to the extent such Option was by its terms exercisable on the Participant's Termination Date. In addition, if any portion of the Option is unvested as of such Termination Date, the Participant shall also be entitled to exercise the Option to acquire the number of Shares that would have vested on the next anniversary of the date of grant of the Option multiplied by the product of which (A) the numerator is the number of calendar days during the period commencing on the immediately prior anniversary of the date of grant and ending on the Termination Date, and (B) the denominator is 365.
- (b) If a Participant dies or becomes Disabled, and subject to any determination to the contrary by the Board, each Option held by the Participant will cease to be exercisable on the earlier of (i) the expiry date of the Option and (ii) 12 months after the Termination Date. For greater certainty, the Participant or the legal representatives of the Participant as the case may be, will be entitled to exercise the Option only to the extent such Option was by its terms exercisable on the date of death or determination of Disability. In addition, if any portion of the Option is unvested as of such Termination Date, the Participant or the legal representatives of the Participant shall also be entitled to exercise the Option to acquire that number of Shares that would have vested on the next anniversary of the date of grant of the Option multiplied by the product of which (A) the numerator is the number of calendar days during the period commencing from the immediately prior anniversary of the date of grant and ending on the date of death or determination of Disability, and (B) the denominator is 365.
- (c) Notwithstanding Section 2.6(a), if a Participant is terminated with Cause, all vested and unvested portions of Options held by that Participant will terminate immediately upon such termination and, in the case of vested portions of Options, cease to be exercisable.
- (d) Subject to Section 2.7(c) and if required in connection with Section 2.10, no Option may be exercised after its stated date of expiration.

- (e) Without limitation, and for greater certainty only, this Section 2.6 will apply regardless of whether the Participant was terminated with or without Cause and regardless of whether the Participant received compensation in respect of termination or was entitled to a period of notice of termination that would otherwise have permitted a greater portion of the Option to vest in the Participant.

## **2.7 Term, Vesting and Exercise of Options**

- (a) Unless otherwise determined by the Board, Options must expire no later than eight years after the date of grant or after such other period as may be required by any applicable regulatory authority or Stock Exchange.
- (b) Except as otherwise determined by the Board or as otherwise provided in any Option Agreement, (i) Options will vest yearly on a “straight line basis” as to one-third of the Shares under such Option on each anniversary of the date of grant (being the date upon which the Participant entered into an Option Agreement with the Corporation or the start date of employment or engagement or as otherwise specified in any Option Agreement, as applicable) for a period of three years and (ii) each vested portion of such Option will be exercisable in respect of such Shares for five years after the date upon which such portion of the Option vested. For greater certainty, the Option will expire in full five years after the last of such vesting dates.
- (c) Notwithstanding Section 2.7(b), if the expiry of an Option falls during a Black-Out Period, the expiry date of the Option shall be automatically extended to the tenth business day following the end of such Black-Out Period.
- (d) An Option will be exercisable only by delivery of a written notice substantially in the form set forth in Schedule 2.7(d) to any one of the Chief Executive Officer, Senior Executive Vice President, Chief Financial Officer or a Managing Director or any other representative of the Corporation designated by the Board to accept such notices on its behalf, specifying the number of Shares for which such Option is exercised and accompanied by either (i) payment as described in Section 2.9(a)(i), or (ii) if permitted by the Board, irrevocable instructions to a broker to promptly deliver to the Corporation full payment of the amount necessary to pay the aggregate exercise price.
- (e) By the exercise of an Option, the Participant will be deemed to have irrevocably appointed any one of the Chief Executive Officer, Senior Executive Vice President, Chief Financial Officer or a Managing Director (or failing any of them any other representative of the Corporation designated by the Board) his attorney to effect any transfer of the Shares acquired by the Participant, if required, through an Option exercise as described in this section, on the books of the Corporation.

## **2.8 Alternate Form of Purchase**

In any case in which an Option is exercisable, the Corporation may elect to purchase for cancellation the Option for an amount equal to the difference between the Fair Market Value of the underlying Shares (or any lesser amount agreed upon by the Corporation and the Participant) and the aggregate exercise price of such underlying Shares, subject to the payment to the Corporation of any applicable taxes by the Participant. However, this right may be exercised by the Corporation only with the consent of the Participant, which consent may be withheld for any reason.

## **2.9 Payment of Option Price**

- (a) Subject to the following, the exercise price of each Share purchased under an Option must be paid (i) in full by bank draft or certified cheque at the time of exercise; or (ii) if permitted by the Board, in such manner and on such terms prescribed by the Board for a Cashless Exercise program for Options under the Plan.

- (b) Any Participant may elect to effect a cashless exercise of any or all of such Participant's right under an Option (a "**Cashless Exercise**"). In connection with any such Cashless Exercise, the Participant shall be entitled to receive, without any cash payment (other than the taxes required to be paid in connection with the exercise which must be paid by the Participant to the Corporation in cash at the time of exercise or as otherwise provided herein), such number of whole Shares (rounded down to the nearest whole number) obtained pursuant to the following formula:

$$x = \frac{[a(b - c)]}{b}$$

where

- x = the number of whole Shares to be issued
- a = the number of Shares under Option subject to the Cashless Exercise
- b = the Fair Market Value of the Shares on the date of the Cashless Exercise
- c = the exercise price of the Option subject to the Cashless Exercise

In connection with each Cashless Exercise, the full number of Shares issuable (item (a) in the formula set forth immediately above) shall be considered to have been issued for the purposes of the reduction in the number of Shares which may be issued under the Plan, if applicable.

- (c) The Corporation reserves the right, at any and all times, in the Corporation's sole discretion and subject to Applicable Law or the requirements of any applicable Stock Exchange, to amend or terminate any program or procedure for the exercise of Options by means of a Cashless Exercise.
- (d) Upon receipt of payment in full (or as herein provided) and subject to the terms of the Plan, including Section 3.5, the number of Shares in respect of which the Option is exercised will be duly issued as fully paid and non-assessable.

## **2.10 Right to Terminate Option, including on Change of Control, Combination, Liquidation or Dissolution of Corporation**

Notwithstanding any other provision of the Plan, if the Board at any time determines it advisable to do so in connection with any of the following events (each, a "**Proposed Transaction**"):

- (a) any Change of Control or any proposed Combination;
- (b) any proposed dissolution, liquidation or winding-up of the Corporation, either voluntarily or involuntarily;
- (c) any other proposed distribution of the assets of the Corporation among shareholders for the purpose of winding up its affairs;
- (d) any proposed merger, consolidation, share exchange, reorganization, amalgamation, arrangement, take-over bid, reverse take-over or other business combination or other transaction or series of related transactions pursuant to which all or part of the business of the Corporation is combined with that of the any other Person (a "**Combination**");



- (e) any proposed acquisition, directly or indirectly through any one or more transactions, by any Person other than the Corporation of: (i) any of the shares of any class of shares in the capital of the Corporation; or (ii) all or substantially all of the assets of the Corporation;
- (f) any proposed long term lease or license of all or substantially all of the assets of the Corporation or of any subsidiary of the Corporation (other than a sale, transfer or license to a wholly-owned subsidiary of the Corporation);
- (g) any combination of the foregoing; or
- (h) any like proposed transaction,

the Board, having regard to its fiduciary duties and the best interests of the Corporation, will address the economic value of the rights that Participants, as a group, have in outstanding Options in whatever manner the Board deems to be reasonable in the circumstances, including any of the following:

- (i) provide that the Options are assumed, or rights equivalent to the Options are substituted, by the acquiring or succeeding corporation (or an affiliate);
- (j) upon written notice to Participants, provide that all unexercised Options (both vested and/or unvested portions thereof) will terminate immediately prior to the consummation of the Proposed Transaction unless those portions of Options which have vested are exercised by respective Participants within a specified number of days following the date of the notice;
- (k) in case of a Combination under the terms of which holders of Shares will receive cash and/or other consideration for each Share surrendered in the Combination, provide for the delivery to each Participant of the cash and/or other consideration that the Participant would have received had the Participant exercised all of the Participant's outstanding vested Options immediately prior to the Combination less the amount the Participant would have been required to pay to the Corporation on that exercise, in cash and/or in a portion of any other consideration having a fair market value equal to the amount, in exchange for the termination of all of the Participant's vested and unvested Options;
- (l) require Participants to surrender their outstanding (vested and unvested) Options in exchange for a payment, in cash, Shares or other appropriate consideration as determined by the Board, in an amount equal to the amount by which the then Fair Market Value of the Shares subject to each Participant's unexercised (vested) Options exceeds the exercise price of those Options (treating all unexercised (vested) portions of Options as being fully exercisable for purposes of this calculation);
- (m) complete a transaction or series of transactions which are intended to provide to Participants economic consequences which are substantially similar to or more favourable than those provided in Sections 2.10(i) through (l); or
- (n) complete a combination of the procedures contemplated by Sections 2.10(i) through (m), including providing on a good faith basis for certain Participants or groups of Participants to be subject to different procedures than other Participants or groups of Participants.

In the case of any Proposed Transaction, the Board may, in its discretion, advance any waiting, vesting or instalment period and exercise date.

For the purposes of this Section 2.10, if the cash and/or other consideration that the Participant is entitled to receive after deducting the amount that the Participant would have been required to pay to the Corporation on exercise of Options, if applicable, is not greater than zero, the Options shall be cancelled for no additional consideration.

## **2.11 Substitute Options upon Acquisition by the Corporation**

The Corporation may grant Options under the Plan in substitution for options held by directors, officers or employees of, or consultants to, another entity who become Eligible Persons as a result of a merger or consolidation of the other entity with the Corporation, or as a result of the acquisition by the Corporation of property or securities of the other entity. The Corporation may direct that substitute Options be granted on any terms and conditions that the Board considers appropriate in the circumstances, subject to Applicable Laws and the requirements of each applicable regulatory authority and Stock Exchange.

### **3. GENERAL**

#### **3.1 Capital Adjustments**

If there is any change in the outstanding Shares by reason of a share dividend or split, subdivision, recapitalization, consolidation, combination or exchange of shares or other similar corporate change, subject to any prior approval required of applicable regulatory authorities or Stock Exchange, the Board may make appropriate substitution or adjustment in:

- (a) the Fair Market Value of the Shares on any relevant date and/or any exercise price of unexercised Options;
- (b) the number or kind of shares or other securities or property issuable pursuant to the Plan; and
- (c) the number and kind of shares subject to unexercised Options theretofore granted and in the exercise price of those Options,

provided, however, that no substitution or adjustment will obligate the Corporation to issue or sell fractional shares.

#### **3.2 Non-Exclusivity**

Subject to any required regulatory, Stock Exchange or shareholder approval and Section 1.4, nothing contained herein will prevent the Board from adopting other additional security or other compensation arrangements for the benefit of any Participant.

#### **3.3 Amendment and Termination**

- (a) The Board may amend, suspend or terminate the Plan or any portion of it at any time in accordance with Applicable Law and subject to any required regulatory, applicable Stock Exchange or shareholder approval. However, except as otherwise provided in the Plan, unless consent is obtained from the affected Participant, no amendment, suspension or termination may materially impair any Options, or any rights related to Options, that were granted to that Participant prior to the amendment, suspension or termination. Any amendments to the Plan to change the maximum number or percentage of Shares issuable pursuant to Options granted under the Plan shall be deemed not to materially impair the rights of any Participant.
- (b) Without limiting the generality of the foregoing, the Board, subject to Section 3.3(c), may make the following amendments to the Plan or an Option granted under the Plan, as applicable, without obtaining approval of any Participant or shareholder of the Corporation:
  - (i) amendments to the terms and conditions of the Plan necessary to ensure that the Plan complies with Applicable Law and regulatory requirements, including the requirements of any applicable Stock Exchange, in place from time to time;

- (ii) amendments to the provisions of the Plan respecting administration of the Plan and eligibility for participation under the Plan;
  - (iii) amendments to the provisions of the Plan respecting the terms and conditions on which Options may be granted pursuant to the Plan, including the vesting schedule;
  - (iv) the addition of, and any subsequent amendment to, any financial assistance provision;
  - (v) amendments to the Plan that are of a “housekeeping” nature;
  - (vi) amendments to the provisions relating to a Change of Control; and
  - (vii) any other amendments not requiring shareholder approval under Applicable Laws or the requirements of any Stock Exchange.
- (c) Without limiting the generality of the foregoing, the Board may not, without the approval of the Corporation’s shareholders, make amendments to the Plan or an Option granted under the Plan with respect to the following:
- (i) an increase to the maximum number or percentage of securities issuable under the Plan;
  - (ii) amendment provisions granting additional powers to the Board to amend the Plan or entitlements thereunder;
  - (iii) a reduction in the exercise price of an outstanding Option or other entitlements under the Plan;
  - (iv) any cancellation and reissue of Options or other entitlements;
  - (v) any change to the categories of individuals eligible to be selected for grants of Options where such change may broaden or increase the participation of Non-Employee Directors under the Plan;
  - (vi) an amendment to the prohibition on Transfer of Options in Section 2.4;
  - (vii) an amendment to the amendment provisions in this Section 3.3;
  - (viii) an extension to the term of Options; and
  - (ix) any changes to Insider or Non-Employee Director participation limits.
- (d) Notwithstanding the foregoing, no amendment to the Plan which, pursuant to: (i) the *Securities Act* (Ontario) and the regulations and rules promulgated thereunder; (ii) any rules and regulations of any applicable Stock Exchange or consolidated stock price reporting system on which prices for the Shares are quoted at any time; or (iii) any other Applicable Laws, rules and regulations of any jurisdiction requiring action by the shareholders, requires action by the shareholders may be made without obtaining, or being conditioned upon, shareholders’ approval.
- (e) If the Plan is terminated, the provisions of the Plan and the Regulations and any administrative-guidelines and other rules adopted by the Board and in force at the time of implementation of the Plan will continue in effect as long as any Option remains outstanding. However, notwithstanding the termination of the Plan, the Board may make

any amendments to the Plan or to any outstanding Option that the Board would have been entitled to make if the Plan were still in effect.

### **3.4 Compliance with Legislation**

The Corporation will not be obligated to grant any Options, issue any Shares on the exercise of an Option, make any payments or take any other action pursuant to the Plan or an Option Agreement if, in the opinion of the Board (in this Section 3.4, "Board" will not include a Committee) exercising its discretion, such action would conflict or be inconsistent with any Applicable Law or regulation of any governmental agency having jurisdiction, including, in particular, any federal, provincial or state securities laws, or the requirements of any applicable Stock Exchange, and the Board reserves the right to refuse to take such action for so long as such conflict or inconsistency remains outstanding. The Board will make reasonable efforts to resolve or remove such conflict or inconsistency. If such conflict or inconsistency remains outstanding for more than 12 months after the date of exercise of an Option, the Board will take such steps to provide the Participant with compensation which is equitable and appropriate in the circumstances, in which case the actions taken by the Corporation in consequence of such determination will be deemed to have satisfied the Corporation's obligations that would otherwise have existed.

### **3.5 Withholding Taxes**

If the Corporation is required under the *Income Tax Act* (Canada) or any other Applicable Law to remit to any governmental authority an amount on account of tax on the value of any taxable benefit associated with the exercise or disposition of Options by a Participant, then the Participant shall, concurrently with the exercise or disposition:

- (b) pay to the Corporation, in addition to the exercise price for the Options, if applicable, sufficient cash as is determined by the Corporation to be the amount necessary to fund the required tax remittance;
- (c) authorize the Corporation, on behalf of the Participant, to sell in the market on such terms and at such time or times as the Corporation determines such portion of the Common Shares being issued upon exercise of the Options as is required to realize cash proceeds in the amount necessary to fund the required tax remittance; or
- (d) make other arrangements acceptable to the Corporation to fund the required tax remittance.

By participating in the Plan, the Participant consents to the sale described in the foregoing clause (b), if applicable, and authorizes the Corporation to effect such sale on behalf of the Participant and remit the appropriate amount to the applicable governmental authorities. The Corporation shall not be responsible for obtaining any particular price for the Shares, and the Corporation shall not be required to issue any Shares under the Plan unless the Participant has made suitable arrangements with the Corporation to fund any withholding obligation.

Without limiting the generality of the foregoing, the Corporation will have the right to deduct from payments of any kind otherwise due to the Participant any taxes of any kind required to be withheld by the Corporation as a result of the Participant's exercise or disposition of Options. Payment of withholding taxes may be made (i) by bank draft or certified cheque or (ii) through and in accordance with the terms and conditions of any Cashless Exercise program established by the Board, subject to the discretion of the Board to require payment in cash if it determines that payment by other methods is not in the best interests of the Corporation.

### **3.6 No Rights as a Shareholder**

No Participant will have any rights as a shareholder in respect of any Shares issuable upon exercise of an Option (including the right to receive dividends or other distributions therefrom or thereon), unless and

until and except to the extent that such Share has been paid for and issued and a share certificate delivered upon proper exercise of the Option.

### **3.7 Right to Terminate Service**

Nothing contained in the Plan or in any Option granted hereunder will restrict the right of the Corporation to terminate the employment, consulting or other service of any employee or consultant at any time and for any reason, with or without notice.

### **3.8 Notices**

Any notice or other communication required or permitted to be given under the Plan will be in writing and will be given by prepaid first-class mail, by electronic mail or other means of electronic communication or by hand-delivery as provided below. Any notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth business day after the post-marked date, or if sent by electronic mail other means of electronic communication, will be deemed to have been received on the day of sending, or if delivered by hand will be deemed to have been received on the day on which it is delivered to the applicable address noted below either to the individual designated below or to an individual at that address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section 3.8. Notices and other communications will be addressed, if to the Corporation, to the head office of the Corporation, Attention: Chief Executive Officer and, if to a Participant, at the last address which appears on the records of the Corporation.

### **3.9 Submission to Jurisdiction**

The Corporation and each Participant irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario in respect of all matters relating to the Plan and any Option Agreement.

### **3.10 Further Assurances**

Each Participant will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all further acts, documents and things as the Corporation may reasonably require from time to time for the purpose of giving effect to the Plan and will use reasonable efforts and take all steps as may be reasonably within the Participant's power to implement to their full extent the provisions of the Plan.

### **3.11 Counterparts**

Any Option Agreement or other document contemplated under the Plan may be signed in counterparts and each counterpart will constitute an original document and all counterparts, taken together, will constitute one and the same instrument. Counterparts may be delivered by facsimile or other means of electronic communication.

**Exhibit "A"**  
**to**  
**ECN Capital Corp. Share Option Plan**  
**Special Provisions Applicable to Participants Subject to Section 409A of the United States Internal Revenue Code of 1986, as amended ("Section 409A")**

This Exhibit sets forth special provisions of the ECN Capital Corp. Share Option Plan (the "Plan") that apply to Participants who are U.S. Taxpayers. This Exhibit shall apply to such Participants notwithstanding any other provisions of the Plan. Terms defined elsewhere in the Plan and used herein shall have the meanings set forth in the Plan, as may be amended from time to time.

**Definitions**

For purposes of this Exhibit:

**"Fair Market Value"** means, at any date in respect of the Shares, the closing sale price of such Shares on the Stock Exchange (with the greatest volume of securities traded) on the trading day immediately preceding such date. In the event that such Shares are listed or quoted on a Stock Exchange but did not trade on such trading day, the Fair Market Value shall be the closing sale price of such Shares on the Stock Exchange on the closest preceding date on which the Shares did trade. Notwithstanding the foregoing, if there is no reported closing price that satisfies the preceding sentences or if the Shares are no longer listed or quoted on a Stock Exchange, the Fair Market Value on any day shall be determined by such methods and procedures as shall be established from time to time by the Board in its sole discretion. If any Stock Exchange, other than the Toronto Stock Exchange, requires a different formula for the calculation of "Fair Market Value"; the definition of Fair Market Value shall be amended accordingly; provided that such definition complies with the applicable requirements under Section 409A;

**"Separation From Service"** shall mean that employment or service with the Corporation and any entity that is to be treated as a single employer with the Corporation for purposes of United States Treasury Regulation Section 1.409A-1(h) terminates such that it is reasonably anticipated that no further services will be performed.

**"Specified Employee"** means a U.S. Taxpayer who meets the definition of "specified employee," as defined in Section 409A(a)(2)(B)(i) of the Code and using the identification methodology selected by the Corporation from time to time.

**Compliance with Section 409A**

**In General.** Notwithstanding any provision of the Plan to the contrary, it is intended that any payments under the Plan either be exempt from or comply with Section 409A, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. Each payment made in respect of Options shall be deemed to be a separate payment for purposes of Section 409A. Each U.S. Taxpayer is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or for the account of such U.S. Taxpayer in connection with the Plan or any other plan maintained by the Corporation (including any taxes and penalties under Section 409A), and the Corporation shall not have any obligation to indemnify or otherwise hold such U.S. Taxpayer (or any Beneficiary) harmless from any or all of such taxes or penalties.

No U.S. Taxpayer or the creditors or beneficiaries a U.S. Taxpayer shall have the right to subject any deferred compensation (within the meaning of Section 409A) payable under the Plan to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A, any deferred compensation (within the meaning of Section 409A) payable to any U.S. Taxpayer or for the benefit of any U.S. Taxpayer under the Plan may not be reduced by, or offset against, any amount owing by any such U.S. Taxpayer to the Corporation.

**Extensions.** Any extension of the expiry date of an Option pursuant to Section 2.7(c) of the Plan shall be subject to the requirements of United States Treasury Regulation Section 1.409A-1(b)(5)(v)(c)(1).

**Distributions to Specified Employees.** Solely to the extent required by Section 409A, any payment in respect of Options which the Corporation has determined in good faith constitutes deferred compensation subject to Section 409A and which has become payable by reason of a Separation from Service to any Participant who is determined to be a Specified Employee at the time of such Separation from Service shall not be paid before the date which is six months after such Specified Employee's Separation from Service (or, if earlier, the date of death of such Specified Employee). Following any applicable six month delay of payment, all such delayed payments shall be made to the Specified Employee in a lump sum on the earliest possible payment date. Such amount shall be paid without interest, unless otherwise determined by the Committee, in its sole discretion, or as otherwise provided in any applicable employment agreement between the Corporation and the relevant Participant.

**Amendment of Exhibit.** Subject to Applicable Law, the Board shall retain the power and authority to amend or modify this Exhibit, the Plan or any Option Agreement to the extent the Board in its sole discretion deems necessary or advisable to comply with any guidance issued under Section 409A or to avoid the imposition of taxes or penalties under Section 409A. Such amendments may be made without the approval of any U.S. Taxpayer.

## **SCHEDULE 1.1(X)**

### **REGULATIONS UNDER THE ECN CAPITAL CORP. SHARE OPTION PLAN**

In these Regulations, unless otherwise defined herein, capitalized terms have the same meaning as set forth in the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the "Plan").

"Year", with respect to any Option granted under the Plan, means the twelve-month period commencing on the date of the granting of the Option or on any anniversary thereof.

Not less than 100 Shares may be purchased at any one time except where the remainder totals less than 100 Shares.

Unless otherwise approved by the Board, no Option will be granted to any person who is an officer or employee of the Corporation and who has reached the age of normal retirement as fixed from time to time by the Board.



**SCHEDULE 2.3**

**OPTION AGREEMENT**

**ECN CAPITAL CORP.  
SHARE OPTION PLAN**

Participant:

\_\_\_\_\_  
(name)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(address)

Grant:

\_\_\_\_\_

Maximum Number of Common Shares subject  
to Option (the "**Shares**")

Option Exercise Price:

\$\_\_\_\_\_ per Share

Date of Grant:

\_\_\_\_\_, 20\_\_

Vesting and Expiry Schedule: The Options to purchase Shares vest and  
expire on the dates set out below.

**Number of Shares  
subject to Option**

**Vest Date for Shares  
identified in left column**

**Expiry Date for  
Shares identified left  
column**

Expiry Date:

\_\_\_\_\_, 20\_\_

- (1) This Option Agreement is made under and is subject in all respects to the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the “**Plan**”), and the Plan and the regulations governing the Plan and made by the Board (as the same may be supplemented and amended from time to time) (the “**Regulations**”) enacted in connection therewith are deemed to be incorporated in and form part of this Option Agreement. The Participant acknowledges receipt of a copy of the Plan and the Regulations, a copy of each of which is attached to this Option Agreement, and is deemed to have notice of and to be bound by all of the terms and provisions of the Plan and the Regulations, as if the Plan and the Regulations were set forth in full herein. In the event of any inconsistency between the terms of this Option Agreement and the Regulations, the terms of this Option Agreement will prevail to the extent that it is not inconsistent with the requirements of any applicable regulatory authority or Stock Exchange. The Plan and Regulations contain provisions respecting termination and/or voiding of the Plan or the Option. Capitalized terms used in this Option Agreement and not otherwise defined will have the meanings attributed to those terms in the Plan.
- (2) The Participant acknowledges that if the Participant is terminated with Cause, all vested and unvested Options held by that Participant will terminate immediately upon such termination with Cause and, in the case of vested Options, cease to be exercisable.
- (3) This Option Agreement evidences that the Participant named above is entitled, subject to and in accordance with the Plan, to purchase up to but not more than the maximum number of Shares set out above at the Option exercise price set out above upon delivery of an exercise form as annexed to the Plan duly completed and accompanied by certified cheque or bank draft for the aggregate exercise price or, if applicable and to the extent permitted, by evidence acceptable to the Corporation of irrevocable instructions to a broker to promptly deliver to the Corporation full payment in accordance with Section 2.9(a)(ii) of the Plan of the amount necessary to pay the aggregate exercise price (a “**Cashless Exercise**”). Provided that all other requirements specified in the Plan are met, Options may be exercised by Cashless Exercises.
- (4) The Option may not be transferred in any manner other than in accordance with the Plan, and may be exercised during the lifetime of the Participant only by, or for the benefit of, the Participant. The terms of the Option will be binding upon the executors, administrators, heirs, successors, and assigns of the Participant.
- (5) The vested portion of the Option may not be exercised in respect of the relevant Shares more than five years from the vesting date of such portion of the Option and may be exercised during such period only in accordance with the terms of the Plan. For greater certainty, the Option will expire in full five years after the last vesting date, being eight years after the date of grant of the Option.
- (6) The Option evidenced by this Option Agreement may not be exercised if the issuance of Shares upon such exercise would constitute a violation of any applicable securities or other law or valid regulation or the requirements of any applicable Stock Exchange. The Participant, as a condition to his exercise of the Option, represents to the Corporation that the Shares that he acquires under the Option are being acquired by him for investment and not with a present view to distribution or resale, unless counsel for the Corporation is then of the opinion that such a representation is not required under applicable securities laws, regulations, or any other law or valid rule of any governmental agency.
- (7) The Plan and each Option will be subject to the requirement that, if at any time the Board determines that the listing, registration or qualification of the Shares subject to such Option upon any applicable Stock Exchange or under any provincial, state or federal law, or the consent or approval of any governmental body, securities exchange, or the holders of the Shares generally, is necessary or desirable, as a condition of, or in connection with, the granting of such Option or the issue or purchase of Shares thereunder, no such Option may be

granted or exercised in whole or in part unless such listing, registration, qualification, consent or approval will have been affected or obtained free of any conditions not acceptable to the Board.

- (8) As a condition to the exercise or disposition of Options, including the issuance of Shares upon exercise of the Option, the Participant: (a) authorizes the Corporation to withhold, in accordance with Applicable Law, any taxes of any kind required to be withheld by the Corporation under Applicable Law as a result of the Participant's exercise of the Option ("**Withholding Taxes**") from payments of any kind otherwise due to the Participant; (b) agrees, if requested by the Corporation, to remit to the Corporation at the time of exercise of the Option amounts necessary to pay any Withholding Taxes; (c) if applicable, authorizes the Corporation, on behalf of the Participant, to sell in the market such portion of Shares being issued upon exercise of the Options as is required to fund the Withholding Taxes; and/or (d) comply with other arrangements acceptable to the Corporation to fund the Withholding Taxes.
- (9) The Participant acknowledges and confirms that prior to executing this Option Agreement, the Corporation requested the Participant to obtain independent legal advice with respect to the Participant's rights and obligations under the Plan, the Regulations and related documents, including this Option Agreement. The Participant confirms and agrees that: (i) the Participant has executed this Option Agreement on its own volition and without any duress whatsoever from the Corporation or any other Person; and (ii) if the Participant did not obtain legal advice prior to executing this Option Agreement, the Participant will not in any proceeding relating to the enforcement of rights or obligations under the Plan, the Regulations and related documents, including this Option Agreement, raise that fact as a defence or otherwise.
- (10) Notwithstanding the foregoing, including paragraph (5) hereof, in the event of a proposed Change of Control, any Option held by any Participant that is not fully vested on the date that the Change of Control occurs shall, subject to the approval of each applicable regulatory authority or Stock Exchange and subject to the provisions of any other written agreement between the Participant and the Corporation, if applicable, vest immediately prior to the Change of Control, and all Options held by the Participant shall be immediately exercisable within a 30-day period following the Change of Control regardless of the expiry date. Upon expiration of such 30-day period, all rights of the Participant to the Option or to exercise same (to the extent not theretofore exercised) shall terminate and cease to have further force or effect whatsoever. Alternatively, the Corporation may also or instead determine in its sole discretion that all such outstanding Options may be purchased, including by the Corporation (or any of its affiliates), for an amount per Option equal to the Transaction Price (as defined below), less the applicable exercise price, as of the date such transaction is determined to have occurred or as of such other date prior to the transaction closing date as the Board may determine in its sole discretion. For purposes of this paragraph, "**Transaction Price**" means the fair market value of a Share based on the consideration payable in the applicable transaction as determined by the Board. For the purposes of this paragraph, if the cash and/or other consideration that the Participant is entitled to receive after deducting the amount that the Participant would have been required to pay to the Corporation on exercise of Options, if applicable, is not greater than zero, the Options shall be cancelled for no additional consideration.

This Option Agreement is not effective until countersigned on behalf of ECN Capital Corp. and accepted by the Participant.

Dated: \_\_\_\_\_, 20\_\_

**ECN CAPITAL CORP.**

By: \_\_\_\_\_

Accepted: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature of Participant

**SCHEDULE 2.4**

**NOTICE OF TRANSFER**

**To transfer an Option(s) to permitted transferees, complete and return this form along with an original Option Agreement.**

The undersigned Participant under the ECN Capital Corp. Share Option Plan (as the same may be supplemented and amended from time to time) (the "**Plan**") hereby irrevocably elects to transfer the Option evidenced by the attached Option Agreement to the following person(s), each of whom the Participant hereby certifies is a permitted transferee in accordance with the Regulations under the Plan:

Direction as to Registration:

\_\_\_\_\_  
Name of Registered Holder

\_\_\_\_\_

\_\_\_\_\_  
Address of Registered Holder(s)

The undersigned Participant hereby directs such Option(s) to be registered in the names of such permitted transferee(s). Unless they are otherwise defined herein, any defined terms used herein shall have the meaning ascribed to such terms in the Plan.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Witness to the Signature of:

\_\_\_\_\_  
Name of Participant



Direction as to Registration:

\_\_\_\_\_  
Name of Registered Holder

\_\_\_\_\_  
Address of Registered Holder

**APPENDIX P**

**FORM OF ECN CAPITAL DEFERRED SHARE UNIT PLAN**



## Section 1 Interpretation

### 1.1 Purpose

The purposes of the Plan are:

- (a) to promote a greater alignment of long-term interests between Eligible Participants and Shareholders;
- (b) to provide a compensation system for Non-Employee Directors that, together with the other Director compensation mechanisms of the Corporation, is reflective of the responsibility, commitment and risk accompanying membership on the Board and the performance of the duties required of the various committees of the Board; and
- (c) in the case of Designated Executives, to attract and retain employees with the knowledge, experience and expertise required by the Corporation.

### 1.2 Definitions

As used in the Plan, the following terms have the following meanings:

- (a) “**Account**” means the account maintained by the Corporation in its books for each Eligible Participant to record the DSUs credited to such Eligible Participant under the Plan;
- (b) “**Annual Remuneration**” means all amounts ordinarily payable in cash to a Non-Employee Director by the Corporation in respect of the services provided by the Non-Employee Director to the Corporation in connection with such Non-Employee Director’s service on the Board in a fiscal year, including without limitation (i) the Annual Retainer; (ii) the fee for serving as a member of a Board committee; and (iii) the fee for chairing a Board committee, which amounts shall, unless otherwise determined by the Board or the Committee, be payable Quarterly in arrears. For greater certainty, “Annual Remuneration” shall exclude any meeting fees payable in respect of attendance at individual meetings and amounts received by a Non-Employee Director as a reimbursement for expenses incurred in attending meetings;
- (c) “**Annual Retainer**” means the annual base retainer fee payable to a Non-Employee Director by the Corporation for serving as a director;
- (d) “**Applicable Law**” means any applicable provision of law, domestic or foreign, including, without limitation, applicable securities legislation, together with all regulations, rules, policy statements, rulings, notices, orders or other instruments promulgated thereunder and Stock Exchange Rules;
- (e) “**Beneficiary**” means an individual who, on the date of an Eligible Participant’s death, is the person who has been designated in accordance with Section 4.7 and the laws applying to the Plan, or where no such individual has been validly designated by the Eligible Participant, or where the individual does not survive the Eligible Participant, the Eligible Participant’s legal representative;
- (f) “**Board**” means the Board of Directors of the Corporation;
- (g) “**Change of Control**” means:

- (i) the consummation of any transaction or series of transactions including any consolidation, amalgamation, arrangement, merger or issue of voting shares in the capital of the Corporation, the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly or indirectly, of more than 50% of the voting shares in the capital of the Corporation, measured by voting power rather than number of shares (but shall not include the creation of a holding company or similar transaction that does not involve any material change in the indirect beneficial ownership of the shares in the capital of the Corporation);
  - (ii) the direct or indirect sale, transfer or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation, taken as a whole, to any Person or group of Persons acting jointly or in concert for purposes of such transaction (other than to any affiliates of the Corporation);
  - (iii) the election at a meeting of the Corporation's shareholders of that number of individuals that would represent a majority of the Board as Directors of the Corporation, who are not included in the slate for election as Directors proposed to the Corporation's shareholders by management of the Corporation or a transaction or series of transactions as a result of which a majority of the directors of the Corporation are removed from office at any annual or special meeting of shareholders or as a result of a transaction referred to in clause (i) immediately above, or a majority of the Directors of the Corporation resign from office over a period of 60 days or less, and the vacancies created thereby are filled by nominees proposed by any Person other than Directors or management of the Corporation in place immediately prior to the removal or resignation of the Directors; or
  - (iv) the completion of any transaction or the first of a series of transactions which would have the same or similar effect as any transaction or series of transactions referred to in clauses (i), (ii) or (iii), referred to immediately above;
- (h) "**Code**" means the U.S. Internal Revenue Code of 1986, as amended and any applicable United States Treasury Regulations and other binding regulatory guidance thereunder;
  - (i) "**Conversion Date**" means the date used to determine the Fair Market Value of a Deferred Share Unit for purposes of determining the number of Deferred Share Units to be credited to an Eligible Participant under Section 2.3, which date shall, subject to variation as determined by the Board, generally be the last day of each Quarter and, in any event, shall not be earlier than the first business day of the year in respect of which the Deferred Share Units are being provided;
  - (j) "**Corporation**" means ECN Capital Corp., a corporation incorporated under the laws of Ontario, and includes: (i) any successor to ECN Capital Corp. resulting from any amalgamation, arrangement or other reorganization of, or involving, ECN Capital Corp. or any continuance under the laws of another jurisdiction and (ii) any Related Corporation;
  - (k) "**Deferred Share Unit**" or "**DSU**" means a unit credited by the Corporation to an Eligible Participant by way of a bookkeeping entry in the books of the Corporation, as determined by the Board, pursuant to the Plan, the value of which at any particular date shall be the Fair Market Value at that date;

- (l) “**Designated Executive**” means an officer (including an executive Chair or an executive Vice-Chair of the Board) or employee of the Corporation or a Related Corporation who is designated by the Board as eligible to receive Deferred Share Units under the Plan;
- (m) “**Director**” means a member of the Board;
- (n) “**DSU Award Agreement**” means a written agreement setting out the terms of any DSU award under Section 2.3.2 in the form of Schedule B hereto, or such other form as may be prescribed by the Board from time to time;
- (o) “**ECN Capital Entity**” has the meaning ascribed thereto in Section 4.12;
- (p) “**Election Notice**” means the written election under Section 2.2 to receive Deferred Share Units, in the form of Schedule A hereto, or such other form as may be prescribed by the Board from time to time;
- (q) “**Eligible Participant**” means any Non-Employee Director and any Designated Executive;
- (r) “**Entitlement Date**” has the meaning ascribed thereto in Section 3.1 or Section 3.2, as applicable;
- (s) “**Fair Market Value**” means, (a) with respect to any particular date, the volume weighted average trading price per Share on the Stock Exchange during the immediately preceding ten (10) Trading Days, or (b) in any case in which the Shares are not listed on the Stock Exchange, the value established by the Corporation acting in good faith;
- (t) “**Insider**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (u) “**Non-Employee Director**” means a Director who is not an employee of the Corporation or any Related Corporation, and includes any non-executive Chair of the Board;
- (v) “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (w) “**Plan**” means this deferred share unit plan of the Corporation, as the same may be supplemented and amended from time to time;
- (x) “**Quarter**” means a fiscal quarter of the Corporation, which, until changed by the Corporation, shall be the three month period ending March 31, June 30, September 30 and December 31 in any year and “Quarterly” means each “Quarter”;
- (y) “**Related Corporation**” means a corporation related to the Corporation for the purposes of the *Income Tax Act* (Canada);
- (z) “**Security Based Compensation Arrangement**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (aa) “**Share**” means a common share of the Corporation and such other share as may be substituted for it as a result of any amendments to the articles of the Corporation, or

consolidation, merger, amalgamation, arrangement, reorganization or otherwise involving the Corporation, including any rights that form a part of the common share or substituted share;

- (bb) “**Stock Exchange**” means the Toronto Stock Exchange, or if the Shares are not listed on the Toronto Stock Exchange, such other stock exchange on which the Shares are listed, or if the Shares are not listed on any stock exchange, then on the over-the-counter market;
- (cc) “**Stock Exchange Rules**” means the applicable rules of any stock exchange upon which shares of the Corporation are listed;
- (dd) “**Termination Date**” means, with respect to an Eligible Participant, the earliest date on which: (i) if the Eligible Participant was a Non-Employee Director, he/she has ceased to hold the office of Director for any reason whatsoever, including the death of the Eligible Participant and is not an employee of the Corporation or a Related Corporation; (ii) if the Eligible Participant was a Designated Executive, he/she is no longer employed by the Corporation or any Related Corporation and is not a Director or a member of the board of directors of a Related Corporation; provided that, solely with respect to any Eligible Participant who is a U.S. Taxpayer, such cessation of services is also a “separation from service” within the meaning of Section 409A of the Code such that it is reasonably anticipated that no further services will be performed;
- (ee) “**Trading Day**” means any date on which the Stock Exchange is open for the trading of Shares and on which Shares are actually traded; and
- (ff) “**U.S. Taxpayer**” means an Eligible Participant who is a citizen or permanent resident of the United States for purposes of the Code or an Eligible Participant for whom the compensation subject to deferral, the amounts payable or the Shares deliverable under the Plan are subject to taxation under the Code.

### **1.3 Effective Date**

The Plan shall be effective as of July 21, 2016.

### **1.4 Eligibility**

The Board may designate any officer or employee of the Corporation as eligible to receive an award of Deferred Share Units under Section 2.3.2.

If an Eligible Participant becomes an officer (other than non-executive Chair of the Board) or employee of the Corporation while remaining as a Director, his or her eligibility to receive Deferred Share Units pursuant to an election in accordance with Section 2.2 shall be suspended effective as of the date of the commencement of his or her employment and shall resume upon termination of such employment provided he continues as a Director of the Corporation; provided, however, that in the case of any U.S. Taxpayer, the portion of such U.S. Taxpayer’s Annual Remuneration attributable to his or her services as a Director of the Corporation shall remain subject to any election in accordance with Section 2.2 in effect as of the date of commencement of his or her employment. During the period of such ineligibility, such individual shall be entitled to continue to be credited with Deferred Share Units allocated as dividend equivalents under Section 2.5.

### **1.5 Construction**

In this Plan, all references to the masculine include the feminine; references to the singular shall include the plural and vice versa, as the context shall require. If any provision of the Plan or part hereof is determined to be void or unenforceable in whole or in part, such determination shall not

affect the validity or enforcement of any other provision or part thereof. Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions contained herein. References to “Section” or “Sections” mean a section or sections contained in the Plan unless expressly stated otherwise. All amounts referred to in this Plan are stated in Canadian dollars unless otherwise indicated.

## **1.6 Administration**

The Board shall, in its sole and absolute discretion: (i) interpret and administer the Plan; (ii) establish, amend and rescind any rules and regulations relating to the Plan; (iii) have the power to delegate, on such terms as the Board deems appropriate, any or all of its powers hereunder to any committee of the Board or officer of the Corporation; and (iv) make any other determinations that the Board deems necessary or desirable for the administration of the Plan. The Board may correct any defect or supply any omission or reconcile any inconsistency in the Plan in the manner and to the extent the Board deems, in its sole and absolute discretion, necessary or desirable. Any decision of the Board with respect to the administration and interpretation of the Plan shall be conclusive and binding on the Eligible Participant and any other person claiming an entitlement or benefit through the Eligible Participant. All expenses of administration of the Plan shall be borne by the Corporation as determined by the Board. Where the Board has delegated any of its powers with respect to any matter hereunder to any committee of the Board or officer of the Corporation any reference in the Plan to a determination, decision or other action by the Board with respect to such matter shall be construed as a reference to such committee or officer.

## **1.7 Governing Law**

The Plan shall be governed by and interpreted in accordance with the laws of the Province of Ontario and any actions, proceedings or claims in any way pertaining to the Plan shall be commenced in the courts of the Province of Ontario.

## **Section 2 Election Under the Plan and Deferred Share Unit Awards**

### **2.1 Payment of Annual Remuneration**

Subject to Section 2.2 and such rules, regulations, approvals and conditions as the Board may impose, an Eligible Participant who is a Non-Employee Director may elect to receive his or her Annual Remuneration in the form of Deferred Share Units, cash or any combination thereof.

### **2.2 Election Process**

- (a) A person who is a Non-Employee Director on the effective date of the Plan may elect to receive a percentage (as specified in the Election Notice) of his or her Annual Remuneration earned after such effective date of the Plan in Deferred Share Units, cash or combination of Deferred Share Units and cash by completing and delivering to the Secretary of the Corporation an initial Election Notice by no later than 30 days after the effective date of the Plan, which shall apply to the Non-Employee Director's Annual Remuneration earned in Quarters that commence after the date the election is made; provided, however, that in the case of any U.S. Taxpayer who has made an election pursuant to Section 2.2 of the Element Financial Corporation Deferred Share Unit Plan for Directors and Executives that is in effect as of immediately prior to the effective date of the Plan, such election shall remain in effect with respect to the Annual Remuneration of such U.S. Taxpayer until a new election may be made in accordance with Section 2.2(c).
- (b) A person who becomes a Non-Employee Director during a year may elect to receive a percentage (as specified in the Election Notice) of his or her Annual Remuneration earned in Quarters that commence after the date the election is made in Deferred Share

Units, cash or combination of Deferred Share Units and cash by completing and delivering to the Secretary of the Corporation an Election Notice. An Election Notice shall not be effective to require that Annual Remuneration earned in the year in which the individual becomes a Non-Employee Director be provided in the form of Deferred Share Units if (i) such Election Notice is not completed and delivered to the Secretary of the Corporation within 30 days after the individual becomes a Non-Employee Director; or (ii) the individual previously participated in, or was eligible to participate in, this Plan or any other plan that is required to be aggregated with this Plan for purposes of Section 409A of the Code.

- (c) A Non-Employee Director who has previously made an election under this Section 2.2, or who has never made any election under the Plan but who was previously eligible to do so, may elect to receive a percentage (as specified in the Election Notice) of his or her Annual Remuneration for subsequent Quarters in Deferred Share Units, cash or combination of Deferred Share Units and cash by completing and delivering to the Secretary of the Corporation a new Election Notice on or before the day immediately preceding the first day of the first such Quarter; provided, however, that, for greater certainty, any such new election made by a Non-Employee Director who is a U.S. Taxpayer shall only apply to Annual Remuneration payable in the subsequent calendar years (rather than subsequent calendar Quarters).
- (d) The Board may prescribe election forms for use by Non-Employee Directors who are residents of a jurisdiction other than Canada that differ from the election forms it prescribes for use by Canadian resident Non-Employee Directors where the Board determines it is necessary or desirable to do so to obtain comparable treatment for the Plan, the Non-Employee Directors or the Corporation under the laws or regulatory policies of such other jurisdiction as is provided under the laws and regulatory policies of Canada and its Provinces, provided that no election form prescribed for use by a non-resident of Canada shall contain terms that would cause the Plan to cease to meet the requirements of paragraph 6801(d) of the regulations under the *Income Tax Act* (Canada) and any successor to such provisions.
- (e) For greater certainty, if the Corporation establishes a policy for members of the Board with respect to the acquisition and / or holding of Shares and / or Deferred Share Units, each Non-Employee Director shall ensure that any election he or she makes under this Section 2.2 complies with such policy.

## **2.3 Deferred Share Unit Awards**

**2.3.1** Deferred Share Units elected by an Eligible Participant pursuant to Section 2.2 shall be credited to the Eligible Participant's Account as of the applicable Conversion Date. The number of Deferred Share Units (including fractional Deferred Share Units) to be credited to an Eligible Participant's Account as of a particular Conversion Date pursuant to this Section 2.3.1 shall be determined by dividing the portion of that Eligible Participant's Annual Remuneration for the applicable period to be satisfied by Deferred Share Units by the Fair Market Value on the particular Conversion Date.

**2.3.2** The Board may award such number of Deferred Share Units to an Eligible Participant as the Board deems advisable to provide the Eligible Participant with appropriate equity-based compensation for the services he or she renders to the Corporation as a Non-Employee Director or Designated Executive. In the case of an Eligible Participant who is a Non-Employee Director, an award of Deferred Share Units under this Section 2.3.2 may be made in addition to an award of Deferred Share Units granted pursuant to Section 2.3.1. The Board shall determine the date on which such Deferred Share Units may be granted and the date as of which such Deferred Share Units shall be credited to a Participant's Deferred Share Unit Account, together with any terms or conditions with respect to the vesting of such Deferred Share Units. The Corporation and an Eligible Participant who receives an award

of Deferred Share Units pursuant to this Section 2.3.2 shall enter into a DSU Award Agreement to evidence the award and the terms, including terms with respect to vesting, applicable thereto.

**2.3.3** Deferred Share Units credited to an Eligible Participant's Account under Section 2.3.1, together with any additional Deferred Share Units granted in respect thereof under Section 2.4, will be fully vested upon being credited to an Eligible Participant's Account and the Eligible Participant's entitlement to payment of such Deferred Share Units at his or her Termination Date shall not thereafter be subject to satisfaction of any requirements as to any minimum period of membership on the Board.

**2.3.4** Deferred Share Units credited to an Eligible Participant's Account under Section 2.3.2, together with any additional Deferred Share Units granted in respect thereof under Section 2.4, will vest in accordance with such terms and conditions as may be determined by the Board and set out in the DSU Award Agreement.

**2.3.5** The Board may specify in a DSU Award Agreement entered into pursuant to Section 2.3.2 whether the Deferred Share Units subject to such agreement will be settled in cash or Shares, or both cash and Shares, provided that where a DSU Award Agreement does not provide for the settlement of the Deferred Share Units subject to such agreement in Shares, such Deferred Share Units may only be settled in cash.

## **2.4 Maximum Number of Shares and Limits**

**2.4.1** Subject to Section 2.4.2, and to adjustment pursuant to Section 2.7, the maximum number of Shares that may be issued under the Plan shall be a number equal to 10% of the number of issued and outstanding Shares on a non-diluted basis at any time, provided that the number of Shares issued or issuable under all Security Based Compensation Arrangements of the Corporation shall not exceed 10% of the issued and outstanding Shares, calculated from time to time at the date at which the rights to acquire Shares under such Security Based Compensation Arrangements are granted.

**2.4.2** All Shares subject to Deferred Share Units that terminate or are cancelled without being settled shall be available for any subsequent grant.

**2.4.3** The aggregate equity award value of any grants of Deferred Share Units under Section 2.3.2 that are eligible to be settled in Shares, in combination with the aggregate equity award value, of any grants under any other Security Based Compensation Arrangement, that may be made to a Non-Employee Director for a year shall not exceed \$150,000.

**2.4.4** Under this Plan and any other Security Based Compensation Arrangements of the Corporation:

- (a) the number of Shares issuable to Insiders, and
- (b) the number of Shares issued to Insiders, within a one year period

shall not exceed 10% of the issued and outstanding Shares.

**2.4.5** Notwithstanding anything herein to the contrary, the Corporation's obligation to issue and deliver Shares in respect of any Deferred Share Unit is subject to the satisfaction of all requirements under Applicable Law in respect thereof and obtaining all regulatory approvals as the Corporation shall determine to be necessary or advisable in connection with the authorization, issuance or sale thereof and the receipt from the Eligible Participant of such representations, agreements and undertakings as to future dealings in such Shares as the Corporation determines to be necessary or advisable in order to safeguard against the violation of the securities laws of any jurisdiction or to comply with Applicable Law. In this connection, the Corporation shall take all reasonable steps to obtain such approvals and registrations as may be necessary for the issuance of such Shares in compliance with Applicable Law.

## **2.5 Dividends**

On any payment date for dividends paid on Shares, an Eligible Participant shall be credited with dividend equivalents in respect of Deferred Share Units credited to the Eligible Participant's Account as of the record date for payment of such dividends. Such dividend equivalents shall be converted into additional Deferred Share Units (including fractional Deferred Share Units) based on the Fair Market Value as of the date on which the dividends on the Shares are paid. For greater certainty, additional Deferred Share Units shall continue to be credited under this Section 2.5 with respect to Deferred Share Units that remain credited to the Eligible Participant's Account after his or her Termination Date.

## **2.6 Eligible Participant's Account**

An Eligible Participant's Account shall record at all times the number of Deferred Share Units standing to the credit of the Eligible Participant. Upon payment in satisfaction of Deferred Share Units credited to an Eligible Participant in the manner described herein, such Deferred Share Units shall be cancelled. A written confirmation of the balance in each Eligible Participant's Account shall be provided by the Corporation to the Eligible Participant at least annually.

## **2.7 Adjustments and Reorganizations**

Notwithstanding any other provision of the Plan, in the event of any change in the Shares by reason of any stock dividend, split, recapitalization, reclassification, amalgamation, arrangement, merger, consolidation, combination or exchange of Shares or distribution of rights to holders of Shares or any other form of corporate reorganization whatsoever, an equitable adjustment permitted under Applicable Law shall be made to any Deferred Share Units then outstanding. Such adjustment shall be made by the Board, subject to Applicable Law, shall be conclusive and binding for all purposes of the Plan.

Notwithstanding any other provision of the Plan, the value of a DSU shall always depend on the value of Shares of the Corporation or a Related Corporation and no amount will be paid to, or in respect of, an Eligible Participant under the Plan or pursuant to any other arrangement, and no additional DSUs will be granted to any Eligible Participant to compensate for a downward fluctuation in the price of Shares, nor will any other form of benefit be conferred upon, or in respect of, an Eligible Participant for such purpose.

## **Section 3 Redemptions**

### **3.1 Redemption of Deferred Share Units – Non-US Taxpayers**

Subject to Sections 4.4 and 4.5, an Eligible Participant who is not a U.S. Taxpayer may elect up to two separate dates as of which either a portion (specified in whole percentages or number of Deferred Share Units on any one date) or all of the Deferred Share Units credited to the Eligible Participant's Account shall be redeemed (each such date being an "**Entitlement Date**") by filing one or two irrevocable written redemption elections with the Secretary of the Corporation prior to the Entitlement Date specified in the redemption election. No Entitlement Date elected by an Eligible Participant pursuant to this Section 3.1 shall be before the Eligible Participant's Termination Date or later than December 15 of the calendar year following the year in which the Eligible Participant's Termination Date occurs. Where an Eligible Participant to whom this Section 3.1 applies does not elect a particular date or dates within the permissible period set out above as his or her Entitlement Date or Entitlement Dates, as the case may be, there shall be a single Entitlement Date for such Eligible Participant which, subject to Sections 3.4 and Section 3.5, shall be December 15 of the year following the year in which the Eligible Participant's Termination Date occurs.



### **3.2 Redemption of Deferred Share Units – US Taxpayer**

Notwithstanding anything contrary in the Plan, subject to Section 3.4 and Section 3.6, the Entitlement Date of an Eligible Participant who is a U.S. Taxpayer shall be the first Trading Day that is more than six months after his or her Termination Date and all vested Deferred Share Units credited to such Eligible Participant's Account on such date shall be redeemed and settled in accordance with Section 4.3 on or soon as practicable after such Entitlement Date and in any event by December 31 of the calendar year that includes such Entitlement Date.

### **3.3 Settlement of Deferred Share Units**

Subject to Section 4.13, an Eligible Participant, or the Beneficiary of an Eligible Participant, as the case may be, whose Deferred Share Units are redeemed hereunder as of an Entitlement Date shall be entitled to receive from the Corporation, as a single distribution and not in installments, a cash payment, Shares or any combination of cash and Shares, as determined by the Board, subject to the DSU Award Agreement applicable to such Deferred Share Units, if any. Settlement in Shares shall be made by way of the issuance by the Corporation of one Share for each Deferred Share Unit being settled in Shares as of the relevant Entitlement Date. Settlement of Deferred Share Units in cash shall be made by way of the lump sum payment of an amount equal to the Fair Market Value on the relevant Entitlement Date multiplied by the number of Deferred Share Units being settled in cash as of such Entitlement Date. No fractional Shares will be issued and any fractional Deferred Share Units shall be settled in cash based on the Fair Market Value on the relevant Entitlement Date.

### **3.4 Extended Entitlement Date**

In the event that the Board is unable, by an Eligible Participant's Entitlement Date, to compute the final value of the Deferred Share Units recorded in such Eligible Participant's Account that will be settled in cash by reason of the fact that any data required in order to compute the Fair Market Value has not been made available to the Board and such delay is not caused by the Eligible Participant, then the Entitlement Date shall be the next following Trading Day on which such data is made available to the Board.

### **3.5 Limitation on Extension of Entitlement Date**

Notwithstanding any other provision of the Plan, all Shares issuable and all amounts payable to, or in respect of, an Eligible Participant hereunder shall be issued or paid, as the case may be, on or before December 31 of the calendar year commencing immediately after the Eligible Participant's Termination Date.

### **3.6 Settlement of Deferred Share Units following a Change of Control**

- (a) Any unvested Deferred Share Units will immediately and automatically vest upon the date a Change of Control becomes effective.
- (b) In the event an Eligible Participant's Termination Date is within twelve (12) months following a Change of Control, the Board may, in its discretion, determine that, as of the Eligible Participant's Entitlement Date(s), the Eligible Participant or his or her Beneficiary, as the case may, shall receive a payment in cash of an aggregate amount equal to the product of (i) the price attributed to the Shares in connection with the transaction resulting in the Change of Control (or the fair market value of a Share at the time of such transaction as determined by the Board in good faith if no Share price was in fact established for purposes of such transaction) multiplied by (ii) the number of Deferred Share Units being settled as of the applicable Entitlement Date. Where an amount is in respect of an Eligible Participant's Deferred Share Units is paid pursuant to this Section 3.6, no amount shall be payable and no Shares shall be issuable in respect of such Deferred Share Units pursuant to Section 3.3.

## **Section 4      General**

### **4.1              Rights as an Unsecured Creditor**

To the extent any individual holds any rights by virtue of an election under the Plan, such rights (unless otherwise determined by the Board) shall be no greater than the rights of an unsecured general creditor of the Corporation.

### **4.2              Successors and Assigns**

The Plan shall be binding on all successors and permitted assigns of the Corporation and an Eligible Participant, including without limitation, the estate of such Eligible Participant and the legal representative of such estate, or any receiver or trustee in bankruptcy or representative of the Corporation's or the Eligible Participant's creditors.

### **4.3              Plan Amendment**

**4.3.1**              The Plan and any Deferred Share Units granted thereunder may be amended, modified or terminated by the Board without approval of shareholders, provided that no amendment to the Plan or any Deferred Share Units granted thereunder may be made without the consent of the Eligible Participant if it adversely alters or impairs the rights of the Eligible Participant in respect of any Deferred Share Units such Eligible Participant has then elected to receive, or Deferred Share Units which such Eligible Participant has been granted under the Plan, except that Eligible Participant consent shall not be required where the amendment is required for purposes of compliance with Applicable Law. Without limiting the generality of the foregoing, the Board may make the following amendments to the Plan or a Deferred Share Unit granted under the Plan, as applicable, without obtaining the approval of any Eligible Participant or shareholder of the Corporation:

- (i)              amendments to the terms and conditions of the Plan necessary to ensure that the Plan complies with applicable law and regulatory requirements, including the requirements of any applicable Stock Exchange, in place from time to time;
- (ii)             amendments to the provisions of the Plan respecting administration of the Plan and eligibility for participation under the Plan;
- (iii)            amendments to the provisions of the Plan respecting the terms and conditions on which Deferred Share Units may be granted pursuant to the Plan;
- (iv)            amendments to the Plan that are of a "housekeeping" nature;
- (v)            amendments to the provisions relating to a Change of Control; and
- (vi)            any other amendments not requiring shareholder approval under applicable laws or the requirements of any applicable Stock Exchange.

Without limiting the generality of the foregoing, the Board may not, without the approval of the Corporation's shareholders, make amendments to the Plan or a Deferred Share Unit granted under the Plan with respect to the following:

- (i)              an increase to the maximum number or percentage of securities issuable under the Plan;
- (ii)             a change in the term of any Deferred Share Units;

- (iii) an amendment to the amending provisions of the Plan granting additional powers to the Board to amend the Plan or entitlements thereunder;
- (iv) a reduction in the Fair Market Value in respect of any Deferred Share Units benefitting an Insider;
- (v) any change to the categories of individuals eligible to be selected for grants of Deferred Share Units where such change may broaden or increase the participation of Non-Employee Directors under the Plan;
- (vi) any changes to the Insider participation limits set out in Section 2.4.4
- (vii) any amendments that increase Non-Employee Director participation limits set out in Section 2.4.3;
- (viii) an amendment to the prohibitions on assignment or transfer of Deferred Share Units in Section 4.9.2; or
- (ix) an amendment to the amendment provisions in this Section 4.3.1.

**4.3.2** Notwithstanding Section 4.3.1, any amendment of the Plan shall be such that the Plan continuously meets the requirements of paragraph 6801(d) of the regulations under the *Income Tax Act* (Canada) or any successor to such provision and the requirements of Section 409A of the Code, as may apply to Eligible Participants who are U.S. Taxpayers. For avoidance of doubt, and notwithstanding Section 4.3.1, if any provision of the Plan or any DSU Award Agreement contravenes any regulations or U.S. Treasury guidance promulgated under Section 409A of the Code or would cause the Deferred Share Units to be subject to the interest, taxes and penalties under Section 409A of the Code, such provision of the Plan or the applicable DSU Award Agreement shall, to the extent that it applies to U.S. Taxpayers, be modified, without the consent of any Eligible Participant, to maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

#### **4.4 Plan Termination**

The Board may terminate the Plan at any time but no such termination shall, without the consent of the Eligible Participant or unless required by law, adversely affect the rights of an Eligible Participant with respect to any amount in respect of which an Eligible Participant has then elected to receive Deferred Share Units or Deferred Share Units which the Eligible Participant has then been granted under the Plan. Notwithstanding the foregoing, any termination of the Plan shall be such that the Plan continuously meets the requirements of paragraph 6801(d) of the regulations under the *Income Tax Act* (Canada) or any successor to such provision and the requirements of Section 409A of the Code as may apply to Eligible Participants who are U.S. Taxpayers.

#### **4.5 Applicable Trading Policies and Reporting Requirements**

The Board and each Eligible Participant will ensure that all actions taken and decisions made by the Board or an Eligible Participant, as the case may be, pursuant to the Plan, comply with applicable securities regulations and policies of the Corporation relating to insider trading and “black out” periods.

#### **4.6 Currency**

All payments and benefits under the Plan shall be determined and paid in the lawful currency of Canada.

#### **4.7 Designation of Beneficiary**

Subject to the requirements of Applicable Law, an Eligible Participant may designate in writing a person who is a dependant or relation of the Eligible Participant as a beneficiary to receive any benefits that are payable under the Plan upon the death of such Eligible Participant. The Eligible Participant may, subject to Applicable Law, change such designation from time to time. Such designation or change shall be in the form of Schedule C. The initial designation of each Eligible Participant shall be executed and filed with the Secretary of the Corporation within sixty (60) days following the Effective Date of the Plan. Changes to such designation may be filed from time to time thereafter.

#### **4.8 Death of Eligible Participant**

In the event of an Eligible Participant's death, any and all Deferred Share Units then credited to the Eligible Participant's Account shall become payable to the Eligible Participant's Beneficiary in accordance with Sections 4.3, 4.4 and 4.5 as soon as reasonably practicable after the Eligible Participant's date of death and such date of death shall be deemed to be the sole Entitlement Date with respect to the Eligible Participant; provided that, solely with respect to an Eligible Participant who is a U.S. Taxpayer, in no event shall such payment be made later than December 31 of the calendar year in which the death occurs, or if later, the 15<sup>th</sup> day of the third month following the date of death.

#### **4.9 Rights of Eligible Participants**

**4.9.1** Except as specifically set out in the Plan, no Eligible Participant, or any other person shall have any claim or right to any benefit in respect of Deferred Share Units granted or amounts payable pursuant to the Plan.

**4.9.2** Rights of Eligible Participants respecting Deferred Share Units and other benefits under the Plan shall not be transferable or assignable other than by will or the laws of descent and distribution.

**4.9.3** The Plan shall not be construed as granting an Eligible Participant a right to be retained as a member of the Board or a claim or right to any future grants of Deferred Share Units, future amounts payable or other benefits under the Plan.

**4.9.4** Under no circumstances shall Deferred Share Units be considered Shares nor shall they entitle any Eligible Participant or other person to exercise voting rights or any other rights attaching to the ownership of Shares.

#### **4.10 Compliance with Law**

Any obligation of the Corporation pursuant to the terms of the Plan is subject to compliance with Applicable Law. The Eligible Participants shall comply with Applicable Law and furnish the Corporation with any and all information and undertakings as may be required to ensure compliance therewith.

#### **4.11 Administration Costs**

The Corporation will be responsible for all costs relating to the administration of the Plan.

#### **4.12 Limited Liability**

No member of the Board or any officer or employee of the Corporation or any subsidiary, partnership, trust of the Corporation or other controlled entity (each an "**ECN Capital Entity**") shall be liable for any action or determination made in good faith pursuant to the Plan, any Election Notice or DSU Notice under the Plan. To the fullest extent permitted by law, the Corporation and the Related Corporations shall indemnify and save harmless each person made, or threatened to be made, a party to any action or

proceeding in respect of the Plan by reason of the fact that such person is or was a member of the Board or is or was an officer or employee of the Corporation or a ECN Capital Entity.

#### **4.13 Withholding**

So as to ensure that the Corporation will be able to comply with the applicable provisions of any Applicable Law relating to the withholding of tax or other required deductions, the Corporation may withhold from any amount payable to an Eligible Participant, either under the Plan or otherwise, such amount as may be necessary to enable the Corporation to comply with the applicable requirements of any federal or provincial tax law or authority relating to the withholding of tax or any other required deductions with respect to Deferred Share Units. The Corporation may also satisfy any liability for any such withholding obligations, on such terms and conditions as the Corporation may determine in its discretion, by (a) selling on behalf of any Eligible Participant, or causing any Eligible Participant to sell, any Shares issued hereunder, or retaining any amount payable, which would otherwise be provided or paid to the Eligible Participant hereunder or (b) requiring an Eligible Participant, as a condition to the redemption of any Deferred Share Units, to make such arrangements as the Corporation may require so that the Corporation can satisfy such withholding obligations, including, without limitation, requiring the Eligible Participant to remit to the Corporation in advance, or reimburse the Corporation for, any such withholding obligations.

#### **4.14 Section 409A of the Code**

**4.14.1** Notwithstanding any provision of the Plan to the contrary, it is intended that any payments under the Plan comply with Section 409A of the Code, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code.

**4.14.2** Each payment made in respect of Deferred Share Units shall be deemed to be a separate payment for purposes of Section 409A of the Code.

**4.14.3** Each U.S. Taxpayer is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or for the account of such U.S. Taxpayer in connection with the Plan or any other plan maintained by the Corporation (including any taxes and penalties under Section 409A of the Code), and neither the Corporation nor any ECN Capital Entity shall have any obligation to indemnify or otherwise hold such U.S. Taxpayer (or any Beneficiary) harmless from any or all of such taxes or penalties.

**4.14.4** No U.S. Taxpayer or the creditors or beneficiaries of a U.S. Taxpayer shall have the right to subject any payments made in respect of Deferred Share Units to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A of the Code, any payments made in respect of Deferred Share Units payable to any U.S. Taxpayer or for the benefit of any U.S. Taxpayer may not be reduced by, or offset against, any amount owing by any such U.S. Taxpayer to any ECN Capital Entity.

**SCHEDULE A**  
**ECN Capital Corp. Deferred Share Unit Plan for Directors and Executives (the "Plan")**

**ELECTION NOTICE FOR NON-EMPLOYEE DIRECTORS**

**I. Election:**

Subject to Part II of this Notice, I hereby elect to receive the following percentage of my Annual Remuneration earned in Quarters commencing after \_\_\_\_\_ by way of Deferred Share Units ("DSUs"):

	Amount	Percentage in DSUs	Percentage in Cash*
Annual Remuneration	\$ _____	____%	____%

\*cash payments will be made Quarterly in arrears

**II. Acknowledgement**

I confirm and acknowledge that:

1. I have received and reviewed a copy of the terms of the Plan and agree to be bound by them.
2. I will not be able to cause the Corporation or any Related Corporation to redeem DSUs granted under the Plan until the date specified in the Plan following my Termination Date.
3. When DSUs credited to my Account pursuant to this election are redeemed in accordance with the terms of the Plan after my Termination Date, income tax and other withholdings as required will arise at that time. Upon redemption of the DSUs, the Corporation will make all appropriate withholdings as required by law at that time.
4. The value of the DSUs is based on the value of the common shares of the Corporation and therefore is not guaranteed.
5. This election is irrevocable until changed with respect to future Annual Remuneration in accordance with Section 2.2 (c) of the Plan.
6. The foregoing is only a brief outline of certain key provisions of the Plan. In the event of any discrepancy between the terms of the Plan and the terms of this Election Notice, the terms of the Plan shall prevail. All capitalized expressions used herein shall have the same meaning as in the Plan unless otherwise defined above.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name of Eligible Participant)

\_\_\_\_\_  
(Signature of Eligible Participant)

## Schedule B

### ECN Capital Corp. Deferred Share Unit Plan for Directors and Executives (the "Plan")

#### DSU AWARD AGREEMENT

#### I. Agreement and Grant

This Agreement is entered into between ECN Capital Corp. (the "Corporation") and the individual named below (the "Eligible Participant") pursuant to Section 2.3.2 of the Plan and confirms that effective •, 20\_\_ (the "Effective Date") \_\_\_\_ [number] Deferred Share Units ("DSUs") have been granted by the Corporation to the Eligible Participant on the terms set out in this Agreement and the Plan.

#### II. Vesting

All DSUs referred to in Part I above, together with any additional DSUs credited to the Eligible Participant's Account pursuant to Section 2.5 of the Plan in respect of such DSUs shall at all times following their grant be fully vested in the Eligible Participant, and shall not be subject to forfeiture.

#### III. Acknowledgement

The Eligible Participant confirms and acknowledges that:

1. He/she has received and reviewed a copy of the terms of the Plan and this Agreement and agrees to be bound by them.
2. Only DSUs that vest in accordance with Part II above may be redeemed by the Eligible Participant or his/her Beneficiary.
3. He/she will not be able to cause the Corporation or any Related Corporation thereof to redeem DSUs referred to in Part I above or any additional DSUs credited to the Eligible Participant's Account pursuant to Section 2.5 of the Plan in respect of such DSUs until the date specified in the Plan following his/her Termination Date.
4. When DSUs referred to in Part I above and additional DSUs credited to the Eligible Participant's Account pursuant to this election are redeemed in accordance with the terms of the Plan after he/she is no longer either a director or employee of the Corporation or any Related Corporation thereof, income tax and other withholdings as required will arise at that time. Upon redemption of the DSUs, the Corporation will make all appropriate withholdings as required by law at that time.
5. The value of the DSUs is based on the value of the common shares of the Corporation and therefore is not guaranteed.
6. In the event of any discrepancy between the terms of the Plan and the terms of this Agreement, the terms of the Plan shall prevail. All capitalized expressions used herein shall have the same meaning as in the Plan unless otherwise specified herein.

**IN WITNESS WHEREOF** the Corporation and Eligible Participant have executed this Agreement as of the Effective Date.

By: \_\_\_\_\_  
(Signature of Eligible Participant)

\_\_\_\_\_  
(Name of Eligible Participant)

**ECN CAPITAL CORP.**

By: \_\_\_\_\_  
(Signature)



**SCHEDULE C  
BENEFICIARY DESIGNATION**

To: Secretary – ECN Capital Corp.

I, \_\_\_\_\_, being an Eligible Participant under the ECN Capital Corp. Deferred Share Unit Plan for Directors and Executives (the “Plan”) hereby designate the following person as my Beneficiary for purposes of the Plan:

Name of Beneficiary: \_\_\_\_\_

Address of Beneficiary: \_\_\_\_\_

\_\_\_\_\_

This designation revokes any previous beneficiary designation made by me under the Plan. Under the terms of the Plan, I reserve the right to revoke this designation and to designate another person as my Beneficiary.

Date: \_\_\_\_\_

Name: \_\_\_\_\_ (please print)

Signature: \_\_\_\_\_

**APPENDIX Q**  
**FORM OF ECN CAPITAL UNIT PLAN**

## 1. PREAMBLE AND DEFINITIONS

### 1.1 Title.

The Plan described in this document shall be called the "ECN Capital Corp. Share Unit Plan".

### 1.2 Purpose of the Plan.

The purposes of the Plan are:

- (i) to promote a further alignment of interests between employees and the shareholders of the Corporation;
- (ii) to associate a portion of employees' compensation with the returns achieved by shareholders of the Corporation; and
- (iii) to attract and retain employees with the knowledge, experience and expertise required by the Corporation.

### 1.3 Definitions.

- (a) "**Applicable Law**" means any applicable provision of law, domestic or foreign, including, without limitation, applicable securities legislation, together with all regulations, rules, policy statements, rulings, notices, orders or other instruments promulgated thereunder, and Stock Exchange Rules;
- (b) "**Beneficiary**" means an individual who, on the date of a Participant's death, is the person who has been designated in accordance with Section 8.7 and the laws applying to the Plan, or where no such individual has been validly designated by the Participant, or where the individual does not survive the Participant, the Participant's legal representative;
- (c) "**Black-Out Period**" means a period of time imposed pursuant to the Insider Trading Policy of the Corporation upon certain designated persons during which those persons may not trade in any securities of the Corporation;
- (d) "**Board**" means the Board of Directors of the Corporation;
- (e) "**Cause**" in respect of a Participant has the meaning ascribed thereto in Participant's written employment agreement with the Corporation or an ECN Capital Entity, or, in the event the Participant is not party to any such written employment agreement, means "just cause" "or "cause" for termination of the Participant's employment by the Corporation or an ECN Capital Entity as determined under Applicable Law;
- (f) "**Change of Control**" means:
  - (i) the consummation of any transaction or series of transactions including any consolidation, amalgamation, arrangement, merger or issue of voting shares in the capital of the Corporation, the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly or indirectly, of more than 50% of the voting shares in the capital of the Corporation, measured by voting power rather than number of shares (but shall not include the creation of a holding

- company or similar transaction that does not involve any material change in the indirect beneficial ownership of the shares in the capital of the Corporation);
- (ii) the direct or indirect sale, transfer or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Corporation, taken as a whole, to any Person or group of Persons acting jointly or in concert for purposes of such transaction (other than to any affiliates of the Corporation);
  - (iii) the election at a meeting of the Corporation's shareholders of that number of individuals that would represent a majority of the Board as Directors of the Corporation, who are not included in the slate for election as Directors proposed to the Corporation's shareholders by management of the Corporation or a transaction or series of transactions as a result of which a majority of the directors of the Corporation are removed from office at any annual or special meeting of shareholders or as a result of a transaction referred to in clause (i) immediately above, or a majority of the Directors of the Corporation resign from office over a period of 60 days or less, and the vacancies created thereby are filled by nominees proposed by any Person other than Directors or management of the Corporation in place immediately prior to the removal or resignation of the Directors; or
  - (iv) the completion of any transaction or the first of a series of transactions which would have the same or similar effect as any transaction or series of transactions referred to in clauses (i), (ii) or (iii), referred to immediately above;
- (g) "**Code**" means the United States Internal Revenue Code of 1986, as amended, and any applicable United States Treasury Regulations and other binding regulatory guidance thereunder;
  - (h) "**Committee**" means the Corporate Governance and Compensation Committee of the Board, or such other the committee of the Board as is designated by the Board to administer the Plan from time to time;
  - (i) "**Corporation**" means ECN Capital Corp., a corporation incorporated under the laws of Ontario, and includes: (i) any successor to ECN Capital Corp. resulting from any amalgamation, arrangement or other reorganization of, or involving, ECN Capital Corp. or any continuance under the laws of another jurisdiction and (ii) any affiliate of ECN Capital Corp. or any such successor;
  - (j) "**Director**" means a member of the Board;
  - (k) "**Disability**" means the mental or physical state of the Participant such that, as a result of illness, disease, mental or physical disability or similar cause, the Participant has been unable to fulfil his or her obligations as an employee of the Corporation either for any consecutive six-month period or for any period of twelve months (whether or not consecutive) in any consecutive 24-month period, provided that, where the Participant has entered into a Participant Services Agreement with the Corporation, "Disability" will have the meaning attributed to that term, or the term equivalent in concept, contained in that Participant Services Agreement, and provided that the term "Disabled" has the same meaning with necessary grammatical changes; "**Disability Date**" means, in relation to a Participant, that date determined by the Committee to be the date on which the Participant experienced a Disability;

- (l) “**ECN Capital Entity**” means any of the Corporation’s subsidiaries, partnerships, trusts or other controlled entities and “**ECN Capital Entities**” means all such entities collectively;
- (m) “**Eligible Person**” means an individual Employed by the Corporation or any ECN Capital Entity who, by the nature of his/her position or job is, in the opinion of the Committee, in a position to contribute to the success of the Corporation;
- (n) “**Employed**” means, with respect to a Participant, that:
  - (i) he/she is rendering services to the Corporation or an ECN Capital Entity, excluding services as a Director; or
  - (ii) he/she is not actively rendering services to the Corporation or an ECN Capital Entity due to an approved leave of absence, maternity or parental leave or leave on account of Disability (provided, in the case of a U.S. Taxpayer, that the Participant has not incurred a “Separation From Service”, as defined in Exhibit A to the Plan),

and “**Employment**” has the corresponding meaning;

- (o) “**Fair Market Value**” means, (a) with respect to any particular date, the volume weighted average trading price per Share on the Stock Exchange during the immediately preceding ten (10) Trading Days, or (b) in any case in which the Shares are not listed on the Stock Exchange, the value established by the Corporation acting in good faith;
- (p) “**Grant**” means a grant of Share Units made pursuant to Section 3.1;
- (q) “**Grant Agreement**” means an agreement between the Corporation and a Participant under which a Grant is made, as contemplated by Section 3.1, together with such schedules, amendments, deletions or changes thereto as are permitted under the Plan;
- (r) “**Grant Date**” means the effective date of a Grant;
- (s) “**Grant Value**” means the dollar amount allocated to an Eligible Person in respect of a Grant as contemplated by Section 3;
- (t) “**Insider**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange;
- (u) “**Participant**” has the meaning set forth in Section 3.2(a);
- (v) “**Performance Period**” means, with respect to PSUs, the period specified by the Committee for achievement of any applicable Performance Conditions as a condition to Vesting;
- (w) “**Performance Conditions**” means such financial, personal, operational or transaction-based performance criteria as may be determined by the Committee in respect of a Grant of PSUs to any Participant or Participants and set out in a Grant Agreement. Performance Conditions may apply to the Corporation, an ECN Capital Entity, the Corporation and ECN Capital Entities as a whole, a business unit of the Corporation or group comprised of the Corporation and some ECN Capital Entities or a group of ECN Capital Entities, either individually,

alternatively or in any combination, and measured either in total, incrementally or cumulatively over a specified performance period, on an absolute basis or relative to a pre-established target or milestone, to previous years' results or to a designated comparator group, or otherwise, and may result in the percentage of Vested PSUs in a Grant exceeding 100% of the PSUs initially determined in respect of such Grant pursuant to Section 3.2(b);

- (x) “**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (y) “**Plan**” means this share unit plan of the Corporation, as the same may be supplemented and amended from time to time;
- (z) “**PSU**” means a right, granted to a Participant in accordance with Section 3, to receive a Share, that generally becomes Vested, if at all, subject to the attainment of certain Performance Conditions and satisfaction of such other conditions to Vesting, if any, as may be determined by the Committee;
- (aa) “**RSU**” means a right granted to a Participant in accordance with Section 3, to receive a Share, that generally becomes Vested, if at all, following a period of continuous Employment of the Participant with the Corporation or an ECN Capital Entity;
- (bb) “**Security Based Compensation Arrangement**” has the meaning set forth in the applicable rules of the Toronto Stock Exchange or similar term on another applicable Stock Exchange, as applicable;
- (cc) “**Share**” means a common share of the Corporation and such other share as may be substituted for it as a result of any amendments to the articles of the Corporation, or consolidation, merger, amalgamation, arrangement, reorganization or otherwise involving the Corporation, including any rights that form a part of the common share or substituted share;
- (dd) “**Share Unit**” means either an RSU or a PSU, as the context requires;
- (ee) “**Share Unit Account**” has the meaning set out in Section 5.1;
- (ff) “**Stock Exchange**” means the Toronto Stock Exchange, or if the Shares are not listed on the Toronto Stock Exchange, such other stock exchange on which the Shares are listed, or if the Shares are not listed on any stock exchange, then on the over-the-counter market;
- (gg) “**Stock Exchange Rules**” means the applicable rules of any stock exchange upon which shares of the Corporation are listed;
- (hh) “**Termination**” means (i) in the case of a Participant who is Employed by the Corporation or an ECN Capital Entity, the cessation of a Participant’s active Employment with the Corporation or ECN Capital Entity (other than in connection with the Participant’s transfer to Employment with the Corporation or an ECN Capital Entity), which shall occur on the earlier of the date on which the Participant ceases to render services to the Corporation or ECN Capital Entity, as applicable, and the date on which the Corporation or ECN Capital Entity, as

applicable, delivers notice of the termination of the Participant's employment to him/her, whether such termination is lawful or otherwise, without giving effect to any period of notice or compensation in lieu of notice, but, for greater certainty, a Participant's absence from active work during a period of vacation, temporary illness, authorized leave of absence, maternity or parental leave or leave on account of Disability shall not be considered to be a "Termination"; and (ii) in the case of any Participant who does not return to active Employment with the Corporation or an ECN Capital Entity immediately following a period of absence due to vacation, temporary illness, authorized leave of absence, maternity or parental leave or leave on account of Disability, such cessation shall be deemed to occur on the last day of such period of absence (in each case, provided, in the case of a U.S. Taxpayer, that the Termination constitutes a "Separation From Service" as defined in Exhibit A to the Plan), and "**Terminated**" and "**Terminates**" shall be construed accordingly;

- (ii) "**Time Vesting**" means any conditions relating to continued service with the Corporation or an ECN Capital Entity for a period of time in respect of the Vesting of Share Units determined by the Committee;
- (jj) "**Trading Day**" means any date on which the Stock Exchange is open for the trading of Shares and on which Shares are actually traded;
- (kk) "**U.S. Taxpayer**" means a Participant who is a citizen or permanent resident of the United States for purposes of the Code or a Participant for whom the amounts payable or Shares deliverable under the Plan are subject to taxation under the Code.
- (ll) "**Valuation Date**" means the date as of which the Fair Market Value is determined for purposes of calculating the number of Share Units included in a Grant, which unless otherwise determined by the Committee shall be the Grant Date of such Grant;
- (mm) "**Vested**" means the applicable Time Vesting, Performance Conditions and/or any other conditions for payment or other settlement (subject to any conditions on such payment or settlement imposed in respect of U.S. Taxpayers under Exhibit "A" hereto) in relation to a whole number, or a percentage (which may be more or less than 100%) of the number, of PSUs or RSUs determined by the Committee in connection with a Grant of PSUs or Grant of RSUs, as the case may be, (i) have been met; (ii) have been waived or deemed to be met pursuant to Section 6.5, Section 6.6 or Section 6.7; (iii) or are otherwise waived pursuant to Section 3.3, and "Vesting" and "Vest" shall be construed accordingly;
- (nn) "**Vesting Date**" means the date on which the applicable Time-Vesting, Performance Conditions and/or any other conditions for a Share Unit becoming Vested are met, deemed to have been met or waived as contemplated in Section 1.3(mm); and
- (oo) "**Vesting Period**" means, with respect to a Grant, the period specified by the Committee, commencing on the Grant Date and ending on the last Vesting Date for Share Units subject to such Grant which, unless otherwise determined by the Committee, shall not be later than December 15 of the third year following the year in which the Participant performed the services to which the Grant relates.

## 2. CONSTRUCTION AND INTERPRETATION

- 2.1 **Gender, Singular, Plural.** In the Plan, references to the masculine include the feminine; and references to the singular shall include the plural and vice versa, as the context shall require.
- 2.2 **Governing Law.** The Plan shall be governed and interpreted in accordance with the laws of the Province of Ontario and any actions, proceedings or claims in any way pertaining to the Plan shall be commenced in the courts of the Province of Ontario.
- 2.3 **Severability.** If any provision or part of the Plan is determined to be void or unenforceable in whole or in part, such determination shall not affect the validity or enforcement of any other provision or part thereof.
- 2.4 **Headings, Sections.** Headings wherever used herein are for reference purposes only and do not limit or extend the meaning of the provisions herein contained. A reference to a section or schedule shall, except where expressly stated otherwise, mean a section or schedule of the Plan, as applicable.

## 3. SHARE UNIT GRANTS AND VESTING PERIODS

### 3.1 **Grant of Share Units.**

Unless otherwise determined by the Board, the Plan shall be administered by the Committee. The Committee shall have the authority in its sole and absolute discretion to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan subject to and not inconsistent with the express provisions of this Plan, including, without limitation, the authority:

- (a) to make Grants;
- (b) to determine the Grant Date for Grants, if not the date on which the Committee determines to make such Grants, provided that the Committee shall ensure that no Grant Date falls within a Blackout Period or within the first five Trading Days immediately following a Blackout Period;
- (c) to determine the Eligible Persons to whom, and the time or times at which Grants shall be made and shall become issuable;
- (d) to determine the Grant Value and the Valuation Date (if not the Grant Date) for each Grant and accordingly the number of Share Units to be covered by each Grant in accordance with Section 3.2;
- (e) to approve or authorize the applicable form and terms of the related Grant Agreements and any other forms to be used in connection with the Plan;
- (f) to determine the terms and conditions of Grants granted to any Participant, including, without limitation, (A) the type of Share Unit, (B) the number of RSUs or PSUs subject to a Grant, (C) the Vesting Period(s) applicable to a Grant, (D) the condition(s) to the Vesting of any Share Units granted hereunder, including terms relating to Performance Conditions, Time Vesting and/or other Vesting conditions, any multiplier that may apply to Share Units subject to a Grant in connection with the achievement of Vesting conditions, the Performance Period for PSUs and the conditions, if any, upon which Vesting of any Share Unit will be waived or accelerated without any further action



by the Committee (including, without limitation, the effect of a Change of Control and a Participant's Termination in connection therewith), (E) the circumstances upon which a Share Unit shall be forfeited, cancelled or expire, (F) the consequences of a Termination with respect to a Share Unit, (G) the manner and time of exercise or settlement of Vested Share Units, and (H) whether and the terms upon which any Shares delivered upon exercise or settlement of a Share Unit must continue to be held by a Participant for any specified period;

(g) to determine whether and the extent to which any Performance Conditions or other criteria applicable to the Vesting of a Share Unit have been satisfied or shall be waived or modified;

(h) to amend the terms of any outstanding Grant under the Plan or Grant Agreement; provided, however, that no such amendment, suspension or termination shall be made at any time to the extent such action would materially adversely affect the existing rights of a Participant with respect to any then outstanding Share Unit without his/her consent in writing and provided further, however, that, notwithstanding the foregoing clause of this Section 3.1(h), the Committee may amend the terms of a Share Unit or Grant Agreement without the consent of the Participant for purposes of complying with Applicable Law whether or not such amendment could adversely affect the rights of the Participant;

(i) to determine whether, and the extent to which, adjustments shall be made pursuant to Section 5.3 and the terms of any such adjustments;

(j) to interpret the Plan and Grant Agreements;

(k) to prescribe, amend and rescind such rules and regulations and make all determinations necessary or desirable for the administration and interpretation of the Plan and Grant Agreements;

(l) to determine the terms and provisions of Grant Agreements (which need not be identical) entered into in connection with Grants; and

(m) to make all other determinations deemed necessary or advisable for the administration of the Plan.

### 3.2 **Eligibility and Award Determination.**

(a) In determining the Eligible Persons to whom Grants are to be made ("**Participants**") and the Grant Value for (and accordingly the number of Share Units to be covered by) each Grant (subject to adjustment in accordance with Time Vesting or Performance Conditions), the Committee shall take into account the terms of any written employment agreement between an Eligible Person and the Corporation or any ECN Capital Entity and may take into account such other factors as it shall determine in its sole and absolute discretion.

(b) The number of Share Units to be covered by each Grant shall be determined by dividing the Grant Value for such Grant by the Fair Market Value of a Share as at the Valuation Date for such Grant, rounded up to the next whole number of Share Units.

(c) For greater certainty and without limiting the discretion conferred on the Committee pursuant to this Section, the Committee's decision to approve a Grant in any period shall not require the Committee to approve a Grant to any

Participant in any other period; nor shall the Committee's decision with respect to the size or terms and conditions of a Grant in any period require it to approve a Grant of the same or similar size or with the same or similar terms and conditions to any Participant in any other period. The Committee shall not be precluded from approving a Grant to any Participant solely because such Participant may have previously received a Grant under this Plan or any other similar compensation arrangement of the Corporation or an ECN Capital Entity. No Eligible Person has any claim or right to receive a Grant except as may be provided in a written employment agreement between an Eligible Person and the Corporation or an ECN Capital Entity.

- (d) Each Grant Agreement shall set forth, at a minimum, the type of Share Units and Grant Date of the Grant evidenced thereby, the number of RSUs or PSUs subject to such Grant, the applicable Vesting conditions, the applicable Vesting Period(s) and the treatment of the Grant upon Termination and may specify such other terms and conditions consistent with the terms of the Plan as the Committee shall determine or as shall be required under any other provision of the Plan. The Committee may include in a Grant Agreement terms or conditions pertaining to confidentiality of information relating to the Corporation's operations or businesses which must be complied with by a Participant including as a condition of the grant or Vesting of Share Units.

3.3 **Discretion of the Committee.** Notwithstanding any other provision hereof or of any applicable instrument of grant, the Committee may accelerate or waive any condition to the Vesting of any Grant, all Grants, any class of Grants or Grants held by any group of Participants.

3.4 **Effects of Committee's Decision.** Any interpretation, rule, regulation, determination or other act of the Committee hereunder shall be made in its sole discretion and shall be conclusively binding upon all persons.

3.5 **Limitation of Liability.** No member of the Committee, the Board or any officer or employee of the Corporation or an ECN Capital Entity shall be liable for any action or determination made in good faith pursuant to the Plan or any Grant Agreement under the Plan. To the fullest extent permitted by law, the Corporation and the ECN Capital Entities shall indemnify and save harmless each person made, or threatened to be made, a party to any action or proceeding in respect of the Plan by reason of the fact that such person is or was a member of the Committee or the Board or is or was an officer or employee of the Corporation or an ECN Capital Entity.

3.6 **Delegation and Administration.** The Committee may, in its discretion, delegate such of its powers, rights and duties under the Plan, in whole or in part, to any one or more Directors, officers or employees of the Corporation as it may determine from time to time, on terms and conditions as it may determine, except the Committee shall not, and shall not be permitted to, delegate any such powers, rights or duties to the extent such delegation is not consistent with Applicable Law. The Committee may also appoint or engage a trustee, custodian or administrator to administer or implement the Plan or any aspect of it, except that the Committee shall not, and shall not be permitted to, appoint or engage such a trustee, custodian or administrator to the extent such appointment or engagement is not consistent with Applicable Law.

#### 4. SHARES SUBJECT TO THE PLAN

4.1 **Maximum Number of Shares and Limitations.**

- a. Subject to Section 4.2 and to adjustment pursuant to Section 5.3, the maximum number of Shares that may be issued under the Plan shall be a number equal to 10% of the number of issued and outstanding Shares on a non-diluted basis at any time, provided that the number of Shares issued or issuable under all Security Based Compensation Arrangements of the Corporation shall not exceed 10% of the issued and outstanding Shares, calculated from time to time at the date at which the rights to acquire Shares under such Security Based Compensation Arrangements are granted.
- b. All Shares subject to Share Units that terminate or are cancelled without being settled shall be available for any subsequent Grant.
- c. Under the Plan and any other Security Based Compensation Arrangement of the Corporation (i) the aggregate number of Shares issued to Insiders, within any one year period; and (ii) the aggregate number of Shares issuable to Insiders at any time, shall not exceed 10% of the issued and outstanding Shares.

4.2 **Issuance of Shares Subject to Applicable Law.** Notwithstanding anything herein to the contrary, the Corporation's obligation to issue and deliver Shares in respect of any Share Unit is subject to the satisfaction of all requirements under Applicable Law in respect thereof and obtaining all regulatory approvals as the Corporation shall determine to be necessary or advisable in connection with the authorization, issuance or sale thereof and the receipt from the Participant of such representations, agreements and undertakings as to future dealings in such Shares as the Corporation determines to be necessary or advisable in order to safeguard against the violation of the securities laws of any jurisdiction or to comply with Applicable Law. In this connection, the Corporation shall take all reasonable steps to obtain such approvals and registrations as may be necessary for the issuance of such Shares in compliance with Applicable Law.

## 5. ACCOUNTS, DIVIDEND EQUIVALENTS AND REORGANIZATION

5.1 **Share Unit Account.** An account, called a "Share Unit Account", shall be maintained by the Corporation, or an ECN Capital Entity, as specified by the Committee, for each Participant and will be credited with such notional grants of Share Units as are received by a Participant from time to time pursuant to Sections 3.1 and 3.2 and any dividend equivalent Share Units pursuant to Section 5.2. Share Units that fail to Vest in a Participant and are forfeited pursuant to Section 6, or that are paid out to the Participant or his/her Beneficiary, shall be cancelled and shall cease to be recorded in the Participant's Share Unit Account as of the date on which such Share Units are forfeited or cancelled under the Plan or are paid out, as the case may be. For greater certainty, where a Participant is granted both RSUs and PSUs, such RSUs and PSUs shall be recorded separately in the Participant's Share Unit Account.

5.2 **Dividend Equivalent Share Units.** Except as otherwise provided in the Grant Agreement relating to a grant of RSUs or PSUs, if and when cash dividends (other than extraordinary or special dividends) are paid with respect to Shares to shareholders of record as of a record date occurring during the period from the Grant Date under the Grant Agreement to the date of settlement of the RSUs or PSUs granted thereunder, a number of dividend equivalent RSUs or PSUs, as the case may be, shall be granted to the Participant who is a party to such Grant Agreement. The number of such additional RSUs or PSUs will be calculated by dividing the aggregate dividends or distributions that would have been paid to such Participant if the RSUs or PSUs in the Participant's Share Unit Account had been Shares by the Fair Market Value on the date on which the dividends or distributions were paid on the Shares. The additional RSUs or PSUs granted to a Participant will be subject to the same terms and conditions, including Vesting and settlement terms, as the corresponding RSUs or PSUs, as the case may be.

- 5.3 **Adjustments.** In the event of any stock dividend, stock split, combination or exchange of shares, capital reorganization, consolidation, spin-off, dividends (other than cash dividends in the ordinary course) or other distribution of the Corporation's assets to shareholders, or any other similar changes affecting the Shares, a proportionate adjustment to reflect such change or changes shall be made with respect to the number of Share Units outstanding under the Plan, or securities into which the Shares are changed or are convertible or exchangeable may be substituted for Shares under this Plan, on a basis proportionate to the number of Share Units in the Participant's Share Unit Account or some other appropriate basis, all as determined by the Committee in its sole discretion.

## 6. VESTING AND SETTLEMENT OF SHARE UNITS

- 6.1 **Settlement.** A Participant's RSUs and PSUs, adjusted in accordance with the applicable multiplier, if any, as set out in the Grant Agreement, shall be settled as provided below to the Participant or his/her Beneficiary, upon or as soon as reasonably practicable following the Vesting thereof in accordance with Section 6.3, 6.5 or 6.6, as the case may be, subject to the terms of the applicable Grant Agreement. In all events, Vested RSUs and PSUs will be settled on or before the earlier of the ninetieth (90<sup>th</sup>) day following the Vesting Date and December 31 of the year in which Vesting occurred. The Committee may determine whether Vested RSUs or PSUs will be settled by way of a cash payment, the delivery of Shares or a combination of a cash payment and the delivery of Shares. Settlement in Shares shall be made by way of the issuance by the Corporation of one Share for each Vested RSU or PSU being settled in Shares. Settlement of Vested RSUs or PSUs in cash shall be made by way of the lump sum payment of an amount equal to the Fair Market Value on the relevant settlement date multiplied by the number of Vested RSUs or PSUs being settled in cash as of such date. No fractional Shares will be issued and any fractional Vested RSUs or PSUs shall be settled in cash based on the Fair Market Value on the relevant settlement date.
- 6.2 **Failure to Vest.** For greater certainty, a Participant shall have no right to receive any payment or other benefit as compensation, damages or otherwise, with respect to any RSUs or PSUs that do not become Vested.
- 6.3 **Continued Employment.** Subject to this Section 6, Share Units subject to a Grant and dividend equivalent Share Units credited to the Participant's Share Unit Account in respect of such Share Units shall vest in such proportion(s) and on such Vesting Date(s) as may be specified in the Grant Agreement governing such Grant provided that the Participant is Employed on the relevant Vesting Date. For greater certainty, a Participant shall not be considered to be Employed on a Vesting Date if, prior to such Vesting Date, such Participant received a payment in lieu of notice of Termination of Employment, whether under a contract of employment, as damages or otherwise.
- 6.4 **Termination of Employment for Cause or Resignation.** Subject to the terms of a Participant's written employment agreement with the Corporation or an ECN Capital Entity and unless otherwise determined by the Committee, in the event a Participant's Employment is terminated for Cause by the Corporation, or an ECN Capital Entity, as applicable, or a Participant's Employment with the Corporation or an ECN Capital Entity Terminates as a result of the Participant's resignation, no Share Units that have not Vested and been settled prior to the date of the Participant's Termination for Cause or the date on which the Participant submits his/her resignation, as the case may be, including dividend equivalent Share Units in respect of such Share Units, shall Vest and all such Share Units shall be forfeited immediately.
- 6.5 **Termination of Employment without Cause.** Subject to the terms of a Participant's written employment agreement with the Corporation or an ECN Capital Entity and the

relevant Grant Agreement, in the event a Participant's Employment is terminated by the Corporation, or an ECN Capital Entity, as applicable, without Cause all RSUs and/or PSUs that have not previously Vested shall Vest on the effective date of Termination of the Participant's employment without Cause, provided that, in the case of a Grant of PSUs, the total number of PSUs that Vest shall be the number of PSUs covered by such Grant pursuant to Section 3.2(b) (together with any additional PSUs credited to the Participant's Account under Section 5.2) without giving effect to any potential increase or decrease in such number as a result of graduated Performance Conditions permitting Vesting of more or less than 100% of such PSUs.

6.6 **Death or Disability.** Subject to the terms of a Participant's written employment agreement with the Corporation or an ECN Capital Entity and the relevant Grant Agreement, in the event the Participant dies or experiences a Disability prior to the end of a Vesting Period relating to a Grant:

(i) the number of RSUs determined by the formula  $A \times B/C$ , where

A equals the total number of RSUs relating to such Grant that have not previously Vested and dividend equivalent RSUs in respect of such RSUs,

B equals the total number of days between the first day of the Vesting Period relating to such Grant and the Participant's date of death or Disability Date, as the case may be, and

C equals total number of days in the Vesting Period relating to such Grant,

shall become Vested RSUs on the Participant's date of death or Disability Date, as the case may be, and all other RSUs not so Vested shall be forfeited immediately; and

(ii) the number of PSUs, if any, that Vest shall be determined in accordance with the Grant Agreement governing such PSUs and any PSUs that do not Vest pursuant to the relevant Grant Agreement shall be forfeited immediately.

6.7 **Change of Control.** In the event of a Change of Control, subject to the terms of a Participant's written employment agreement with the Corporation or an ECN Capital Entity and the Grant Agreement in respect of the Grant, all RSUs and/or PSUs that have not previously Vested shall Vest on the effective date of the Change in Control, provided that, in the case of a Grant of PSUs, the total number of PSUs that Vest shall be the number of PSUs covered by such Grant pursuant to Section 3.2(b) (together with any additional PSUs credited to the a Participant's Account under Section 5.2) without giving effect to any potential increase or decrease in such number as a result of graduated Performance Conditions permitting Vesting of more or less than 100% of such PSUs. Share Units that Vest in accordance with this Section 6.7 shall be settled by a lump sum cash payment on the effective date of the Change of Control equal to the price attributed to the Shares in connection with the transaction resulting in the Change of Control (or the fair market value of a Share at the time of such transaction as determined by the Committee in good faith if no Share price was in fact established for purposes of such transaction) multiplied by the number of Vested Share Units..

## 7. CURRENCY

7.1 **Currency.** Except where the context otherwise requires, all references in the Plan to currency refer to lawful Canadian currency. Any amounts required to be determined

under this Plan that are denominated in a currency other than Canadian dollars shall be converted to Canadian dollars at the applicable Bank of Canada noon rate of exchange on the date as of which the amount is required to be determined.

## 8. SHAREHOLDER RIGHTS

- 8.1 **No Rights to Shares.** Share Units are not Shares and a Grant of Share Units will not entitle a Participant to any shareholder rights, including, without limitation, voting rights, dividend entitlement or rights on liquidation.

## 9. MISCELLANEOUS

- 9.1 **Compliance with Laws and Policies.** The Corporation's obligation to make any payments hereunder is subject to compliance with Applicable Law. Each Participant shall acknowledge and agree (and shall be conclusively deemed to have so acknowledged and agreed by participating in the Plan) that the Participant will, at all times, act in strict compliance with Applicable Law and all other laws and any policies of the Corporation applicable to the Participant in connection with the Plan including, without limitation, furnishing to the Corporation all information and undertakings as may be required to permit compliance with Applicable Law.
- 9.2 **Withholdings.** So as to ensure that the Corporation or an ECN Capital Entity, as applicable, will be able to comply with the applicable provisions of any Applicable Law relating to the withholding of tax or other required deductions, the Corporation or ECN Capital Entity, as applicable, may withhold or cause to be withheld from any amount payable to or in respect of a Participant, either under this Plan or otherwise, such amount as may be necessary to permit the Corporation or ECN Capital Entity, as applicable, to so comply.
- 9.3 **No Right to Continued Employment/Service.** Nothing in the Plan or in any Grant Agreement entered into pursuant hereto shall confer upon any Participant the right to continue in the employ or service of the Corporation or any ECN Capital Entity, to be entitled to any remuneration or benefits not set forth in the Plan or a Grant Agreement or to interfere with or limit in any way the right of the Corporation or any ECN Capital Entity to terminate Participant's employment or service arrangement with the Corporation or any ECN Capital Entity.
- 9.4 **No Additional Rights.** Neither the designation of an individual as a Participant nor the grant of any Share Units to any Participant entitles any person to the grant, or any additional grant, as the case may be, of any Share Units under the Plan.
- 9.5 **Amendment, Termination.** The Plan and any Grant made pursuant to the Plan may be amended, modified or terminated by the Board without approval of shareholders, provided that no amendment to the Plan or Grants made pursuant to the Plan may be made without the consent of a Participant if it adversely alters or impairs the rights of the Participant in respect of any Grant previously granted to such Participant under the Plan, except that Participant consent shall not be required where the amendment is required for purposes of compliance with Applicable Law. Without limiting the generality of the foregoing, the Board may make the following amendments to the Plan or a Share Unit granted under the Plan, as applicable, without obtaining approval of any Participant or shareholder of the Corporation:
- (i) amendments to the terms and conditions of the Plan necessary to ensure that the Plan complies with applicable law and regulatory requirements, including the requirements of any applicable Stock Exchange, in place from time to time;

- (ii) amendments to the provisions of the Plan respecting administration of the Plan and eligibility for participation under the Plan;
- (iii) amendments to the provisions of the Plan respecting the terms and conditions on which Share Units may be granted pursuant to the Plan;
- (iv) amendments to the Plan that are of a “housekeeping” nature;
- (v) amendments to the provisions relating to a Change of Control; and
- (vi) any other amendments not requiring shareholder approval under Applicable Laws or the requirements of any Stock Exchange.

Without limiting the generality of the foregoing, the Board may not, without the approval of the Corporation’s shareholders, make amendments to the Plan or a Share Unit granted under the Plan with respect to the following:

- (i) an increase to the maximum number or percentage of securities issuable under the Plan;
- (ii) amendment provisions granting additional powers to the Board to amend the Plan or entitlements thereunder;
- (iii) any change to the categories of individuals eligible for grants of Share Units where such change may broaden or increase the participation of non-employee Directors; and
- (iv) any changes to the Insider participation limits set forth in Section 4.1;
- (v) an amendment to the prohibition on assignment or transfer of Share Units in Section 10.1; or
- (vi) an amendment to the amendment provisions in this Section 9.5.

9.6 **Administration Costs.** The Corporation will be responsible for all costs relating to the administration of the Plan.

9.7 **Designation of Beneficiary.** Subject to the requirements of Applicable Law, a Participant may designate a Beneficiary, in writing, to receive any benefits that are payable under the Plan upon the death of such Participant. The Participant may, subject to Applicable Law, change such designation from time to time. Such designation or change shall be in such form as may be prescribed by the Committee from time to time. A Beneficiary designation under this Section 8.7 and any subsequent changes thereto shall be filed with the General Counsel of the Corporation.

## 10. ASSIGNMENT

10.1 Subject to Section 9.7, the assignment or transfer of the Share Units, or any other benefits under this Plan, shall not be permitted other than by operation of law.

## 11. EFFECTIVE DATE

11.1 The Corporation is establishing the Plan effective on July 21, 2016.

**Exhibit "A"**  
**to**  
**ECN Capital Corp. Share Unit Plan**  
**Special Provisions Applicable to Participants Subject to Section 409A of the United States Internal Revenue Code of 1986, as amended ("Section 409A")**

This Exhibit sets forth special provisions of the ECN Capital Corp. Share Unit Plan (the "Plan") that apply to Participants who are U.S. Taxpayers. This Exhibit shall apply to such Participants notwithstanding any other provisions of the Plan. Terms defined elsewhere in the Plan and used herein shall have the meanings set forth in the Plan, as may be amended from time to time.

**Definitions**

For purposes of this Exhibit:

**"Separation From Service"** shall mean that employment or service with the Corporation and any entity that is to be treated as a single employer with the Corporation for purposes of United States Treasury Regulation Section 1.409A-1(h) terminates such that it is reasonably anticipated that no further services will be performed.

**"Specified Employee"** means a U.S. Taxpayer who meets the definition of "specified employee," as defined in Section 409A(a)(2)(B)(i) of the Code and using the identification methodology selected by the Corporation from time to time.

**Compliance with Section 409A**

**In General.** Notwithstanding any provision of the Plan to the contrary, it is intended that any payments under the Plan either be exempt from or comply with Section 409A, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. Each payment made in respect of Share Units shall be deemed to be a separate payment for purposes of Section 409A. Each U.S. Taxpayer is solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on or for the account of such U.S. Taxpayer in connection with the Plan or any other plan maintained by the Corporation (including any taxes and penalties under Section 409A), and neither the Corporation nor any ECN Capital Entity shall have any obligation to indemnify or otherwise hold such U.S. Taxpayer (or any Beneficiary) harmless from any or all of such taxes or penalties.

No U.S. Taxpayer or the creditors or beneficiaries a U.S. Taxpayer shall have the right to subject any deferred compensation (within the meaning of Section 409A) payable under the Plan to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A, any deferred compensation (within the meaning of Section 409A) payable to any U.S. Taxpayer or for the benefit of any U.S. Taxpayer under the Plan may not be reduced by, or offset against, any amount owing by any such U.S. Taxpayer to any ECN Capital Entity.

**Distributions to Specified Employees.** Solely to the extent required by Section 409A, any payment in respect of Share Units which the Corporation has determined in good faith constitute deferred compensation subject to Section 409A and which has become payable by reason of a Separation from Service to any Participant who is determined to be a Specified Employee at the time of such Separation from Service shall not be paid before the date which is six months after such Specified Employee's Separation from Service (or, if earlier, the date of death of such Specified Employee). Following any applicable six month delay of payment, all such delayed payments shall be made to the Specified Employee in a lump sum on the earliest possible payment date. Such amount shall be paid without interest, unless otherwise determined by the Committee, in its sole discretion, or as otherwise provided in any applicable employment agreement between the Corporation and the relevant Participant.



**Change of Control.** In the event of a Change of Control that does not qualify as an event described in Section 409A(a)(2)(A)(v) of the Code, any outstanding RSUs and/or PSUs that the Corporation has determined in good faith constitute deferred compensation subject to Section 409A shall nevertheless Vest and be converted into a fixed amount in cash in accordance with Section 6.7 of the Plan, provided that such cash shall not be paid to the Participant until the earliest date permitted under Section 409A.

**Amendment of Exhibit.** Subject to Applicable Law, the Board shall retain the power and authority to amend or modify this Exhibit, the Plan or any Grant Agreement to the extent the Board in its sole discretion deems necessary or advisable to comply with any guidance issued under Section 409A or to avoid the imposition of taxes or penalties under Section 409A. Such amendments may be made without the approval of any U.S. Taxpayer.

Any questions and requests for assistance may be directed to the  
Proxy Solicitation Agent:



# **KINGSDALE**

## Shareholder Services

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130 King Street West, Suite 2950, P.O. Box 361  
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**Facsimile: 416-867-2271**

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