

***TIMMINCO***

**TIMMINCO LIMITED**

**ANNUAL INFORMATION FORM  
FOR THE YEAR ENDED DECEMBER 31, 2009**

**March 30, 2010**

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In this Annual Information Form, the terms “the Company”, “Timminco” or “we” refer to Timminco Limited and its direct or indirect wholly-owned subsidiaries, unless the context requires otherwise.

## **CAUTIONARY NOTE ON FORWARD-LOOKING INFORMATION**

This Annual Information Form contains “forward-looking information”, as such term is defined in applicable Canadian securities legislation, concerning Timminco’s future financial or operating performance and other statements that express management’s expectations or estimates of future developments, circumstances or results. Generally, forward-looking information can be identified by the use of forward-looking terminology such as “expects”, “believes”, “anticipates”, “budget”, “scheduled”, “estimates”, “forecasts”, “intends”, “plans” and variations of such words and phrases, or by statements that certain actions, events or results “may”, “will”, “could”, “would” or “might” “be taken”, “occur” or “be achieved”. Forward-looking information is based on a number of assumptions and estimates that, while considered reasonable by management based on the business and markets in which Timminco operates, are inherently subject to significant operational, economic and competitive uncertainties and contingencies. Timminco cautions that forward-looking information involves known and unknown risks, uncertainties and other factors that may cause Timminco’s actual results, performance or achievements to be materially different from those expressed or implied by such information, including, but not limited to: liquidity risks; foreign currency exchange rates; equipment failures, downtime or inefficiencies; dependence upon power supply for silicon metal production; pricing and availability of raw materials; global economic conditions; credit risk exposure; selling price of silicon metal; customer concentration; transportation delays and disruptions; class action lawsuits; contract termination claims; interest rates; future growth plans and strategic objectives; environmental, health and safety laws and liabilities; conflicts of interest; limited history with the solar grade silicon business; selling price of solar grade silicon; customer commitments; production cost targets; achieving and maintaining quality of solar grade silicon; customer capabilities in producing ingots; protection of intellectual property rights; production capacity expansion at the Bécancour facilities; closure of the magnesium facilities; investment in Applied Magnesium; insurance costs; government and economic incentives; dependence upon key executives and employees; completion and integration of potential acquisitions, partnerships or joint ventures; intellectual property infringement claims; and climate change. These factors are discussed in greater detail below, under “Risk Factors”. Although Timminco has attempted to identify important factors that could cause actual results, performance or achievements to differ materially from those contained in forward-looking information, there can be other factors that cause results, performance or achievements not to be as anticipated, estimated or intended. There can be no assurance that such information will prove to be accurate or that management’s expectations or estimates of future developments, circumstances or results will materialize. Accordingly, readers should not place undue reliance on forward-looking information. The forward-looking information in this Annual Information Form is made as of the date noted on the cover hereof and Timminco disclaims any intention or obligation to update or revise such information, except as required by applicable law.

## ITEM 1. CORPORATE STRUCTURE

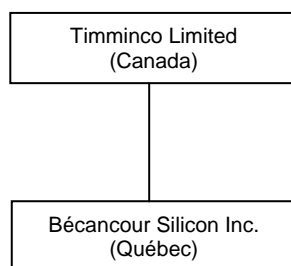
### Issuer

The Company was formed under the name “Chromasco Limited” pursuant to articles of amalgamation issued on June 1, 1974 under the *Business Corporations Act* (Ontario) amalgamating Chromasco Corporation Limited, Chromium Mining & Smelting Corporation, Limited and Light Alloys Corporation Limited. The Company was continued under the *Canada Business Corporations Act* on July 23, 1980. The Company restated its articles on June 2, 2008.

The Company’s head and registered office is located at Sun Life Financial Tower, 150 King Street West, Suite 2401, Toronto, Ontario, Canada, M5H 1J9.

### Subsidiaries

The chart below illustrates the Company’s corporate structure, its wholly-owned material subsidiary and its jurisdiction of incorporation as of December 31, 2009.



## ITEM 2. GENERAL DEVELOPMENT OF THE BUSINESS

### Overview

The Company is a producer of silicon metal for the chemicals industry (used in silicones, as well as in polysilicon for electronics and solar energy) and the aluminum industry. The Company is also a producer of solar grade silicon, using its proprietary technology for purifying silicon metal, for the solar energy industry. The Company conducts its silicon business through its wholly-owned subsidiary, Bécancour Silicon Inc., which it acquired in 2004.

The Company historically has reported on the basis of two reportable segments – the silicon business (also known as the “Silicon Group”) and the magnesium business (also known as the “Magnesium Group”). The Silicon Group, which is the only operating segment since the disposition of the Magnesium Group as of July 22, 2009, includes the production and sale of silicon metal and solar grade silicon.

As at December 31, 2009, the Company had a total of 268 employees in its silicon business and at its head office.

AMG Advanced Metallurgical Group N.V. (“AMG”) became the controlling shareholder of the Company in 2007 and, as at December 31, 2009, was a significant shareholder directly owning 67,761,392, or 42.5%, of the issued and outstanding common shares of the Company.

## **Silicon Group**

### **Silicon Metal**

The Company is, and has been for several years, one of North America's largest producers of silicon metal. The Company's facility in Bécancour, Québec, has been in operation for more than 30 years, and has a production capacity of approximately 48,000 metric tons per year of silicon metal (also known as metallurgical grade silicon). The Company's silicon metal products are used primarily in the chemical, electronics, aluminum, iron and steel industries, as well as for the production of polysilicon and fumed silica. The Company's expertise in manufacturing silicon metal was the foundation for the Company's initial development of its solar grade silicon product line. The Company's silicon metal product line is complementary to the Company's solar grade silicon product line in that silicon metal is the primary input for solar grade silicon.

The rapid deterioration in the global economy in early 2009, including a slow-down in the chemical, aluminum and steel industries, resulted in a retreat in the spot price and demand for silicon metal from the highs reached in 2008. In March 2009, the Company announced that beginning in the second quarter of 2009, it would temporarily curtail production of silicon metal due to, among other things, difficult market conditions and reduced demand for silicon metal in the chemical and aluminum industries. In May 2009, the Company temporarily shut down all of its silicon metal production. Beginning in June 2009, as demand for silicon metal recovered, the Company restarted all three of its electric arc furnaces, bringing its capacity back to full operation by November 2009. See "Item 3 – Description of the Business – Silicon Group – Sales and Marketing - Silicon Metal."

### **Solar Grade Silicon**

The Company started to produce solar grade silicon in 2007 for the solar PV energy industry. The Company uses a patent-pending process to purify 99% pure metallurgical grade silicon into higher purity solar grade silicon (also known as upgraded metallurgical silicon) for manufacturers of solar wafers and solar cells. Solar cells are the critical component in solar modules (or panels) for converting solar energy into an electrical current. Solar grade silicon has historically been, and continues to be, produced by starting with ultra-high purity polysilicon, and adding "dopants" to make it suitable for solar wafers and solar cells. The Company's proprietary process requires significantly less capital investment and uses considerably less energy than for the production of polysilicon.

The Company built a small scale production facility in late 2006 to test its proprietary purification process. Based on the initial success of this process, and the execution of initial long-term contracts with customers for the supply of the Company's solar grade silicon in early 2007, the Company commenced construction of a production facility for solar grade silicon in August 2007, which facility was completed in February 2008. By the end of 2007, the Company had entered into four long-term contracts for the supply of solar grade silicon through 2012, and had received orders from customers, which accounted for all of the Company's planned production capacity in 2008. During 2008, the Company signed an additional three long-term supply contracts with solar cell manufacturers.

In March 2009, due to difficult market conditions and reduced demand for solar grade silicon, the Company announced that it will produce solar grade silicon at reduced levels to bring production in line with customer orders. The Company also announced that it will defer further capacity expansion of its solar grade silicon facility pending recovery of demand for solar grade silicon. Subsequent to year end, the Company has, in the short-term, suspended solar grade silicon production pending sufficient customer demand and commitments to justify a resumption of production.

In April 2009, the Company announced that some of its solar grade silicon customers had asserted that their contracts had been terminated due to non-compliance. These customers had paid deposits, which were non-interest bearing pre-payments to be credited against future deliveries of solar grade silicon under the supply agreements. The Company engaged in active discussions with such customers and has now concluded settlement negotiations with all of its solar grade silicon customers who had advanced deposits against future shipments of solar grade silicon in 2008 and who had claimed that their contracts were terminated. See “Item 3 – Description of Business – Sales and Marketing – Solar Grade Silicon.”

Over the long term, the solar PV energy industry is expected to experience significant growth driven by continued growth in the demand for electricity worldwide, the increasing preference for renewable energy sources and solar’s advantages over other “clean” alternatives. This growth is being supported by billions of dollars of investment and government commitments to increasing the proportion of energy generated by alternative means. Moreover, as related technologies improve and output in the various segments of the value chain increases, solar PV energy is becoming more economical.

### **Magnesium Group**

Effective July 22, 2009, the Company completed the divestiture of its magnesium business, with the completion of the merger of the Company’s remaining magnesium extrusion and specialty metals business with the magnesium operations of Winca Tech Limited, a Chinese-based producer of magnesium products (“Winca”), to form Applied Magnesium International Limited (“Applied Magnesium”). See “Item 4 – Description of the Business – Magnesium Group – Divestiture of the Company’s Magnesium business”.

Prior to the divestiture, the Company produced value-added magnesium products, which were used in a broad range of specialised applications for the water heater, construction, consumer products, sporting goods, lead refining and container industries, among others. The Company historically had a strong position in several market niches, including a significant share of the market for magnesium anodes for the North American water heater industry. Competition from China prior to 2007, however, forced magnesium metal prices down to the point where many Western manufacturers of this commodity closed their plants. This led to a significant increase in magnesium metal prices in 2007 and further significant price fluctuations in 2008 and 2009, putting pressure on downstream operations, like the Company’s magnesium extrusion business and magnesium die casters. Although some of the increased costs were passed on to customers, continued fluctuations in the price of magnesium metal prices proved challenging for the Company’s magnesium extrusion and fabrication business.

Starting in 2007, the Company focussed on positioning its magnesium business for a return to profitability and strategic divestiture. Given the low manufacturing cost environment in China, the Company successfully transferred activities previously undertaken at its Haley, Ontario magnesium manufacturing facilities to China, leading to the closure of that facility in June 2008. Additionally, high labour content activities related to water heater anodes, formerly undertaken in the Company’s Aurora, Colorado facility, were successfully moved to the Company’s manufacturing facility in Nuevo Laredo, Mexico, supported by the Chinese supply chain. In February 2009, the Company announced that it would wind down production operations at its Aurora, Colorado and close that facility later in 2009. These moves provided the Company’s magnesium business with a competitive core to be leveraged in a strategic transaction.

In April 2009, the Company announced the signing of a definitive agreement with Winca to transfer the Company’s remaining magnesium extrusion and specialty metals business to Applied Magnesium International, a new merged business that would include all of Winca’s magnesium operations

and would be majority owned by Winca. The transaction with Winca, which completed the Company's divestiture of its magnesium business, was effected as of July 22, 2009 through the sale by each party of certain subsidiaries, intellectual property rights, equipment, non-cash working capital and other assets to Applied Magnesium. Key senior managers and employees of the Magnesium Group accepted employment with Applied Magnesium.

In keeping with its strategic objective to fully exit the magnesium business, the Company plans to eventually divest itself of these investments, on a timeframe that maximizes the return of capital and value to the Company.

### **Investment in Aluminum Wheels Business**

Fundo Wheels AS ("Fundo"), a Norwegian company with operations located in Høyanger, Norway, was an original equipment manufacturer of cast aluminum wheels for high end European automobile original equipment manufacturers. As at December 31, 2008, the Company held a 45.3% equity interest in Fundo Wheels. On January 12, 2009, Fundo commenced bankruptcy proceedings in Norway. The Company's investment in Fundo is in the form of common equity and convertible loans that are subordinated to other secured parties. As a result of the commencement of these proceedings, management does not anticipate recovery of any proceeds from the Company's investment in Fundo.

## **ITEM 3. DESCRIPTION OF THE BUSINESS – SILICON GROUP**

### **Products and Markets**

There are many and varied applications of silicon, each application with its own particular specifications.

Most of the world production of metallurgical grade silicon goes to the aluminum and chemical industries.

A portion of worldwide production of metallurgical grade silicon is used in the semiconductor industry for producing silicon wafers. The semiconductor industry requires an ultra-pure grade of silicon, known as polysilicon. Metallurgical grade silicon must be purified to produce this grade, and the conventional purification process is elaborate and capital and energy intensive.

The solar PV industry also requires silicon of a relatively high degree of purity for the production of photovoltaic cells, also known as solar cells. However, the degree of purity required is less than that of the semiconductor industry. This intermediate grade of silicon, known as solar grade silicon, must have purity levels with certain amounts of dopants for the best performance in solar cell applications. Solar grade silicon has principally been produced using polysilicon, with certain elements, or "dopants", added. However, this results in relatively high cost solar grade silicon. Solar grade silicon can also be produced with metallurgical grade silicon that has been purified to achieve the desired levels of dopants.

### **Silicon Metal**

Silicon metal is produced from quartz and other materials using similar smelting processes. It can be produced in different grades, primarily depending on the percentage of silicon in the product. Silicon metal generally has a silicon concentration of 98% or higher.

The principal markets for silicon metal are the chemical, electronics, aluminum and steel industries. In the chemical and electronics industries, silicon metal is used in the manufacture of silicones and polysilicon. Silicones cover more than 4,000 different products, including lubricants, synthetic rubbers, water repellent fluids, building sealants, glues, high voltage insulators and permanent seals between glass and metals. They are also contained in cosmetics, shampoos, and other personal care products. Polysilicon is obtained from silicon metal and is further transformed for semi-conductors, silicon wafers and solar cells. In the aluminum industry, silicon metal is used in the production of aluminum alloys. Aluminum containing silicon metal can be found in a variety of automobile components, including cast aluminum wheels, engine pistons and housings. The addition of silicon metal to the aluminum in the casting process improves castability and minimizes shrinkage and cracking. In finished aluminum products, silicon metal increases corrosion resistance, hardness, tensile strength and wear resistance.

Silicon metal, as a product category (excluding solar grade silicon), accounted for \$69.4 million of the Company's consolidated revenues in 2009 (\$127.7 million in 2008).

The Company also sells silica fumes and dross, each of which are non-hazardous by-products from its manufacturing process. Silica fumes are extracted from dust collection systems from the emissions from the electric arc furnaces. Silica fumes are sold to the construction industry for use in cement for marine structures or bridge foundations or as a thermal insulator. Dross is generally collected as a residue from cleaning out the ladles from the manufacturing process. This material is sold to the iron foundry and steel industries who recover the silicon content for use in certain types of iron.

The following table summarizes the principal products of the silicon metal business, the principal industries to which it markets such products and examples of applications in which such products are used:

| <u>Product</u>                                  | <u>Industry Customer</u>  | <u>Application</u>   |
|---|---------------------------|--|
| <i>Silicon Metal</i>                            |                           |  |
| Silicon metal - chemical grade (> 99% purity)   | Chemical/silicones        | More than 4,000 different consumer products (sealants, rubber, fluids, lubricants, textiles, cosmetics)  |
| Silicon metal - electronics grade (98% purity)  | Electronics/chlorosilanes | Electronics (computer chip wafers, semi-conductors, solar cells, fiber optic cables), high purity fumed silica (pharmaceutical substrates, tires)  |
| Silicon metal - aluminum grade (≥ 98.5% purity) | Aluminum/light metals     | Alloying agent in aluminum mainly used for automobile components (engine pistons, housing, cast aluminum rims, wheel suspensions, engine blocks, cylinder heads, intake manifolds, oil pans) |
| <i>Other Products</i>                           |                           |  |
| Silica fumes                                    | Construction              | Ingredient in cement for marine structures or bridge foundations;  |

| <u>Product</u>                     | <u>Industry Customer</u> | <u>Application</u>  |
|------------------------------------|--------------------------|---|
|                                    |                          | thermal insulator   |
| Dross and silicon-containing slags | Iron foundries/Steel     | Manufacture of briquettes used to increase silicon content in certain kinds of iron |

The Company warrants to its customers that its silicon metal meets their specifications. The Company provides a certificate of analysis with each shipment, based on samples taken during the process using in-house high precision equipment and trained operators. Product samples are routinely checked using X-ray spectrometry and various other techniques to analyze product chemistry. The Company has been qualified to serve as a preferred supplier to certain of its customers by meeting rigorous qualification tests. Although each customer has established its own testing requirements, qualification processes are generally designed to test for low variability of critical chemical elements as well as reliable and predictable chemical reactivity.

The rapid deterioration in the global economy in early 2009, including a slow-down in the chemical, aluminum and steel industries, resulted in a retreat in the spot price and demand for silicon metal. In March 2009, the Company announced that beginning in the second quarter of 2009, it would temporarily curtail production of silicon metal due to, among other things, difficult market conditions and reduced demand for silicon metal in the chemical and aluminum industries. In May 2009, the Company temporarily shut down all of its silicon metal production. Beginning in June 2009, as demand for silicon metal recovered, the Company restarted all three of its electric arc furnaces, bringing its capacity back to full operation by November 2009. See “Item 3 – Description of the Business – Silicon Group – Sales and Marketing - Silicon Metal.”

### **Solar Grade Silicon**

Solar PV energy is emerging as one of the most viable sources of clean power, based on the cost and logistical advantages it has over alternative renewable energy sources. Over the long term, the solar energy industry is expected to experience significant growth driven by continued growth in the demand for electricity worldwide, the increasing preference for renewable energy sources and solar’s advantages over other “clean” alternatives. The production of solar PV energy involves the conversion of solar radiation into electricity using photovoltaic technology, which is the basis for the operation of solar cells. When solar cells are exposed to sunlight, an electric field is created and electricity begins to flow. The key component in the production of solar cells is high purity silicon, also known as solar grade silicon, defined as at least 99.999%, or “5-nines”, pure. The solar PV industry is expected to require significant growth in the supply of solar grade silicon to achieve these forecasts for solar cell and module production.

The majority of global supply of solar grade silicon is currently produced by companies whose primary focus had been the production of an ultra-pure grade of silicon (between 99.99999%, or “7-nines”, and 99.9999999%, or “9-nines”, pure), known as polysilicon, for the semiconductor industry. Polysilicon’s purity is higher than is usable for solar cells, and solar cell manufacturers must increase its conductivity by adding impurities, including boron and phosphorus, through a process called “doping” to enable the solar cell to conduct electricity from the solar energy it captures. Most polysilicon is produced by blending metallurgical silicon with hydrochloric acid under high pressure and high temperatures through a chemical process. This creates a gaseous product that undergoes a “Siemens” process, which further purifies the silicon and deposits it on a small rod heated at high temperatures. This requires significant capital investment and energy costs.

The Company produces solar grade silicon using a proprietary manufacturing process to purify low purity metallurgical grade silicon, which yields upgraded metallurgical silicon with a purity level of 99.999%, or “5-nines”. During 2009, the Company continued to develop its solar grade silicon product with the ultimate goal of enabling the Company’s customers to manufacture solar products using the Company’s material that are indistinguishable from solar products made from polysilicon. The Company’s solar grade silicon is principally sold to manufacturers of solar cells, who blend it together with polysilicon, or in some cases without further blending, in making ingots which are used to manufacture solar cells.

Recent market conditions in the solar industry have adversely affected the development of the Company’s solar grade silicon product line. In addition to a reduction in demand for the Company’s solar grade silicon product line, an oversupply of polysilicon led to a decline in the spot price of polysilicon from US\$400 per kg at its peak in 2008 to a range of US\$45-US\$90 per kg during 2009. The current pricing and availability of polysilicon for the solar industry has diminished the cost advantage of the Company’s solar grade silicon, with the result that the Company’s customers are requiring a higher quality of solar grade silicon, such that solar cells manufactured from solar grade silicon will have characteristics that make them indistinguishable from solar cells manufactured from polysilicon. As discussed above, the Company is striving to meet this challenging market requirement.

In March 2009, due to difficult market conditions and reduced demand for solar grade silicon, the Company announced that it will produce solar grade silicon at reduced levels to bring production in line with customer orders. The Company also announced that it will defer further capacity expansion of its solar grade silicon facility pending recovery of demand for solar grade silicon. Subsequent to year end, the Company has, in the short-term, suspended solar grade silicon production pending sufficient customer demand and commitments to justify a resumption of production. The Company will supply its solar grade silicon customers from its finished goods inventory in the interim.

## **Sales and Marketing**

The Company’s sales and marketing activities for its silicon business are global, and are conducted by personnel located at the Bécancour facilities.

The customers of the Company’s silicon business in North America represented approximately 45% of sales in 2009 (44% in 2008), and in Western Europe accounted for approximately 54% of sales in 2009 (43% in 2008). The largest customer of the silicon business represented approximately 18% of the silicon business’ sales in 2009 (20% in 2008), while the largest five customers accounted for approximately 53% of such sales in 2009 (52% in 2008) and the largest ten customers accounted for approximately 70% in 2009 (74% in 2008). Sales to the chemical industry represented approximately 54% of the silicon business’ sales in 2009 (28% in 2008), while the aluminum industry was the next largest at approximately 25% in 2009 (13% in 2008).

## **Silicon Metal**

The Company sells its silicon metal under predominantly annual agreements. The Company’s principal customers are multi billion dollar global companies that are leaders in their respective industries. The Company has also historically devoted attention to developing its sales to the Western European market for specialty silicon metal, and supplies to producers of silicones, polysilicon, fumed silica and automotive castings in Western Europe.

In recent years, the price of silicon metal has appreciated from historical lows of approximately \$0.50 per pound reached in 2003 to approximately \$1.90 per pound reached in 2008. The price appreciation was the result of the confluence of a number of market conditions, including higher energy costs, a number of independent factors that have constrained supply, and increased market demand, especially from the solar energy industry, among others. However, the rapid deterioration in the global economy in early 2009, including a slow-down in the chemical, aluminum and steel industries, resulted in a retreat in the spot price and demand for silicon metal. The price of silicon metal at the end of 2009 was approximately \$1.10 per pound. Subsequent to year end, the price of silicon metal has been appreciating as a result of constrained supply from China and increased market demand.

In 2008, the Company's focus was on its solar silicon product line which required a significant proportion of the Company's silicon metal production in 2009 to meet solar silicon contractual demand. As a result, the Company entered into fewer contractual commitments with customers in the second half of 2008 for 2009 deliveries of silicon metal. Fewer contractual commitments for silicon metal combined with the difficult market conditions and reduced demand for silicon metal in the chemical and aluminum industries, caused a temporary shut down of all the Company's silicon metal production in May 2009. Beginning in June 2009, as demand for silicon metal recovered, the Company restarted all three of its electric arc furnaces, bringing its capacity back to full operation by October 2009.

Subsequent to the year end, the Company announced that it has executed long-term contracts to supply approximately 90,000 metric tons of silicon metal over the next five years to one of its long-standing silicon metal customers. These contracts extended this customer's purchase commitments made in the fourth quarter of 2009. In addition, the Company also announced subsequent to year end that it was pursuing opportunities to expand its silicon metal production capacity through a potential new silicon metal production facility in Iceland that would operate using geothermal power.

### **Solar Grade Silicon**

During 2007, the Company executed four long-term contracts for the supply of solar grade silicon. These four contracts provided for shipments of up to 6,000 metric tons of solar grade silicon per year starting in 2009. In March 2008, the Company executed a fifth contract with Q-Cells SE to supply solar grade silicon in 2008 and 2009. In July 2008, the term of the contract with Q-Cells SE was formally extended for 2010 through 2013, with deliveries of 6,000 metric tons per year. The Company executed a sixth contract with CaliSolar, Inc. in June 2008, to supply approximately 1,700 metric tons of solar grade silicon through December 2012. In July 2008, the Company executed its seventh contract with a leading global manufacturer of wafers for approximately 1,150 metric tons of solar grade silicon through December 2009. The Company shipped 182 metric tons of solar grade silicon in 2009, excluding product returns, the substantial majority of which went to certain customers under long-term contracts and the remainder of which was sold to other existing and prospective customers, mainly as samples for testing purposes. An additional 153 metric tons were sold to AMG Conversion Ltd. (see "Item 3 – Description of the Business – Silicon Group – Manufacturing – Solar Grade Silicon").

In April 2009, the Company announced that some of its solar grade silicon customers had asserted that their contracts had been terminated due to non-compliance. These customers had paid deposits, which were non-interest bearing pre-payments to be credited against future deliveries of solar grade silicon under the supply agreements. The Company engaged in discussions with each of these customers regarding volume commitments, pricing and deposit repayment terms, with a view to maintaining and enhancing long-term customer relationships. In May 2009, the Company announced the mutual termination of the former long-term supply agreement and the execution of a new supply agreement with Q-Cells SE, and concurrently agreeing to a repayment schedule and terms with Q-Cells SE for approximately €8.9 million

in outstanding deposit liabilities. In December 2009, the new supply agreement with Q-Cells SE was terminated and subsequent to year end, the repayment schedule for the outstanding deposit was substantially settled by issuing common shares of the Company. The Company also resolved such claims with three other customers in May, September and October 2009, respectively, in each case issuing common shares in settlement of any deposit repayment liability. The Company has now concluded settlement negotiations with all of its solar grade silicon customers who had advanced deposits against future shipments of solar grade silicon in 2008 and who had claimed that their contracts were terminated.

Subsequent to year end, the Company and CaliSolar, Inc. mutually terminated their June 2008 supply contract.

## **Manufacturing**

All of the manufacturing operations for the Company's silicon business are located at a site in Bécancour, Québec, which is approximately 125 km southwest of Québec City. The site is situated on the edge of the St. Lawrence River with access to major modes of transportation, including highway, rail and water. The Company owns the land at the Bécancour site, which covers an area of approximately 392,100 m<sup>2</sup> (96.8 acres).

### **Silicon Metal**

The Company produces silicon metal at the Bécancour site in a manufacturing facility with three electric arc furnaces, having a nominal annual capacity of approximately 48,000 metric tons. Two of these furnaces are dedicated to the production of silicon metal and one that can be used for the production of either silicon metal or ferrosilicon. This facility, which is ISO 9002 certified, started production in 1976 and is still the newest facility for the production of silicon metal and ferrosilicon in North America. This facility includes buildings having a size of 24,140 m<sup>2</sup> and covers an area of approximately 243,000 m<sup>2</sup>.

Silicon metal is produced by smelting quartz with carbon substances (typically low ash coal and/or charcoal) and woodchips. Computerized process controls measure the mixture of raw materials. The mixture is fed into the top of a submerged electric arc furnace by automatic conveyors. Electric power is delivered to the furnaces by carbon electrodes. The electrodes act as conductors of electricity in each furnace, generating heat in excess of 3,000 degrees Celsius. At this temperature, the carbon, acting as a reducing agent, combines with the oxygen in the mixture to free the molten silicon metal. Molten silicon metal is tapped out of the furnaces into ladles, where it may be refined by injecting oxygen, other gas mixtures or other ingredients to meet specific customer requirements.

The emissions from the electric arc furnaces are carbon dioxide with certain particulates. These particulates are collected by dust collecting hoods and passed through a dust collection system in which silica dust is filtered out of the process gases. The resulting by-product is silica fumes. Another by-product is dross collected from the ladles.

One of the electric arc furnaces at the silicon metal production facility uses a compound electrode process patented by the Company, which permits the production of silicon metal at a lower cost than with conventional electrodes used by other producers. The other two electric arc furnaces also use a proprietary compound electrode process licensed to the Company, which also provides a cost advantage on silicon metal dedicated furnaces. This facility also uses a proprietary water granulation technology that creates greater uniformity in the product and improves product yield.

## **Solar Grade Silicon**

The Company started to produce high purity silicon at a small scale production facility, which commenced operations in December 2006. This facility, which was originally located within the Company's silicon metal and ferrosilicon production facility at the Bécancour site (see below) and has since ceased operations, was used to test the Company's proprietary purification processes and to produce initial samples for prospective customers.

The Company started construction of a large scale solar grade silicon production facility in August 2007. This facility has three production lines, and is located in a newly-constructed building on the Bécancour site. In February 2008, the Company announced plans to expand its nominal production capacity, the construction of which commenced in the second quarter of 2008. As of January 2009, the Company had commissioned seven purification lines, out of an originally planned twelve purification lines. In March 2009, due to difficult market conditions and reduced demand for solar grade silicon, the Company ceased any further capacity expansion pending recovery of demand for solar grade silicon.

The Company manufactures solar grade silicon by purifying silicon metal. The purification process begins with molten silicon metal and consists of multiple steps to yield solar grade silicon with the desired purity level (99.999%, or "5-nines", pure). The equipment and methods used by the Company to purify silicon metal in its solar grade silicon production are based in part on two patents pending manufacturing processes. In particular, during 2007, the Company filed a formal patent application with the U.S. and international patent authorities in respect of one of its processes for purifying low-grade silicon metal, involving a melting apparatus with an oxy-fuel burner. The Company has a 2006 priority date in respect of this patent application. The international patent examiner has provided a positive report and the U.S. patent examiner has issued a Notice of Allowance on such application. The Company has also filed a formal patent application in 2008 with the U.S. and international patent authorities in respect of another process for purifying low-grade silicon metal, by way of directional solidification with electromagnetic stirring. The international patent examiner has also provided a positive report on such application, which claims a 2007 priority date. The Company has responded to an office action issued by the U.S. patent examiner in respect of this application, which is still under examination. In 2009 and to date in 2010, both of the international patent applications entered into national phase, in more than 20 countries. It generally takes two to three or more years after a patent application is filed before a patent is granted, and the Company will need to take steps during various phases in the U.S. and international application processes to pursue its patent applications. When and if the patents are ultimately granted, the Company will have exclusive rights for up to twenty years from the filing date to prevent third parties from using the patented processes in the applicable jurisdiction. These patents are fundamental to the Company's purification processes and a key component in the competitive advantage of the Company's solar grade silicon product line. The Company has also filed other informal (or provisional) patent applications relating to solar grade silicon production.

In March 2009 the Company and AMG Conversion Ltd. ("AMG Conversion"), a wholly-owned subsidiary of AMG, executed a Memorandum of Understanding whereby the parties agreed to jointly develop the ingot production process to optimize the quality of the ingots and bricks produced with the Company's solar grade silicon, and to jointly explore the feasibility of AMG Conversion producing ingots and bricks at the Bécancour ingoting facilities on an exclusive long-term tolling basis for and on behalf of the Company. These activities are to continue during an interim term, which currently expires June 30, 2010.

To facilitate such activities, the Company sold to AMG Conversion certain of its ingot making assets, including a silicon crystallization furnace and related parts previously purchased from ALD

Vacuum Technologies GmbH, another wholly-owned subsidiary of AMG, and testing and other equipment located at the Bécancour ingoting facilities, concurrently with executing the Memorandum of Understanding. AMG Conversion also installed five additional silicon crystallization furnaces for the ingot making operations at the Bécancour facility.

In the event that definitive agreements in respect of long-term arrangements between the Company and AMG Conversion are not concluded by June 30, 2010, the Company has the option to buy from AMG Conversion, and AMG Conversion has the option to sell to the Company, all ingot and brick making assets at the Bécancour facilities, in each case at the then net book value of such assets, subject to the consent of the Company's lenders.

During 2009, AMG Conversion produced ingots and bricks at the Bécancour facilities on behalf of the Company, using its equipment and the Company's employees and solar grade silicon, and invoiced a tolling fee based on the actual, fully-loaded cost to produce ingots and bricks for the Company, plus an agreed fixed margin. AMG Conversion also produced ingots and bricks at the Bécancour facilities for its own account, using its equipment and solar grade silicon and the Company's employees.

The Company and AMG Conversion are also considering the feasibility of a long-term relationship on the basis that the Company would continue its focus on producing solar grade silicon while AMG Conversion would use solar grade silicon purchased from the Company to produce ingots and bricks for the solar wafer market. In this connection, certain sales have occurred in pursuit of new sales channel for the Company's solar grade silicon. During 2009, the Company sold approximately 153 metric tons of solar grade silicon to AMG Conversion and received cash proceeds of approximately \$6.0 million from such sale.

## **Competition**

### **Silicon Metal**

The Company's silicon metal product line competes globally, primarily on the basis of product quality, service and price. Its competitors include silicon metal producers, Ferroatlantica S.L., Globe Metallurgical, Inc., Elkem ASA and Fesil ASA. Chinese producers have also developed a large market share of silicon products used in the western world.

The following are competitive strengths of the Company's silicon metal product line:

- ***Technologically Advanced Production for High Quality Products.*** Although it was built over 30 years ago, the Company's silicon metal production facility is one of the industry's most technologically advanced. It uses special water granulation technology to gain cost and quality advantages. Other manufacturing technologies deployed in this facility allow the Company to produce various grades of silicon metal and ferrosilicon products for applications with demanding product specifications. The Company also has quality control procedures that allow it to consistently meet its customers' demands.
- ***Competitive Cost Position.*** The Company is the only North American producer of silicon metal to use compound electrodes, which substantially reduces electrode costs. Furthermore, the location of the Bécancour site provides access to competitively priced electricity.
- ***Long-Term Relationships with Market-Leading Customers.*** The largest customers of the Company's silicon business are multi-billion dollar global companies that are the leading companies in their

respective industries. Its principal silicon metal customers are leading producers for the chemical, aluminum and electronics industries.

### **Solar Grade Silicon**

The Company's solar grade silicon product line competes with solar grade silicon produced by traditional producers of silicon metal, such as Elkem, which supply upgraded metallurgical silicon to the solar PV energy industry. The Company also competes directly against producers of polysilicon, such as Wacker Chemie AG, Renewable Energy ASA, Hemlock, MEMC, Tokuyama and OCI Company Limited. Polysilicon has historically been the principal raw material in the production of solar cells.

The following are competitive strengths of the Company's solar grade silicon product line:

- ***Access to Silicon Metal.*** The Company's silicon metal production facility, with approximately 48,000 metric tons of annual capacity, is the second largest in North America. Having control of such a significant volume of feedstock enhances the Company's competitive position for solar grade silicon.
- ***Energy Cost Advantages Relative to Polysilicon.*** The Company's proprietary process offers cost advantages based on efficiencies in electricity used in the solar grade silicon production process. The simplicity of the Company's method and low energy requirements relative to polysilicon result in production costs that, at large-scale capacity, are lower than those required to produce polysilicon.

### **Raw Materials**

The principal raw materials and cost components in the Company's production of silicon metal are electricity, quartz, coal and woodchips. The principal raw materials and cost components in the Company's production of solar grade silicon are silicon metal, natural gas and oxygen.

Electricity is supplied to the Bécancour site by Hydro-Québec at rates that are comparable to other large power users in the Province of Québec. Contracted power is sufficient to meet the Company's current and anticipated power requirements.

A large portion of the Company's requirements for quartz is sourced from a mine located in Lac Malbaie, Québec, which is approximately 135 km northeast of Québec City. The Company leases the mine from the Québec Natural Resources Department under a lease that expires in 2016 and is renewable for another ten years at the Company's option, provided the mine is in compliance with all environmental requirements. The Company has a long-term contract with a third party, with whom the Company has had a relationship since 1976, for the operation of the mine, including extraction and processing of the quartz. The contract was renewed in 2007 and expires in 2012. The Company also purchases some of its requirements for quartz from third parties.

Coal is sourced from a limited number of suppliers from the United States and Colombia and is of a special grade to ensure a high quality silicon metal.

Wood chips and wood blocks are sourced from a variety of third party suppliers, mainly in Québec.

The Company also purchases silicon metal on the spot (or open) market from time to time to balance its production and delivery commitments.

## **Employees**

As at December 31, 2009, the Company's silicon business employed 268 employees, including 80 salaried and 188 hourly employees.

The hourly workers at the Company's Bécancour site are represented by the Communication, Energy and Paper Union under a collective bargaining agreement that expires in April 2013. The Company believes that relations with its employees in the silicon business are good.

The Company employs engineers, technicians and other skilled employees who have expertise in the manufacturing processes utilized by the Company in its silicon business. The Company's key employees have developed several proprietary technologies, including the patents-pending manufacturing process for the production of solar grade silicon.

## **Environmental Matters**

Silica fumes, which are a by-product of silicon metal production, were historically disposed of in cells at the Company's Bécancour facilities. Disposal of silica fumes at this site ceased in 1993 when a market for selling silica fumes started to develop. In 1995, the Company started to extract silica fumes from the disposal cells for sale to third parties. Following submission by the Company in July 2008 of its plan to continue extraction of the remaining silica fumes over a 5 year period, the Québec Ministry of Sustainable Development, Environment and Parks (the "Ministry") issued a certificate of authorization in February 2009. The Company is required to remediate the disposal cells from which the silica fumes are extracted and to fill the empty cells with materials meeting the requirements of the certificate of authorization. In addition, subsequent to completion of its operations of extracting silica fumes, the Company will be required to remediate the site, dismantle its equipment and monitor groundwater for a number of years. The Company has accrued \$1.1 million as at December 31, 2009 for future costs relating to site restoration and remediation relating to its Bécancour facilities.

The Company is working in collaboration with the Ministry to dispose of a pile of residual materials and contaminated soil relating to the Company's operations at its Bécancour facilities. The Company expects to complete such disposal within the next 12 months. The Company is also working in collaboration with the Ministry to establish and implement procedures relating to dust and smoke emissions at its Bécancour facilities.

The Company has filed a number of requests with the Ministry for additional or revised environmental permits required for the operation of its Bécancour facilities, which are currently being processed by the Ministry.

## **ITEM 4. DESCRIPTION OF THE BUSINESS – MAGNESIUM GROUP**

### **Divestiture of the Company's Magnesium Business**

Effective July 22, 2009, the Company completed the divestiture of its magnesium business, with the completion of the merger of the Company's remaining magnesium extrusion and specialty metals business with the magnesium operations of Winca Tech Limited, a Chinese-based producer of magnesium products ("Winca"), to form Applied Magnesium International Limited ("Applied Magnesium").

Prior to the divestiture, the Company produced value-added magnesium products, which were used in a broad range of specialized applications for the water heater, construction, consumer products, sporting

goods, lead refining and container industries, among others. The principal manufacturing facility for the Company's magnesium business was located in Aurora, Colorado, which is near Denver, Colorado. The Company's magnesium business also had facilities in Nuevo Laredo, Mexico, which is near Laredo, Texas, and in Baulkham Hills, Australia, which is near Sydney in New South Wales.

Starting in 2007, the Company focused on positioning its magnesium business for a return to profitability and strategic divestiture. Given the low manufacturing cost environment in China, the Company successfully transferred activities previously undertaken at its Haley, Ontario magnesium manufacturing facilities to China, leading to the closure of that facility in June 2008. Additionally, high labour content activities related to water heater anodes, formerly undertaken in the Company's Aurora, Colorado facility, were successfully moved to the Company's manufacturing facility in Nuevo Laredo, Mexico, supported by the Chinese supply chain. In February 2009, the Company announced that it would wind down production operations at its Aurora, Colorado and close that facility later in 2009. These moves provided the Company's magnesium business with a competitive core to be leveraged in a strategic transaction.

In April 2009, the Company announced the signing of a definitive agreement with Winca to transfer the Company's remaining magnesium extrusion and specialty metals business to Applied Magnesium, a new merged business that would include all of Winca's magnesium operations and would be majority owned by Winca. The transaction with Winca, which completed the Company's divestiture of its magnesium business, was effected as of July 22, 2009 through the sale by each party of certain subsidiaries, intellectual property rights, equipment, non-cash working capital and other assets to Applied Magnesium, including the Company's facility in Nuevo Laredo, Mexico and Baulkham Hills, Australia and Winca's facilities in Hebi and Linyi, in the Henan and Shandong provinces, respectively, of the People's Republic of China. Key senior managers and employees of the Magnesium Group accepted employment with Applied Magnesium.

In connection with the sale, the Company received a 19.5% equity interest in Applied Magnesium as well as promissory notes of Applied Magnesium in the aggregate principal amount of US\$3.7 million. Winca holds the remaining equity and has received a promissory note from Applied Magnesium in the principal amount of US\$4.0 million. The equity interests in Applied Magnesium are subject to a shareholders agreement, which includes board representation and special approval rights in favour of minority shareholders, as well as share transfer restrictions. The promissory notes issued to the Company are non-interest bearing and subject to additional conditions, including the financial performance and liquidity of Applied Magnesium.

In keeping with its strategic objective to fully exit the magnesium business, the Company plans to eventually divest itself of these investments, on a timeframe that maximizes the return of capital and value to the Company.

### **Environmental Matters**

The Company filed a mines closure plan with the Ministry of Northern Development, Mines and Forestry (Ontario) in February 2006 with respect to the mining operations at its Haley facility, together with appropriate financial assurance covering its obligations pursuant to the plan. The Company was required to provide financial assurance covering the costs of active closure of \$1.7 million through an initial payment of \$336,540 and payments of \$269,232 per year over a period of five years. The Company has paid the initial payment and the first three years' payments. The filed mine closure plan consists of 45 years of progressive rehabilitation followed by five years of active closure and a ten-year post-closure period. The mine closure plan and supporting financial assurance reflected only anticipated active closure

costs and did not reflect the cost of all future expenditures that might be required for long-term monitoring. The Company additionally filed a Notice of Project Status for the Haley Plant in December 2008 resulting in both the Haley plant and mining operations being in temporary suspension under the *Mining Act* (Ontario). As the Haley plant is no longer in operation, an amendment to the closure plan was filed in December 2009. This amendment is currently under review with the Ministry of Northern Development, Mines and Forestry. The Company will be required to perform the work outlined in the amended mine closure plan, which principally includes the rehabilitation of the mining site and demolition of buildings relating to the former mining operations. To the extent that the actual closure costs exceed the amount of the financial assurance, the Company will be responsible for such excess costs.

With respect to the Company's former manufacturing facility at Beauharnois, Québec, which it operated from 1950 to 1989, the Company is required to investigate the site to identify potential environmental issues, to conduct soil and water sampling if warranted, and to propose a remediation plan. The remediation plan was approved by the Ministry of the Environment (Québec), effective October 2003, and includes demolition of plant installations, soil and groundwater investigation, closure of ponds, elimination of dry residual materials present on the site, removal of backfill and stockpiles, shaping, covering and sowing to control drainage slopes for existing material piles. The remediation plan also requires an annual environmental follow-up program for groundwater to measure the impact of the work commencing in the tenth year after the work began. The cost to complete the remediation work has been estimated at \$1.1 million spread over the 10-year period covered by the plan. This estimate does not include the cost of groundwater monitoring required after the completion of the 10-year plan or the cost of any additional clean-up that may be shown to be required by such monitoring. The Company sold the Beauharnois property for \$660,000 in December 2004 to a buyer who agreed to assume the Company's remediation obligations. Transfer of title to the property will occur in October 2013, subject to the buyer's completion of the remediation plan on behalf of the Company. In the event that the buyer fails to fulfil its obligations, the property will revert to the Company, which will be entitled to retain the purchase price. The Company has engaged an environmental consultant to monitor progress of the remediation plan and, as at the end of 2009, it was estimated that approximately 15% of the remediation work was complete.

During the mid-1990s, a groundwater pump-and-treat system was constructed and continues to be operated on a portion of the Company's former adhesives facility in North York, Ontario. A hydrogeologic investigation conducted in February 2005 identified environmental risks associated with potential source areas at the site arising out of historical operations which had not been addressed by prior remedial activities. The Ministry issued an order in October 2007 requiring the Company to implement the plan that it had developed for further investigations and remedial activities. Pursuant to the plan, the Company has repaired and upgraded the pump-and-treat system, and the Company expects that, with continual operation of the system, active remediation of the groundwater is occurring and contaminant concentrations within the plume will decrease over time. The Company submitted its final report to the Ministry in March 2008 and a meeting to discuss the results and whether any added remedial action is required to be taken, either voluntarily or pursuant to a further order, was held in February 2009. It was determined at that time that the Company would complete further groundwater monitoring activities and future requirements would be based on these results.

## **ITEM 5. RISK FACTORS**

The Company's businesses are subject to significant risks and uncertainties. These risks and uncertainties, together with certain assumptions, also underlie the forward-looking statements made and forward-looking information contained in this Annual Information Form and may cause the Company's actual results to differ materially from management's expectations. Although we believe that we have identified and discussed below the key risk factors affecting our business, there may be additional risks and

uncertainties that are not presently known or that are not currently believed to be significant that may also adversely affect our business, financial condition, results of operations, cash flows, liquidity and the trading price of our common shares.

***The Company is subject to liquidity risks.***

The Company is currently subject to substantial liquidity risk. Liquidity risk arises through excess financial obligations over available financial assets due at any point in time. The Company's objective in managing liquidity risk is to maintain sufficient readily available sources of funding in order to meet its liquidity requirements at any point in time. The Company attempts to achieve this through managing cash from operations and through the availability of funding from committed credit facilities.

The Company has incurred a net loss of \$134.2 million for the year ended December 31, 2009 and has incurred net losses for the years ended December 31, 2008 and 2007 of \$22.6 million and \$18.0 million, respectively. At December 31, 2009 the Company has a working capital deficiency of \$58.5 million. There is also material uncertainty with respect to the level of revenues that will be achieved in the next twelve months, in particular from the sale of solar grade silicon.

The Company is dependent upon a revolving line of credit (the "Revolver") provided for under the Company's credit agreement dated April 15, 2005 (as amended, the "Credit Agreement") with the Bank of America, N.A. (the "Bank") to maintain liquidity. The amount of funding available to the Company under the Revolver is limited by a borrowing base, which is based on the value of eligible collateral, less a minimum availability reserve. Such collateral includes inventories and receivables, subject to eligibility criteria, and the borrowing base is subject to adjustments. The Company is in discussions with the Bank regarding such adjustments, including as a result of the write downs in inventory values in the fourth quarter of 2009 of approximately \$7.1 million, due to the net realizable value adjustments. In the event that the Bank determines that the borrowing base is less than the aggregate outstanding amount borrowed under the Revolver plus the minimum availability reserve, the Company is required to repay to the Bank an amount equal to such deficiency. In such circumstances, the Company may request an over-advance for such amount, or more up to certain limits. If the Bank agrees to provide such over-advance, which it may do in its sole discretion, the amount of such over-advance would be repayable upon demand and otherwise be treated as an amount borrowed under the Revolver. There is no assurance that the Bank will exercise its discretion under the Credit Agreement in a manner that allows the borrowing base to remain in excess of the aggregate outstanding amount borrowed under the Revolver plus the minimum availability reserve, or that the Bank would permit any over-advance in the event of any such deficiency. In addition, although the availability under the Revolver is denominated in US dollars, substantially all of the collateral currently used to determine the borrowing base is valued in Canadian dollars. As a result, a reduction in the value of the Canadian dollar relative to the US dollar causes a reduction in the borrowing base and availability. Further reduction in the value of eligible collateral, whether as a result of reduced inventory or receivables values or currency exchange rate movements, could further reduce, or eliminate, the funding available to the Company under the Revolver, and could also cause the amount of the existing indebtedness under the Credit Agreement to exceed the availability, which would require a repayment by the Company of an amount equal to such deficiency. In the event that the Company does not repay such amount to the Bank when due, the company would be in default of its obligations under the Credit Agreement, which would entitle the bank to demand immediate payment of the full amount outstanding under the Revolver. Any such event could have a material adverse effect of the Company's liquidity.

Both the Credit Agreement and the term loan agreement between Bécancour and Investissement Québec ("IQ") dated July 10, 2009 (the "Term Loan Agreement" – see "Item 13 – Material Contracts") contain financial covenants. The covenants under the Credit Agreement have been revised and waived for

all periods in 2009 to avoid a default in respect of those periods and, going forward, the minimum EBITDA levels are set at amounts based on the Company's projected financial results. In the event that the Company is unable to achieve such financial results, it may become non-compliant under the Credit Agreement. Non-compliance with any of the financial covenants under the Credit Agreement or the Term Loan Agreement may cause the Bank or IQ to declare an event of default and demand repayment of the entire outstanding indebtedness under such facilities.

Both the Credit Agreement and the Term Loan Agreement also contain cross-default provisions, and restrict the Company's ability to incur additional indebtedness, sell assets, create liens or other encumbrances, incur guarantee obligations, make certain payments, make investments, loans or advances and make acquisitions beyond certain levels. In addition, substantially all of the Company's assets have been pledged as collateral to its lenders.

The Credit Agreement will expire on July 2, 2010. The Company is in discussions with the Bank regarding credit facilities beyond this date. However, there is no assurance that the Bank will provide any funding commitment beyond such date.

The Company has also been named as a defendant in a proposed class action lawsuit, claiming damages in excess of \$540 million. While the Company intends to vigorously defend the allegations in such lawsuit and the plaintiff's attempts to get court approval to proceed, the timing and outcome of such proceedings are uncertain and the amount of any damages awarded could be substantial.

If sufficient sources of funding are not available in the future, the Company may not be able to fully implement its growth plans or strategic objectives, if at all, which could have a material adverse effect on the Company's business or investments.

As a result of the Company's liquidity risk, the Company's ability to continue as a going concern is subject to continued support of its lenders and is uncertain. Accordingly, the Company may be unable to continue to realize its assets and discharge its liabilities in the normal course of business. The consolidated financial statements do not give effect to any adjustments to recorded amounts and their classification which could be necessary should the Company be unable to continue as a going concern and therefore be required to realize its assets and discharge its liabilities in other than the normal course of business and at amounts different than those reflected in the consolidated financial statements.

***The Company is subject to foreign exchange and currency fluctuation risks.***

The majority of the Company's products are priced and sold in U.S. dollars and Euros. In particular, Bécancour has signed a contract to supply silicon metal over the next five years at prices denominated in Euros. Such pricing is fixed in Euros for deliveries in 2010, and subject to negotiation within a defined price range, for each of the remaining four years. The volume commitments may be suspended for any future year if the parties are unable to mutually agree upon pricing for such year, and neither Bécancour exercises its right to sell the base quantity at the lower threshold for price negotiations nor the customer exercises its right to buy the base quantity at the upper threshold for price negotiations, for such year. The Company reports its results in Canadian dollars, and a substantial portion of the operating costs of the silicon business is in Canadian dollars. The current volume of the Company's committed and contracted customer sales orders for future product shipments in 2010 in foreign currencies exceeds the expected volume of purchases of raw materials and services in foreign currencies by a material amount, particularly in Euros. Volatility in the Canadian dollar – Euro exchange rate could have a material impact on the gross margins of the Company.

The Company also has interest bearing debts denominated in foreign currencies which may generate significant realized or unrealized gains and losses. The Company's ability to borrow funds under the Credit Agreement is also affected by fluctuations in the U.S. dollar-Canadian dollar exchange rate, as described above. Consequently, the Company's earnings and cash flows are sensitive to changes in foreign currency exchange rates.

The Company has historically entered into foreign exchange contracts, and may enter into such contracts from time to time in the future, to mitigate its foreign currency exchange rate risks. However, the Company currently does not have any foreign exchange contracts to mitigate such risks, and there is no assurance that any foreign exchange contracts entered into in the future will fully protect the Company against such risks.

***Unexpected equipment failures, downtime or inefficiencies may lead to production curtailments or shutdowns.***

The Company's manufacturing processes for both silicon metal and solar grade silicon are dependent upon the continuous, efficient operation of certain critical production equipment, such as its silicon metal electric arc furnaces, casters and crushing equipment, electrical transformers, rotary furnaces, filtration equipment, molds, electromagnetic stirrers, silicon crystallization furnaces, sawing equipment, and product quality testing equipment. While some of this manufacturing equipment is relatively new, such as the equipment for the solar grade silicon purification lines and for ingoting, much of the equipment at the Bécancour facilities has been in operation for several years, or even decades in the case of the silicon metal electric arc furnaces. This equipment may on occasion be out of service as a result of unanticipated failures or scheduled maintenance shutdowns. For example, the silicon metal electric arc furnaces are scheduled to have major repairs later in 2010. The Company's manufacturing equipment may also operate at less than nominal production capacity due to a variety of other factors, such as the quality and mix of raw materials used in the production process and any additional materials processing to meet customer requirements. Some of this equipment is, and in the future may be, owned and operated by third parties, such as the equipment in the ingoting facility. The Company has experienced, and may in the future experience, material shutdowns or periods of reduced production efficiencies as a result of equipment failures, prolonged maintenance shutdowns, or any of these other factors. Moreover, the Company may be required to make significant capital expenditures to remedy any underlying problems with equipment failures or production efficiencies, which could have a negative effect on the Company's profitability and cash flows. Loss of production efficiencies or interruptions in the Company's silicon metal production or solar grade silicon purification and testing capabilities could significantly adversely affect production levels and reduce its revenue and earnings.

In addition to equipment failures, the Company's facilities are also subject to the risk of catastrophic loss due to unanticipated events such as fires, explosions or violent weather conditions. The losses that the Company may sustain as a result of such events could exceed any recoveries it may be able to make under its insurance coverage. In addition to such losses, long term disruption, could result in a loss of customers, which could also have a material adverse effect on the Company's business, financial condition and results of operations.

***The Company's silicon business is dependent on electrical power and any interruption in power or increase in electricity costs could have a material adverse effect on the Company's results of operations.***

The production of silicon metal is energy intensive and the Company is dependent upon the continuous supply of electricity from Hydro Québec and others for its smelting and other operations in

Bécancour. The Company has taken measures to mitigate the likelihood of an interruption in electricity service, but there is no assurance that the Company will not be subject to power interruptions in the future.

In addition, electricity prices form a significant component of the cost of production for silicon metal. Electricity rates for industrial users in the Province of Québec are favourable, relative to other global locations. However, there is no assurance that such rates will remain favourable and an increase in electricity prices for the Company's operation in Bécancour could have a material adverse effect on the Company's results of operations.

***Risks associated with the pricing and availability of raw materials for the Company's silicon business could have a material adverse effect on the Company's results of operations.***

Coal is a significant raw material in the production of silicon metal, and the market price of coal is an important factor influencing the Company's cash flows and earnings. There are only two known reliable production areas of coal that are geographically viable to the Company, each with a limited number of producers. The prices of coal have risen in the last few years, and more significantly towards the second half of this year, principally due to increased demand from such areas. The Company has its own internal supply of quartz, through a mining lease. The Company has determined that alternate suppliers of quartz have superior quality for the production of solar grade silicon feedstock and accordingly have begun to procure more quartz from third party suppliers. The Company also buys silicon metal in the spot (or open) market to balance its production and thus is subject to fluctuations in market price, which have increased due to supply and demand forces. An increase in the pricing for, or limitations on the availability of, these raw materials could have a material adverse effect of the Company's financial position, results of operations and liquidity.

***Global economic conditions are creating substantial risks and uncertainties.***

Global economic conditions have contributed to significantly reduced sales in the Silicon Group across all product lines as many of the Company's customers were experiencing financial constraints and reduced or deferred their purchases. These conditions include the significant tightening of credit, loss of consumer and investor confidence and recession. While global economic conditions related to the silicon metal market appear to be improving, based upon demand from traditional customers for shipment of silicon metal products in both the fourth quarter of 2009 and through 2010, the adverse impact of global economic conditions on the solar industry, and in particular the resulting impact on demand for the Company's solar grade silicon products, continues. Moreover, a global economic recovery is not yet clear, and when combined with continued uncertainty with respect to the timing of the recovery of the solar grade silicon market, risks remain, which could reduce the Company's revenues, or may cause even more severe financial difficulties, or may significantly increase the Company's credit risk. In addition, if these circumstances persist or deteriorate further, the Company's ability to raise capital in the debt or equity markets could be significantly limited, which could restrict the Company's ability to pursue its strategies or financial objectives. Any one of these developments could have a material adverse effect on the Company's financial position, results of operations and liquidity.

***The Company is subject to credit risk exposure.***

Accounts receivable and long term receivables are subject to credit risk exposure and the carrying values reflect management's assessment of the associated maximum exposure to such credit risk. Substantially all of the Company's accounts receivable are due from customers in a variety of different industries and, as such, are subject to normal credit risks in their respective industries. The Company regularly monitors customers for changes in credit risk. Where available, the Company has insured its

accounts receivable under credit insurance policies to offset the increased credit risk environment. However, since all customers may not qualify for credit insurance the Company may not be able to reduce its exposure to all such credit risks.

***Lower silicon metal selling prices could adversely affect the Company's results of operations.***

The Company's revenues, earnings and cash flows from the sale of silicon metal are sensitive to changes in market prices. In addition, the price of silicon metal has fluctuated considerably, having fallen substantially during 2009 from a peak of approximately \$1.90 per pound in 2008 while appreciating commencing towards the end of 2009 and continuing to appreciate since the beginning of 2010. In order to manage some of the price volatility, the Company endeavours to enter into contractual arrangements to fix the silicon metal selling prices for certain periods, generally a calendar year, where possible. However, not all of the Company's silicon metal customers have executed such arrangements, and the Company may not be able to reduce its exposure to such price risks

***The Company's silicon business is dependent on a small number of key customers, the loss of any of which could have a material adverse effect on the financial position, results of operations and liquidity of the Company.***

The Silicon Group has traditionally had several large customers, the loss of any of which could have a material adverse effect on the financial position, results of operations and liquidity of the Company. For the year ended December 31, 2009, the five largest customers accounted for 53% of total sales in the Silicon Group, compared to 51% for the year ended December 31, 2008. However, the Company has recently signed supply contracts and entered into supply commitments with a few customers that cover a large portion of the silicon metal production capacity for 2010, as well as long-term contracts to supply approximately 90,000 metric tons of silicon metal over the next five years to one of its long-standing silicon metal customers. As a result, customer concentration risk is expected to increase. The extent to which any of the Company's significant silicon metal customers may be unwilling or unable to satisfy all or a material portion of its purchase commitments with the Company could have a material adverse effect on the Company's results of operations and liquidity.

***Unexpected transportation disruptions may lead to production curtailments or shutdowns.***

The Company depends upon seaborne freight, rail and truck transport to deliver raw materials to its facilities and its products to market. Delays and disruptions in these transportation services has arisen, and may arise from time to time in the future, because of weather related problems, equipment failures, labour strikes or lock-outs, or limitations on available port capacity, shipping containers, or rail delivery schedules. Any such disruption could temporarily impair the Company's ability to supply its raw materials to its facilities, and/or deliver its products to its customers on a timely basis, any of which could have a material adverse effect on the Company's business, financial condition and results of operations.

***The Company is subject to a potential class action lawsuit.***

The Company is subject to a potential class action lawsuit alleging that the Company and others made certain misrepresentations about the Company's solar grade silicon production process (see "Item 14 – Legal Proceedings and Regulatory Actions"). The Company intends to vigorously defend these allegations and the plaintiff's attempts to get court approval to proceed. However, no assurance can be given with respect to the ultimate outcome of such proceedings, and the amount of any damages awarded could be substantial. In addition, the defence of this lawsuit could involve significant expenses and divert the attention of the Company's senior management and other personnel for long periods of time.

These matters may have also contributed to negative publicity in respect of the Company and its solar grade silicon production process. Continuing negative publicity could have an adverse effect on the Company's business and liquidity, and on the market price of the Company's common shares.

***The Company is subject to contract termination claims.***

The Company is involved in legal proceedings with a former supplier alleging improper termination of a contract relating to Bécancour's commitment to purchase certain feedstock materials for its solar grade silicon product line. The Company is also in settlement negotiations with certain suppliers to resolve any potential claims arising from the termination of contracts relating to Bécancour's commitments to purchase certain equipment and services relating to its solar grade silicon purification facility. Any adverse outcome that the Company may experience with respect to the ultimate outcome of such proceedings or settlement negotiations, may have a material adverse effect on the Company's business, financial condition and results of operations.

***The Company is subject to interest rate risks.***

The Company is exposed to interest rate risk to the extent that cash and short term investments, bank indebtedness, term debt and convertible debt are at floating rates of interest. The Company's maximum exposure to interest rate risk is based on the effective interest rate and the current carrying value of these assets and liabilities. The Company monitors the interest rate markets to assess whether any steps can be taken to mitigate interest rate volatility. However, the Company may not be able to reduce its exposure to such interest rate risks and a significant increase in interest rates could have an adverse effect on the Company's results of operations and liquidity.

***The Company's future growth plans and strategic objectives could require substantial cash resources and a failure to secure such resources could have a material adverse effect on the Company's businesses or investments.***

The Company may require capital expenditures for production capacity expansions, acquisitions, mergers, business combinations, joint ventures, or strategic business alliances or partnerships in respect of its businesses or investments. The Company expects to fund its requirements for capital expenditures from common equity, term debt, credit facilities, operating cash flows and cash balances. However, these sources of financing may not be available to the Company when required in the amounts needed or on acceptable terms. The Company's existing credit agreement also limits the Company's financial flexibility in a number of ways, including restrictions on the Company's ability to incur additional indebtedness, to sell assets, to create liens or other encumbrances, to incur guarantee obligations, to make certain payments, investments, loans or advances, and to make acquisitions or capital expenditures beyond certain levels.

***A violation of environmental, health or safety laws or releases of hazardous substances could expose the Company to liability.***

The Company is, and historically has been, involved in certain activities that may be deemed to be hazardous to the environment, and the Company must also comply with stringent regulatory requirements in certain jurisdictions. The Company maintains environmental and industrial safety and health compliance programs at its facilities. There can be no assurance that current environmental requirements or future changes to them, including possible additional regulations or increases in levels of fines or penalties, will not result in liabilities and obligations that may be material to the Company's business, financial condition and results of operations.

The Company's manufacturing businesses are subject to extensive and changing laws and regulations governing, amongst other things, emissions to air, discharges and releases to land and water, the generation, handling, storage, transportation, treatment and disposal of wastes and other materials, and the remediation of contamination caused by discharges of waste and other material, as well as the risk that employees and others are exposed to hazardous or toxic substances. Such laws and regulations not only expose the Company to liability for its own actions, but also may expose it to liability for the conduct of others or for its actions which were in compliance with all applicable laws at the time such actions were undertaken or performed but which subsequently have become subject to regulation. In addition, the Company could be held liable for the release or discharge of materials which may be hazardous to health or the environment, including the cost of investigating and cleaning up such contamination, regardless of whether such release or discharge was legal and of whether the Company continues to own or operate the facility at which such release or discharge occurred, as well as such releases or discharges that occur at sites to which the Company or its predecessors have sent waste or that migrate onto the property of third parties. The Company could be held liable for such costs even if they arise from the actions of third parties. The Company's operations generally, and those involving hazardous materials in particular, also raise potential risks of liability under common law.

A violation of environmental or health and safety laws relating to the Company's facilities or a failure to comply with the instructions of the relevant environmental or health and safety authorities could lead to, amongst other things, a temporary shutdown of the Company's facilities or the imposition of fines, penalties or costly compliance or remediation procedures. The Company may also be exposed to potential litigation based on perceived violations of environmental or health and safety laws. If environmental or health and safety authorities impose substantial fines or penalties or require the Company to shut down any of its facilities or to implement costly compliance measures, whether pursuant to existing or new environmental, health and safety laws and regulations, such measures could have a material adverse effect on the Company's business, financial condition and results of operations.

The Company is also obligated to undertake remediation activities related to former facilities and has accrued \$5.2 million as at December 31, 2009, for future costs relating to site restoration and closure of certain of its former facilities and operations, including at Haley, Ontario and Aurora, Colorado. In addition, the Company has accrued \$1.1 million as at December 31, 2009 for future costs relating to site restoration and remediation relating to its existing facilities and silicon metal operations in Bécancour, Québec (see "Item 3 – Description of the Business – Silicon Group – Environmental Matters"). The actual cost for such site restoration and closure in the future could be higher than the amount estimated. The Company's estimate for this future liability is also subject to change based on amendments to applicable laws, the nature of ongoing operations, the timing of future closures and technological innovations. Any changes in this estimate could have a material adverse effect on the Company's financial position, results of operations and liquidity.

***AMG may influence the Company's strategic direction and may have conflicts of interest, and certain executives of the Company could acquire or hold interests that may compete with the Company.***

AMG is the largest single shareholder in the Company, with a direct holding of common shares representing approximately 42.5% of the Company's issued and outstanding share capital as at December 31, 2009. Certain of AMG's directors and executive officers are also directors and executive officers of the Company. AMG also trades in silicon metal, produces silicon metal through its controlled subsidiary Graphit Kropfmuehl AG, and operates other businesses that are complimentary to the Company's solar grade silicon product line. AMG has also established various commercial relationships with the Company,

including arrangements regarding ingot making (see “Item 3 – Description of the Business – Silicon Group – Manufacturing – Solar Grade Silicon”).

As a result of these relationships, AMG has the ability to influence the Company’s strategic direction and business opportunities, including any merger, consolidation or sale of the Company’s assets, and the composition of the Company’s board of directors and executive management. There may be significant synergies and new business opportunities for the benefit of the Company that may arise from these relationships with AMG. However, these relationships may also involve conflicts of interest. The boards of directors of the Company and AMG have established independent committees and special procedures to address these conflicts of interest. AMG may also directly pursue acquisitions or other strategic opportunities that could be beneficial or complementary to the Company’s business. However, the Company may not realize the benefits of any such acquisitions or opportunities pursued by AMG, if at all. In addition, these relationships have served as a foundation for certain equity financings and other commercial transactions between the Company and AMG, which have assisted in the Company’s expansion and liquidity. However, there is no assurance that such financings or transactions with AMG will be available on terms acceptable to the Company, if at all.

In the past, AMG has participated as an investor in the Company’s equity financings and maintained a controlling interest in the Company through its ownership of more than 50% of the outstanding common stock. However, since September 30, 2009, AMG no longer has majority control over the Company. AMG may acquire common shares of the Company under the exercise of its conversion rights under the December 2009 Note, but exercising these rights may not entitle AMG to reacquire a majority ownership interest in the Company (See “Item 11 – Interests of Management and Others in Material Transactions – AMG.” In the event that AMG’s equity ownership position in the Company continues to decline, AMG may reduce its involvement in pursuing opportunities that may otherwise be beneficial to the Company’s business, results of operations or liquidity.

***Evaluating the operations and prospects of the Company’s solar grade silicon product line may be difficult because of its limited history.***

There is limited historical information with which to evaluate the Company’s solar grade silicon product line, which began on a trial basis in 2006. As such, the historical financial results for this product line do not provide a meaningful basis for evaluating its future financial performance. The prospects for the silicon business should instead be evaluated in light of the risks, experiences and challenges an early growth stage company would typically experience in developing and manufacturing new products in a rapidly growing market, in addition to the more specific risks and uncertainties identified in this section.

***Lower solar grade silicon selling prices could adversely affect the Company’s results of operations.***

The Company’s revenues, earnings and cash flows from the sale of solar grade silicon are significantly influenced by the prevailing and expected future market (or spot) prices for polysilicon. Such prices have declined considerably since 2008, and may continue to decline, whether as a result of availability of additional polysilicon supply or due to continued weak demand in the solar photovoltaic industry. Continued price declines could have a material adverse effect on the Company’s financial position, results of operations and liquidity.

***There are risks associated with the Company’s customer commitments for solar grade silicon.***

There is significant uncertainty about the long-term commitments from the Company’s solar grade silicon customers, including future pricing, deliveries and volumes. The Company had executed several

long-term supply agreements with solar grade silicon customers in 2007 and 2008, many of which have since been terminated. The Company is in on-going negotiations with existing and prospective solar grade silicon customers, to secure new commitments to support future production and sales activities. However, there is no assurance that the Company will be able to secure meaningful long-term commitments from such customers, which may have an adverse effect on the growth prospects and future results of operations from the Company's solar grade silicon product line.

***There is no assurance of the timing and extent to which the Company will be able to achieve its solar grade silicon production cost targets.***

Once customer demand enables the Company to resume solar grade production, the key factors that will influence the Company's achievement of its solar grade silicon production cost targets include:

- Quality of silicon metal feedstock - Lower impurity levels in the silicon metal that the Company uses as a feedstock for the purification process will provide higher yields of solar grade silicon per volume input into the process.
- In-house production of molten silicon metal feedstock – Cost reductions may be achieved once the Company is able to utilize molten silicon metal produced at its own facility as feedstock for the purification process as this may enable the Company to eliminate one cycle of re-melting and purification.
- Scale - The Company expects to realize cost savings per kilogram once market demand supports increased production of solar grade silicon to utilize fully the seven production lines that have been commissioned, based upon spreading overhead costs across a larger volume, and production efficiencies related to a more flexible plant configuration.
- Continuous process improvement - The Company expects to realize numerous small process improvements over time to increase yields, or reduce impurity levels at various process steps.
- Customer Requirements - The specific purity levels required by the Company's current and future customers of solar grade silicon will impact the amount and nature of the processing that the Company would have to perform.

There is no assurance of the timing and extent to which the Company will be able to achieve its solar grade silicon production cost targets, and a failure to achieve such targets could have a material adverse effect on the Company's financial position, results of operations and liquidity.

***The Company's solar grade silicon business may be harmed if it does not achieve and maintain required quality objectives in respect of solar grade silicon.***

The requirements of the Company's customers with respect to specifications, quality controls and testing methodologies for solar grade silicon are expected to continue to evolve as the Company and its customers continue to build experience in using the Company's solar grade silicon for solar photovoltaic applications.

The current pricing and availability of polysilicon, which is the principal competing product for such applications, led the Company's customers to demand in 2009 a higher quality of solar grade silicon, such that solar cells manufactured using the Company's solar grade silicon will have characteristics that

make them indistinguishable from solar cells manufactured from polysilicon. The Company is working with new equipment, methodologies and processes to achieve consistent production of solar grade silicon at levels to meet customer requirements and to provide the data and analysis required by customers in respect of shipments on a continuous basis. Although it is making progress towards achieving these objectives, the Company may experience delays in being able to consistently produce solar grade silicon at the required specifications or purity levels, in implementing such new equipment, methodologies and processes, and in ultimately being able to achieve its indistinguishability objective. Furthermore, achieving and maintaining these heightened customer requirements may increase the Company's production costs for solar grade silicon.

The Company's proprietary purification process, which is based on metallurgical methods as compared to the chemical processes used to manufacture polysilicon, involve several steps and various equipment to control the levels of impurities, or dopants, particularly phosphorus and boron. Controlling these and other non-metallic elements, at the levels required for solar cell applications (which are measured in parts per million), is critical and there is no universally accepted method for controlling all of these elements at required levels simultaneously. As a consequence, multiple refining steps, or passes, are necessary, with the risk of lower yields and increased solar grade silicon production costs. In addition, recontamination by impurities from the equipment or reactants used in the purification process may reduce the quality or require further processing of the solar grade silicon. This risk is exacerbated in the ramp-up stage of a new production process. While the Company has valuable experience in mitigating these risks, there is no assurance that it will be able to consistently achieve the desired quality or required purity levels within a certain range of production costs.

***Customer capabilities in producing ingots could adversely affect the Company's solar grade silicon business.***

The process for making ingots is a key element in being able to manufacture solar cells from solar grade silicon that have characteristics that make them indistinguishable from solar cells manufactured from polysilicon. The Company is collaborating with third parties and its affiliates to develop processes to optimize the quality of ingots and bricks made from its solar grade silicon, in order to achieve the objective of indistinguishability. However, there is no assurance that such development efforts will be successful or that customers will adopt appropriate processes. If the Company's customers do not achieve the results that they expected from using the Company's solar grade silicon to make ingots or bricks, or are unable to manufacture solar cells that have characteristics that are indistinguishable from solar cells manufactured from polysilicon, such customers will be disinclined to take deliveries of the Company's solar grade silicon, which could have a material adverse effect on the Company's financial position, results of operations and liquidity.

The Company has agreed with AMG Conversion to jointly develop the ingot production process to optimize the quality of the ingots and bricks produced with the Company's solar grade silicon, and to jointly explore the feasibility of AMG Conversion producing ingots at the Bécancour facilities under long-term tolling arrangements. In the event that such long-term tolling arrangements are not concluded by June 30, 2010, the Company has the option to buy from AMG Conversion, and AMG Conversion has the option to sell to the Company, all ingot and brick making assets at the Bécancour facilities, in each case at the then net book value of such assets, subject to the consent of the Company's lenders. There is no assurance that the Company will be able to mutually agree upon the terms and conditions of any long-term tolling arrangements with AMG Conversion, or that its lenders will grant such consent.

***The Company's silicon business may be harmed if it is unable to adequately protect its intellectual property.***

The success of the Company's solar grade silicon production and sales depends in part on the protection and development of its intellectual property rights, including proprietary technology, information, processes and know-how. Such protection is based on trade secrets and patents, including two patents pending in respect of the Company's manufacturing process for the production of solar grade silicon.

The Company has applied for patent protection in respect of certain manufacturing processes relating to the purification of low-purity silicon metal for the production of solar grade silicon, and intends to continue to pursue such applications and to make additional applications as applicable. The patent positions of the Company involve complex legal and factual questions and, therefore, the success of any applications and the validity and enforceability of any patents granted cannot be predicted with certainty. Patents may be challenged, deemed unenforceable, invalidated or circumvented or infringed by competitors. The validity, enforceability and commercial value of these rights are therefore uncertain. The Company may also determine not to apply for patents for certain manufacturing processes in order to maintain their confidentiality. If the Company decides to apply for patents on important technologies or products, it might not be able to do so in a timely fashion, or at all, and, in any event, any applications filed may be challenged and may not result in issued patents. Any future patents obtained by the Company may not be sufficiently broad to prevent others from using its technologies or from developing competing products. Furthermore, others may independently develop similar or alternative technologies or design around the Company's patented or unpatented technologies. In addition, if challenged, the Company's patents may be declared invalid. Even if valid, the Company's patents may fail to provide it with any competitive advantages.

As well, the Company attempts to protect its trade secrets through physical security measures, as well as confidentiality agreements with customers, suppliers and key employees. The Company also enters into licensing arrangements in respect of third parties' intellectual property rights, and collaborates with key equipment suppliers in the development of technologies that enhance the Company's product offering. The Company could also be liable to third parties in respect of any infringements of their patents or other intellectual property rights.

There is no assurance that the Company has adequately protected or will be able to adequately protect its valuable intellectual property rights, or will at all times have access to all intellectual property rights that are required to conduct its business or pursue its strategies, or that the Company will be able to adequately protect itself against any intellectual property infringement claims. There is also no assurance that our competitors will not be able to utilize such rights or develop similar technology, processes or know how independently, that the Company's trade secrets will not be revealed, that the claims allowed with respect to any current or future patents pending, or patents now held, will be broad enough to protect the Company's intellectual property rights, or that foreign intellectual property laws will adequately protect such rights. Any adverse outcome that the Company may experience whilst attempting to obtain, maintain or enforce its intellectual property rights could have a material adverse effect on the Company's business, financial condition and results of operations.

***Additional expansion of production capacity in Bécancour presents risks that could materially adversely affect the Company's results of operations.***

The Company has recently announced that it is pursuing opportunities to expand its silicon metal capacity, through a potential new silicon metal production facility in Iceland that would operate using

geothermal power. To this end, the Company and an Icelandic power company have agreed in principle on the terms of a long-term power supply contract for such a facility, and the Company has also secured convertible debt financing, to fund preliminary expenses associated with this project. The deadline for concluding the definitive power contract is April 15, 2010, and there is no assurance that the parties will be able to mutually agree upon all terms by such date, or agree to an extension of such date if necessary. Preliminary engineering work is being performed in respect of a conceptual study, which is expected to be completed by mid-April 2010, and in the event of a positive outcome from such study, and subject to successful negotiations on the power contract and preliminary commitments from one or more silicon metal customers, a full feasibility study for the project would be commissioned, with an expected completion in the latter half of this year. Following completion of the feasibility study, it would be necessary to secure long-term off-take agreements with customers and external financing for the construction of the proposed new facility, which are two of the key conditions for proceeding with the project. There is no assurance that any of such conditions will be satisfied, on a timely basis or at all, or that any other aspect of the potential silicon metal production capacity project will proceed.

As of January 2009, the Company had installed and commissioned seven purification lines out of an originally planned twelve purification lines at its production facilities in Bécancour. In March 2009, due to difficult market conditions and reduced demand for solar grade silicon, the Company ceased any further capacity expansion pending recovery of demand for solar grade silicon. Moreover, the existing purification lines have not been operating at full nominal production capacity, principally because of a lack of demand for the Company's solar grade silicon, and the fact that the Company has been in a ramp-up stage with respect to its purification equipment and processes. Even when production of solar grade silicon resumes, the Company will continue to be in a ramp-up stage until demand supports operating all purification lines and acceptable operating performance has been achieved. The number of purification lines and the purification process of the Company will depend substantially on the scope and nature of future customer demand for the Company's solar grade silicon, which has changed significantly over the last year. Accordingly, there is no assurance that the Company will be able to achieve its targeted nominal production capacity for solar grade silicon within foreseeable timeframes.

Any future production capacity expansion, when initiated, will involve risks, including potential delays in commissioning of equipment, and unanticipated costs and changes in design that may cause the Company's capital budget for the project to be exceeded. Failure to complete any further expansion or to achieve the anticipated production capacity of the existing or any additional purification lines, within foreseeable timeframes and on budget, could have a material adverse effect on the Company's financial position, results of operations and liquidity.

***The Company is subject to risks relating to the closure of its magnesium facilities.***

The Company has ceased production operations at its magnesium extrusion facility in Aurora, Colorado and has closed that facility (see "Item 4 – Description of the Business – Magnesium Group – Divestiture of the Company's Magnesium Business"). This resulted in severance and closure costs of approximately \$3.1 million, most of which were incurred in 2009 with the remainder to be incurred in 2010. There can be no assurance that additional closure costs, including costs relating to the remediation of the Aurora facility, will not result in liabilities and obligations that may be material to the Company's business, financial condition and results of operations.

***There are risks associated with the Company's investment in Applied Magnesium.***

The Company has completed the merger of its remaining magnesium extrusion and specialty metals business with the magnesium operations of Winca to form Applied Magnesium (see "Item 4 –

Description of the Business – Magnesium Group - Divestiture of the Company’s Magnesium Business”). The Company received a 19.5% equity interest in Applied Magnesium as well as promissory notes of Applied Magnesium in the aggregate principal amount of US\$3.7 million and other receivables of US\$2.5 million. The Company’s and Winca’s equity interests in Applied Magnesium are subject to a shareholders agreement, which includes board representation and special approval rights in favour of minority shareholders, as well as share transfer restrictions. The promissory notes issued to Timminco are non-interest bearing and subject to conditions respecting repayment, including the level of financial performance and liquidity of Applied Magnesium. In keeping with its decision to exit the magnesium business, the Company plans to divest itself of these investments, over time. However, there is no assurance that the Company will be able to liquidate its equity investment in Applied Magnesium on terms or on a timeline that may be satisfactory to the Company.

***Risks associated with the pricing and availability of insurance could have an adverse effect on the Company’s results of operations.***

The Company has various forms of insurance to cover risks associated with the conduct of its operations, such as those relating to damage to property, and directors’ and officers’ liabilities. The Company has recently made claims under its insurance policies, and is in the process of renewing its coverage under such policies for the next annual policy period. Future insurance coverage may not cover all claims or mitigate all risks to the extent it has in the past, and the costs that the Company may incur to procure insurance may significantly increase, either of which could have an adverse effect on the Company’s results of operations.

***The reduction, modification or elimination of government and economic incentives could cause the Company’s revenue to decline and harm its financial results.***

Growth in the PV industry has been driven, amongst other things, by continued growth in the demand for electricity worldwide and the increasing preference for renewable energy sources. Such growth has been supported by billions of dollars of investment and governmental incentives and commitments to increasing the proportion of energy generated by alternative means, including solar. A reduction or elimination of such incentives and commitments could impact the growth of the solar PV industry and the demand for the Company’s products. A reduction in the demand for the Company’s products could have a material adverse effect on the Company’s financial position, results of operations and liquidity.

***The Company depends substantially upon the continuing efforts of certain key executives and employees, and its businesses may be adversely affected if the Company is unable to retain employees or to attract, train and retain additional qualified personnel.***

The future of the Company’s solar grade silicon product line depends substantially upon the continued services of those employees at Bécancour who developed and have extensive experience in applying the Company’s proprietary manufacturing technologies. In addition, the Company is dependent upon the continued services of Dr. Heinz Schimmelbusch, as Chairman of the Board and Chief Executive Officer of the Company, who has over 30 years of experience in the metals industry. If any one or more of these individuals, or if a significant number of any of the Company’s other executive officers, are unable or unwilling to continue being employed, the Company may not be able to replace them readily, if at all. The Company’s businesses may be significantly disrupted, and the Company may incur additional expenses to recruit and retain their replacements. In addition, if any of the individuals named above joins a competitor or forms a competing company, whether in violation of their agreements with the Company or otherwise, the Company may lose customers and may suffer from unauthorized disclosure or use of its valuable

intellectual property. Recruiting, training and retaining qualified and capable personnel, particularly those with relevant technical expertise, are important to the Company's success. If the Company is unable to attract and retain such personnel, its businesses could be materially adversely affected.

***The Company may make acquisitions, or enter into partnerships or joint ventures, which it may not be able to integrate or manage successfully.***

As part of its growth strategy, the Company will consider prospective acquisitions, as well as proposals for mergers, joint ventures, business combinations and strategic alliances or partnerships, that may complement its existing businesses or investments or achieve its strategic objectives. Future acquisitions would expose the Company to potential additional risks, including risks associated with the assimilation of new technologies, businesses and personnel, unforeseen or hidden liabilities, the diversion of management attention and resources from the Company's existing businesses and investments, and the inability to generate sufficient revenues to offset the costs and expenses of such acquisitions. The Company may also not be able to identify suitable targets or be able to conclude acquisitions or enter into partnerships on its preferred terms. Moreover, if the Company is not able to successfully integrate or manage any acquired company, the acquisition may fail to achieve the desired benefits. Mergers, business combinations or joint ventures relating to any of the Company's businesses or investments may involve special risks associated with the possibility that the other party to the arrangement may: have economic or business interests or goals that are inconsistent with those of the Company; take action contrary to the Company's policies or objectives with respect to its investments; be unable or unwilling to fulfil their obligations under the applicable agreements; or experience financial or other difficulties. In addition, the Company may be unable to manage its relationship with its partners, and management's attention may be diverted away from other on-going business concerns. Any of the foregoing may have a material adverse effect on the Company's business, financial condition or its results of operations.

***Intellectual property infringement claims could require substantial time and money to resolve, and unfavourable outcomes in such proceedings could limit the Company's intellectual property rights.***

The Company may need to resort to litigation to enforce or defend its intellectual property rights, including any patents issued to it. Failure to apply for patents could also lead to infringement claims. If a competitor or collaborator files a patent application, which management believe infringes the Company's intellectual property, the Company may become involved in an expensive and time-consuming opposition proceeding in order to protect its rights, before the European Patent Office, the United States Patent and Trademark Office or patent authorities in other jurisdictions. The Company cannot guarantee that there will be no claims from third parties alleging that its products or processes infringe the intellectual property rights of such parties. Third parties may assert that the Company is employing their proprietary technologies without authorization and they may resort to litigation to attempt to enforce their rights. Third parties may have or obtain patents in the future and claim that the use of the Company's technology or any of its products or systems infringe their patents. The Company may not be able to develop or commercialise certain products because of patent protection others have. The Company's efforts to obtain, protect and defend its patent and other intellectual property rights, whether successful or not, can be expensive and may require the Company to incur substantial costs, including the diversion of management and technical personnel. An unfavourable ruling in patent or intellectual property litigation could subject the Company to significant liabilities to third parties; require it to cease developing, manufacturing or selling the affected products or using the affected technologies or to license the disputed rights from third parties; or result in awards of substantial damages against the Company. There can be no assurance that the Company would prevail in any intellectual property infringement action or will be able to obtain a licence to any third-party intellectual property on commercially reasonable terms, successfully develop

non-infringing alternatives on a timely basis, or license non-infringing alternatives, if any exist, on commercially reasonable terms. Any significant intellectual property impediment on its ability to develop, manufacture and sell the Company's products could have a material adverse affect on the Company's business, financial condition and results of operations.

***Regulatory initiatives to address climate change could have an adverse effect on the Company's results of operations.***

As a producer of silicon metal, the Company emits carbon dioxide, which is a greenhouse gas ("GHG"), as a natural by-product of the pyrometallurgical process used to make silicon at its Bécancour facilities. Specifically, carbon-based process materials, such as coal, coke, charcoal and wood chips are combined with quartz to create both silicon and carbon dioxide. In November 2009, Québec's Minister of Sustainable Development, Environment and Parks announced Québec's target to reduce GHG emissions by 20% below 1990 levels by the year 2020. In order to achieve its reduction target, the Québec government has stated that a GHG cap and trade system will need to be implemented in 2012. Similar regulatory initiatives are also under way in other Canadian jurisdictions designed to limit or create economic disincentives for GHG emissions, including potential carbon taxes and cap and trade regimes. The scope and potential impact of such initiatives on the Company's silicon business is not yet known, and the extent to which such initiatives impose limits, taxes or other adverse economic consequences on any of the Company's operations could have an adverse effect on the Company's business, financial condition or results of operations.

**ITEM 6. DIRECTORS AND OFFICERS**

**Directors**

The Company's Board of Directors currently consists of the following members:

| <u>Name and Residence</u>                                    | <u>Director Since</u> | <u>Principal Occupation</u>   |
|--|-----------------------|---|
| Heinz C. Schimmelbusch <sup>(1)</sup><br>Pennsylvania, USA   | 2003                  | Chairman of the Management Board of AMG Advanced Metallurgical Group N.V., a metals company                             |
| Arthur R. Spector<br>Pennsylvania, USA                       | 2003                  | Managing Director of Safeguard International Fund, L.P., a private equity fund  |
| John C. Fox <sup>(2)(3)(4)(5)</sup><br>Virginia, USA         | 2008                  | Senior Managing Director of Perseus LLC, a merchant bank and private equity fund  |
| John W.W. Hick <sup>(2)(3)(4)(5)</sup><br>Ontario, Canada    | 2009                  | Chief Executive Officer and a director of Medoro Resources Ltd., a gold exploration, development and production company |
| Jack L. Messman <sup>(3)(4)</sup><br>Massachusetts, USA      | 2003                  | Corporate Director  |
| Michael D. Winfield <sup>(2)(3)(4)(5)</sup><br>Illinois, USA | 2004                  | Corporate Director  |

| <u>Name and Residence</u>                              | <u>Director Since</u> | <u>Principal Occupation</u>  |
|--|-----------------------|--|
| Mickey M. Yaksich <sup>(2)(4)</sup><br>Ontario, Canada | 1998                  | Partner and Chief Operating Officer of<br>McMillan LLP, a law firm |

Notes:

- (1) Chairman of the Board
- (2) Member of the Audit Committee
- (3) Member of the Human Resources, Compensation and Pension Committee
- (4) Member of the Corporate Governance and Nominating Committee
- (5) Member of the Special Committee

All of the Company's current directors were elected to their present terms of office by the Company's shareholders at the annual and special meeting of shareholders held on May 15, 2009. The term of office for each director expires at the conclusion of the next annual meeting of shareholders of the Company, which is scheduled for May 18, 2010.

All of the directors have held the principal occupations identified above (or another position with the same employer) for not less than five years, except as follows:

- Prior to the initial public offering of AMG in July 2007, the principal occupation of each of Dr. Schimmelbusch and Mr. Spector was acting as Managing Director of Safeguard International Fund, L.P.
- Mr. Spector was Deputy Chair of the Management Board of AMG Advanced Metallurgical Group N.V. until October 2009.
- Mr. Hick was the Chief Executive Officer and then Vice Chairman of Rio Narcea Gold Mines, Ltd. from December 2004 to January 2006. From December 2001, he was President and Chief Executive Officer of Defiance Mining Corp. and its predecessor company, Geomaque Explorations Ltd., until it was acquired by Rio Narcea in 2004. Mr. Hick is an independent director of each of the following public companies: Aeroquest International Ltd., First Uranium Corporation, Carpathian Gold Inc., Hudson Resources Inc. and Marengo Mining Ltd.
- Mr. Messman was Chairman, President and Chief Executive Officer of Novell Inc., an infrastructure software company, from 2001 until his retirement in June 2006.
- Mr. Winfield was President and Chief Executive Officer of UOP LLC, a technology and products supplier to the oil and gas industries, until his retirement in 2001. He continued to serve as a member of its Board of Managers until 2004. He is a director of Landauer Corp., an analytical services company, where he served as Chairman. Mr. Winfield was also a director of Metallurg Inc., a metals company and a subsidiary of AMG, from 2001 until 2007. He also served as a director of Chicago Bridge and Iron Company, an engineering, procurement and construction company, from 2001 to 2004.

## Officers

The executive officers of the Company currently consist of the following individuals:

| <u>Name and Residence</u>                   | <u>Office</u>  |
|---|--|
| Heinz C. Schimmelbusch<br>Pennsylvania, USA | Chairman of the Board (since April 2003) and Chief Executive Officer (since August 2007)                                       |
| John Fenger<br>Pennsylvania, USA            | President and Chief Operating Officer (since April 2009)   |
| René Boivert<br>Québec, Canada              | President - Silicon (since April 2008) and President and Chief Executive Officer of Bécancour Silicon Inc. (since August 2007) |
| Robert J. Dietrich<br>Ontario, Canada       | Executive Vice President – Finance and Chief Financial Officer (since December 2006)   |
| Peter A.M. Kalins<br>Ontario, Canada        | General Counsel and Corporate Secretary (since September 2007)   |
| Peter D. Rayner<br>Ontario, Canada          | Corporate Controller (since September 2008)  |

To the extent that the foregoing executive officers have not held the offices identified above for the last five years, they have held the following offices or positions with the Company and/or have had the following principal occupations, during the last five years:

- With respect to Dr. Schimmelbusch, who is also a director of the Company, see above under “Directors”. In addition, Dr. Schimmelbusch was Chief Executive Officer of the Company from April 2003 to September 2005.
- Mr. Dietrich joined the Company in April 2006, as Vice President – Finance and Chief Financial Officer. Prior to that, Mr. Dietrich was Chief Financial Officer of MKS Inc., an enterprise software company, from July 2001 to November 2005.
- Mr. Boisvert joined Bécancour Silicon Inc. (“Bécancour”), the wholly-owned subsidiary of the Company that conducts the Company’s silicon business, in 1986 as Senior Electrical Engineer. Since then, Mr. Boisvert has held various positions and offices within Bécancour. Prior to August 2007, Mr. Boisvert was President of Bécancour since December 2004, and prior to that was Vice President – Operations & Technology of Bécancour since 2001.
- Mr. Fenger was Vice President – Aluminum of the Company from May 2004 until his appointment as President – Light Metals of the Company in April 2008. During that time, and prior to his appointment as President and Chief Operating Officer of the Company in April 2009, Mr. Fenger was also engaged for a portion of his time on matters for AMG Advanced Metallurgical Group N.V.
- Mr. Kalins joined the Company in September 2007. Prior to that, Mr. Kalins was Legal Counsel of Magna International Inc., an auto parts manufacturing company, from May 2003 to August 2007.

- Mr. Rayner joined the Company in September 2008. Prior to that, Mr. Rayner was Corporate Controller for KIK Custom Products, a manufacturer of consumer personal care and cleaning products, from April 2001 to August 2008.

### **Beneficial Ownership of Securities**

As at December 31, 2009, the directors and executive officers of the Company as a group (consisting of 12 individuals) beneficially owned, or controlled or directed, directly or indirectly, 784,400 common shares of the Company, representing 0.5 % of the issued and outstanding common shares of the Company. The directors and executive officers of the Company as a group held options to purchase an aggregate of 8,775,000 common shares of the Company.

In addition, Dr. Schimmelbusch is Chairman of the Management Board of AMG, which directly held: (i) 67,761,392 common shares of the Company, representing 42.5% of the total issued and outstanding shares of the Company as at December 31, 2009; and (ii) a US\$5.0 promissory note convertible into common shares of the Company (see “Item 11 – Interest of Management in Material Transactions”).

### **Cease Trade Orders, Bankruptcies, Penalties or Sanctions**

No director or executive officer of the Company is as at the date hereof, or was within 10 years before the date hereof, a director, chief executive officer or chief financial officer of any company (including the Company), that (i) was subject to an “order” (meaning a cease trade order, an order similar to a cease trade order, or an order that denied the relevant company access to any exemption under securities legislation, that in any case was in effect for a period of more than 30 consecutive days) that was issued while the director or executive officer was acting in the capacity as director, chief executive officer or chief financial officer, or (ii) was subject to an order that was issued after the director or executive officer ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer, except as follows:

- A definitive management cease trade order, which superseded a temporary management cease trade order dated April 1, 2005 against all of the directors and officers of the Company in connection with the Company’s failure to file its audited financial statements for the year ended December 31, 2004, was issued by the Ontario Securities Commission on April 14, 2005. These management cease trade orders expired on May 2, 2005.

No director or executive officer of the Company, or a shareholder holding a sufficient number of securities of the Company to affect materially the control of the Company, (i) is as at the date hereof, or has been within the 10 years before the date hereof, a director or executive officer of any company (including the 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, or (ii) has, within the ten years prior to the date hereof, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director, executive officer or shareholder, except as follows:

- John Fenger, President – Light Metals, was the chairman of boards of directors of two associated industrial companies when they entered into insolvency proceedings in 2004. Promeks AS, a Norwegian company, became insolvent as a result of its inability to secure financing for the project for which it was founded and Allied Efa hf, an Icelandic company, became insolvent as a result of operating losses. Mr. Fenger was also Chairman of the Board of Fundo Wheels AS when it commenced bankruptcy proceedings in January 2009.
- In 2008, Mr. Hick was a director and non-executive Chairman of the Board of Tamaya Resources Limited, an Australian incorporated and Australian Stock Exchange (“ASX”) listed company, which made a Voluntary Appointment of an Administrator, Ernst & Young (Australia), as a result of becoming insolvent. The reasons for the insolvency are summarized in the Questionnaire and Report to the Administrators dated November 14, 2008, as filed with the ASX. As a result of the Voluntary Administration, effective upon the appointment of the Administrators on October 26, 2008, such Administrators immediately assumed all legal power, rights and obligations of the directors of Tamaya and the directors had no legal rights with respect to the administration or management of Tamaya or its assets.

### **Conflicts of Interest**

None of the Company’s directors or officers, including directors and officers of the Company’s subsidiaries, has an existing or potential material conflict of interest with the Company or its subsidiaries, except as described below under “Item 11 – Interest of Management and Others in Material Transactions” and as described above under “Item 5 – Risk Factors”.

### **ITEM 7. DIVIDEND POLICY**

During the five-year period ended December 31, 2009, the Company did not pay any dividends on any of its shares. The Company may not pay cash dividends during the term of its credit agreement with Bank of America, N.A., which was executed in April 2005 (as amended) and expires in July 2010.

The future payment of dividends will be subject to the discretion of the Board of Directors having regard to consideration of the Company’s earnings, financial condition and such other factors as deemed relevant by the Board of Directors of the Company.

### **ITEM 8. DESCRIPTION OF CAPITAL STRUCTURE**

The Company’s share capital consists of an unlimited number of Class A and Class B preference shares, issuable in series and none of which are currently outstanding, and an unlimited number of common shares, of which 159,334,453 were issued and outstanding as at December 31, 2009. The Company’s common shares are the only class of shares that carry a general right to vote. In the event of the Company’s liquidation, dissolution or winding up, the Class A preference shares would be entitled to priority over the Class B preference shares and the common shares of the Company in the payment of dividends and the return of capital on the distribution of assets. Similarly, the Class B preference shares are entitled to priority in payment over the common shares of the Company. Additional details of the Company’s share capital, including common shares issuable pursuant to options and convertible loans, are set out in Note 14 to the Company’s audited consolidated financial statements for the year ended December 31, 2009, which is incorporated herein by reference. The Company’s annual financial statements are available on SEDAR at [www.sedar.com](http://www.sedar.com).

## ITEM 9. MARKET FOR SECURITIES

The common shares of the Company are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “TIM”.

The following table indicates the monthly trading volumes and price ranges for the common shares of the Company during the 2009 calendar year:

| <u>Month</u> | <u>Trading Volume</u> | <u>Price Range</u> |
|--------------|-----------------------|--------------------|
| January      | 14259972              | \$3.40 – 5.74      |
| February     | 6681846               | \$2.60 – 3.55      |
| March        | 13633280              | \$1.60 – 3.23      |
| April        | 25233959              | \$1.55 – 3.90      |
| May          | 46469494              | \$1.06 – 2.15      |
| June         | 22398069              | \$1.15 – 1.64      |
| July         | 11546033              | \$1.02 – 1.35      |
| August       | 23398853              | \$1.06 – 1.57      |
| September    | 17447411              | \$1.22 – 1.48      |
| October      | 67187027              | \$1.24 – 3.08      |
| November     | 20782992              | \$1.41 – 2.35      |
| December     | 12718515              | \$1.24 – 1.60      |

## ITEM 10. ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER

To the knowledge of the Company, the following table shows the number of common shares of the Company held in escrow or subject to a contractual restriction on transfer and the percentage that that number represents of our outstanding common shares as at December 31, 2009:

| <u>Designation of Class</u> | <u>Number of Securities held in escrow or that are subject to a contractual restriction on transfer</u> | <u>Percentage of class</u> |
|-----------------------------|---|----------------------------|
| Common shares               | 0   | 0.0%                       |

## ITEM 11. INTEREST OF MANAGEMENT AND OTHERS IN MATERIAL TRANSACTIONS

### AMG Advanced Metallurgical Group N.V.

AMG Advanced Metallurgical Group N.V. (“AMG”) is a significant shareholder in the Company. As at December 31, 2009, AMG directly held 67,761,392 common shares of the Company, representing

42.5% of the total issued and outstanding shares. As at the date hereof, AMG's equity ownership in the Company is 38.6% of the total issued and outstanding common shares.

In February 2009, the Company completed an equity offering by way of private placement of 7,042,000 common shares at a price of \$3.55 per share, pursuant to an agency agreement (the "Agency Agreement") dated February 3, 2009 between the Company, AMG, Clarus Securities Inc. and TD Securities Inc. AMG acquired 3,938,200 common shares in this offering at a price of \$3.55, which was the same price for the common shares issued to the other investors in the equity offering. Immediately following the equity offering, AMG owned 56,497,933 common shares of the Company, representing 50.7% of the outstanding share capital.

In April 2009, the Company completed an equity offering by way of private placement to AMG pursuant to a subscription agreement dated April 30, 2009 between the Company and AMG. Under the subscription agreement, AMG purchased 7,425,743 common shares at a price of \$2.02 per share, for gross proceeds to the Company of \$15 million. The Company did not pay any commission or fee to AMG in connection with its subscription for common shares pursuant to the subscription agreement. Immediately following such transaction, AMG owned 63,973,676 common shares, representing 53.8% of the outstanding share capital at that time.

In November 2009, the Company completed an equity offering by way of private placement to AMG pursuant to a subscription agreement dated November 20, 2009 between the Company and AMG. Under the subscription agreement, AMG purchased 3,837,716 common shares at a price of \$1.38 per share, for gross proceeds to the Company of \$5.3 million. The Company did not pay any commission or fee to AMG in connection with its subscription for common shares pursuant to the subscription agreement. Immediately following such transaction, AMG owned 67,811,392 common shares, representing 46.0% of the outstanding share capital at that time.

In December 2009, Bécancour Silicon Inc., a wholly-owned subsidiary of the Company ("Bécancour"), issued a convertible promissory note to AMG in exchange for a loan of US\$5.0 (the "December 2009 Note"). The maturity date of the December 2009 Note is January 3, 2011 and the outstanding principal amount bears interest at 12%, payable quarterly in arrears starting December 31, 2009. The December 2009 Note is an unsecured obligation of Bécancour, subordinated to existing secured indebtedness of Bécancour but senior to all other unsecured obligations, and guaranteed by the Company. The December 2009 Note may be settled, at AMG's option, in cash or common shares of the Company at \$1.58 per share, or a combination of cash and common shares, subject to customary anti-dilution adjustments, with the US dollar amount converted into Canadian dollars at the Bank of Canada noon exchange rate on the date of notice of conversion. The December 2009 Note contains financial reporting covenants, a negative debt covenant, and certain capital expenditure approval requirements. The entire principal amount of the December 2009 Note is currently still outstanding. As at December 31, 2009, the maximum number of common shares of the Company that may be acquired by AMG upon conversion of the December 2009 Note is 3,312,025 common shares (based on the noon exchange rate on December 31, 2009 of US\$1 = Cdn\$1.0466 as reported by the Bank of Canada).

#### **AMG Conversion Ltd.**

In March 2009 the Company and AMG Conversion Ltd. ("AMG Conversion"), a wholly-owned subsidiary of AMG, executed a Memorandum of Understanding whereby the parties agreed for a six-month interim period ending September 30, 2009, which was subsequently extended to June 30, 2010, to jointly develop the ingot production process to optimize the quality of the ingots and bricks produced with the Company's solar grade silicon, and to jointly explore the feasibility of AMG Conversion producing ingots

and bricks at the Bécancour ingoting facilities on an exclusive long-term tolling basis for and on behalf of the Company. See “Item 3 – Description of the Business – Silicon Group – Manufacturing – Solar Grade Silicon.”

#### **Sudamin S.A.**

In April 2009, the Company sold 5,000 metric tons of silicon metal finished goods inventory to Sudamin S.A. (“Sudamin”), a wholly-owned subsidiary of AMG, for a purchase price of \$10.4 million, which the Company has received in cash. A portion of such silicon inventory was to be sold by the Company to a European silicon metal customer over the balance of 2009. In connection with the inventory sale between the Company and Sudamin, Sudamin has assumed a portion of the volume commitments under the silicon metal supply contract with such customer for 2009.

In October 2009, the Company agreed to supply and deliver a certain volume of silicon metal in the fourth quarter of 2009 on behalf of Sudamin to one of the Company’s traditional long-term silicon metal customers. In exchange, Sudamin agreed to make cash advances to the Company during the fourth quarter of 2009 totalling \$6.8 million, less \$0.6 million in fees and other charges.

Subsequent to the year end, the Company agreed to supply and deliver an additional volume of silicon metal later in 2010 on behalf of Sudamin to one of the Company’s traditional long-term silicon metal customers. In exchange, Sudamin agreed to make cash advances to the Company during the fourth quarter of 2009 totalling \$5.0 million, less \$0.3 million in fees and other charges.

#### **ALD Vacuum Technologies GmbH**

During the year ended December 31, 2009, the Company purchased equipment spare parts for \$0.7 million from ALD Vacuum Technologies (“ALD”). Sales of solar grade silicon by the Company to ALD were \$0.3 million for the year ended December 31, 2009.

#### **GfE Fremat GmbH**

During the year ended December 31, 2009, the Company purchased \$0.6 million of ingots from GfE Fremat GmbH, a wholly-owned subsidiary of AMG. Sales of solar grade silicon by the Company to GfE Fremat GmbH were \$0.5 million for the year ended December 31, 2009.

#### **RW Silicium GmbH**

RW Silicium GmbH (“RW Silicium”) is a controlled subsidiary of AMG which produces and sells silicon metal in Germany. RW Silicium has been appointed as Bécancour’s representative for the purpose of REACH regulations applicable to Bécancour’s sales of silicon metal and related products into the European Union. During the year, Bécancour paid fees to RW Silicium of approximately \$0.1 million for services relating to its duties and responsibilities as Bécancour’s representative.

#### **ALD International LLC**

ALD International LLC (“ALD International”) is a subsidiary of Safeguard International Fund, L.P. (“Safeguard”), which is a shareholder of AMG. Prior to the transfer of Safeguard’s equity interests in the Company to AMG in March 2007 and the initial public offering of AMG in July 2007, Safeguard was the controlling shareholder of the Company.

In March 2006, Bécancour issued a convertible promissory note to ALD International in exchange for a US\$2.0 million. The note could be settled, at the noteholder's option, in cash or shares at \$0.40 per share, or a combination of cash and shares. In April 2007, the entire principal amount of such convertible promissory note was converted and 5,601,000 common shares of the Company were issued, based on a conversion rate of \$0.40 per share, to AMG.

In August 2006, Bécancour issued a convertible promissory note in exchange for US\$3.0 million, which note was held by ALD International (the "August 2006 Note"). The August 2006 Note could be settled, at the noteholder's option, in cash or common shares of the Company at \$0.40 per share, or a combination of cash and common shares. In July 2007, the noteholder exercised its right to convert US\$350,000 principal amount of the August 2006 Note and 913,500 common shares of the Company were issued pursuant to the terms thereof. In September 2009, the noteholder exercised its right to convert the remaining principal amount outstanding under the August 2006 Note, resulting in the issuance of 7,158,313 common shares of the Company on September 30, 2009. The Company also concurrently issued 480,211 common shares to ALD International in satisfaction of approximately US\$0.6 million in accrued interest on the August 2006 Note, at a price of \$1.41 per common share. The common shares issued to ALD International represented approximately 6.2% of the Company's issued and outstanding common shares.

In March 2007, Bécancour issued a convertible promissory note to ALD International in exchange for a loan of \$4.5 million (the "March 2007 Note"). The March 2007 Note could be settled, at the noteholder's option, in cash or common shares of the Company at \$0.42 per share, or a combination of cash and common shares. In December 2009, the entire principal amount of the March 2007 Note was converted and 10,714,286 common shares of the Company were issued on December 22, 2009. The Company also concurrently issued 315,537 common shares to ALD International in satisfaction of approximately \$0.4 million in accrued interest on the March 2007 Note, at a price of \$1.29 per common share. The common shares issued to ALD International represented approximately 7.4% of the Company's issued and outstanding common shares.

### **Safeguard International Fund L.P.**

During 2008, Safeguard billed the Company for various expenses including travel expenses and for business development expenses. These expenses totalled \$0.3 million. These payments were reimbursements of Safeguard's actual expenses incurred.

### **Fundo Wheels AS**

During 2008, the Company purchased \$1.7 million in finished goods inventory (aluminum wheels) from Fundo. Under this inventory purchase arrangement, Fundo agreed to resell such inventory on behalf of the Company to Fundo's existing OEM customers and to remit the proceeds from such sales immediately to the Company. AMG agreed with the Company to unconditionally pay any shortfall in the actual proceeds of sales, as compared to the expected proceeds of sales, for such inventory. Under the terms of the guarantee, AMG paid the Company the outstanding balance plus interest at 7%.

### **Executive Management**

Dr. Schimmelbusch is Chairman of the Board and Chief Executive Officer of the Company, as well as Chairman of the Management Board of AMG. Dr. Schimmelbusch is also a member of the executive committee of the general partner of Safeguard, which controls ALD International. Mr. Spector is a member of the Board of Directors of the Company and is also a member of the executive committee of

the general partner of Safeguard. Until October, 2009, Mr. Spector was also Vice Chairman of the Management Board of AMG.

Mr. Fenger was appointed President and Chief Operating Officer of the Company in April 2009. Prior to that date in 2009, the Company shared the remuneration of Mr. Fenger with AMG, and prior to 2009, the Company shared such cost with Allied Resource Corporation, of which Dr. Schimmelbusch is Chairman, in each case based on the relative amount of time spent by Mr. Fenger acting on behalf of these companies. Effective from April 2009, the Company is paying the full cost of remuneration of Mr. Fenger, which is paid through a subsidiary of Allied Resource Corporation.

#### **ITEM 12. TRANSFER AGENT AND REGISTRAR**

The Company's registrar and transfer agent is Computershare Investor Services Inc. ("Computershare"). The Company's share register is maintained by Computershare at its principal offices in Toronto, Ontario and in Montréal, Québec.

#### **ITEM 13. MATERIAL CONTRACTS**

Reference is made to the descriptions under "Item 11 – Interests of Management and Others in Material Transactions - AMG" above in respect of the Agency Agreement dated February 3, 2009.

Share and Asset Purchase Agreement dated April 8, 2009 (as amended on July 22, 2009) among the Company, Winca Tech Limited ("Winca"), Applied Magnesium International ("Applied Magnesium") and certain other parties. See "Item 4 – Description of the Business – Magnesium Group – Divestiture of the Company's Magnesium Business"

Term loan agreement dated July 10, 2009 ("Term Loan Agreement"), between Bécancour and Investissement Québec ("IQ"), providing for a two-year term loan (the "Term Loan") in the principal amount of \$25.0 million. The Term Loan is due July 15, 2011 and is interest-bearing at a variable rate of prime plus 9%, which is currently 11.25% per annum, with interest payable monthly. The Term Loan Agreement includes certain financial and other covenants in respect of Bécancour, including a minimum working capital ratio commencing December 31, 2009 and a maximum long-term debt to net equity ratio. The Term Loan is also secured by a guarantee from the Company and a charge upon Bécancour's assets, and is subordinated to the obligations of the Company to the Bank of America, N.A. under the Company's credit agreement dated April 15, 2005 (as amended). Subsequent to year end, IQ agreed to defer interest payments for six months starting February 1, 2010. Deferred interest will be added to the outstanding balance of the Term Loan and will be payable on August 31, 2011.

#### **ITEM 14. LEGAL PROCEEDINGS AND REGULATORY ACTIONS**

The Company and certain of its directors and officers, as well as certain third parties, have been named as defendants in a potential class action lawsuit filed in the Ontario Superior Court of Justice on May 14, 2009. This lawsuit was commenced by the plaintiff Ravinder Kumar Sharma on behalf of shareholders who acquired the Company's common shares between March 17, 2008 and November 11, 2008 and claims damages exceeding \$540 million (the "Sharma Action"). The plaintiff in the Sharma Action alleges that the Company and others made certain misrepresentations about the Company's solar grade silicon production process. These are unproven allegations, and the plaintiff will need to seek leave, or permission, of the court to proceed under the secondary market disclosure provisions of the Ontario Securities Act.

The Company and certain of its directors and officers, as well as AMG, were also named as defendants in a potential class action lawsuit filed in the Ontario Superior Court of Justice on June 11, 2009. This second lawsuit was commenced by the plaintiff Robert Gowan on behalf of shareholders who acquired the Company's common shares between December 19, 2007 and April 20, 2009 and made allegations similar to those in the Sharma Action (the "Gowan Action"). The Gowan Action was been stayed, or stopped, by order of the court. The court has also ordered that no other actions may be commenced in respect of Timminco securities purchased during the class period proposed in the Sharma Action. The Sharma Action is ongoing.

The Company has not recorded any liability related to these matters. The Company's directors and officers insurance policies provide for reimbursement of costs and expenses incurred in connection with these lawsuits, including legal and professional fees, as well as potential damages awarded, if any, subject to certain policy limits and deductibles. The Company intends to vigorously defend these allegations and the plaintiff's attempts to get court approval to proceed. However, no assurance can be given with respect to the ultimate outcome of such proceedings, and the amount of any damages awarded in such lawsuits could be substantial.

#### **ITEM 15. EXPERTS**

Ernst & Young LLP was appointed as the Company's external auditor on November 16, 2007, following the resignation of KPMG LLP, which had been the Company's external auditor prior to such date.

The financial statements of the Company for the year ended December 31, 2009 have been audited by Ernst & Young LLP which, to the Company's best knowledge and belief, is independent in accordance with the auditor's rules of professional conduct in the Province of Ontario.

#### **ITEM 16. AUDIT COMMITTEE, CHARTER AND AUDIT FEES**

##### **Audit Committee Charter**

The Audit Committee's charter was approved by the Board of Directors on March 17, 2008. A copy of such charter is attached as Schedule A to this Annual Information Form.

##### **Composition of the Audit Committee**

The Audit Committee is currently comprised of four members: Mickey M. Yaksich (Chair), John C. Fox, John W.W. Hick and Michael D. Winfield. Each current member of the Audit Committee is independent and financially literate, within the meaning of Multilateral Instrument 52-110 – *Audit Committees*, and was appointed to serve as member of the Audit Committee by the Board of Directors on May 15, 2009.

Prior to the Company's annual shareholders meeting on May 15, 2009, the Audit Committee was comprised of three members: Mickey M. Yaksich (Chair), John C. Fox and Michael D. Winfield.

##### **Relevant Education and Experience**

Mr. Yaksich is a partner and the Chief Operating Officer of McMillan LLP, a Toronto, Ontario based law firm. Mr. Yaksich practices corporate and income tax law with an emphasis on international

investments, financings, transaction structuring and transfer pricing. Mr. Yaksich, who has been a lawyer for over 30 years, received his Bachelor of Laws degree from the University of Toronto.

Mr. Fox is a Senior Managing Director of Perseus LLC, a merchant bank and private equity fund management company headquartered in Washington, D.C. Prior to joining Perseus in 2000, Mr. Fox was Chief Operating Officer of Ontario Power Generation Inc. (formerly Ontario Hydro), where he was responsible for generation, transmission and other matters for one of the largest electric utilities in North America. Mr. Fox is a board member for the following Perseus portfolio companies: NxtPhase T&D Corporation, BPL Global Corporation, Puralube, Inc. and Soft Switching Technologies Corporation. Mr. Fox holds a B.S. in Civil Engineering from the University of Toronto and an M.B.A. from McMaster University in Hamilton, Ontario.

Mr. Hick is President and Chief Executive Officer and a director of Medoro Resources Ltd, a gold exploration, development and production company. From December 2004 to January 2006 Mr. Hick was the Chief Executive Officer and then Vice Chairman of Rio Narcea Gold Mines, Ltd. From December 2001, he was President and Chief Executive Officer of Defiance Mining Corp. and its predecessor company, Geomaque Explorations Ltd., until it was acquired by Rio Narcea in 2004. Mr. Hick is an independent director of each of the following public companies: Aeroquest International Ltd., First Uranium Corporation, Carpathian Gold Inc., Hudson Resources Inc. and Marengo Mining Ltd. He received his Bachelor of Laws degree from the University of Ottawa in 1976 and was called to the Bar of Ontario in 1978.

Mr. Winfield was President and Chief Executive Officer of UOP, LLC until his retirement in 2001. He continued to serve on its Board of Managers until 2004. He is a director of Landauer Corp., where he served as Chairman, and was a member of the Governance and Compensation Committee, and currently serves on the Audit and Technology Committee. He also served as a director of Chicago Bridge and Iron Company from 2001 to 2004, and was a member of its Audit Committee. Mr. Winfield earned a Bachelor of Science in Chemical Engineering from Ohio State University, where he is a distinguished alumnus and a member of the College of Engineering Advisory Board. He also has a Master of Business Administration degree from the Executive Program at the University of Chicago.

### **Pre-Approval Policies and Procedures**

The Audit Committee pre-approves all audit services and permitted non-audit services to be provided by the Company's external auditors from time to time, as well as the fees for such services. However, the Audit Committee need not approve in advance any non-audit services where: (i) the aggregate amount of all such non-audit services provided constitutes not more than 5% of the total amount of revenues paid to the external auditor during the fiscal year in which the non-audit services are provided; (ii) at the time of the engagement, the Company did not recognize such services to be non-audit services; and (iii) such services are promptly brought to the attention of the Audit Committee and approved, prior to the completion of the audit, by the Audit Committee or by one or more members of the Audit Committee to whom authority to grant such approvals has been delegated. The Audit Committee may delegate the pre-approval function to its Chair, so that any issues arising between meetings of the Audit Committee may be handled appropriately and on a timely basis. The Chair must fully report all action taken under this delegated authority at the next scheduled Audit Committee meeting.

## External Auditor Service Fees

Ernst & Young LLP, who are the Company's external auditors, billed the following aggregate amounts of fees for the following services provided in each of the years ended December 31, 2008 and December 31, 2009:

| <u>Type of Fees</u>               | <u>2008</u> | <u>2009</u> |
|-----------------------------------|-------------|-------------|
| Audit Fees <sup>(1)</sup>         | \$992,000   | \$1,624,137 |
| Audit-Related Fees <sup>(2)</sup> | \$26,000    | \$9,000     |
| Tax Fees <sup>(3)</sup>           | \$Nil       | \$Nil       |
| All Other Fees <sup>(4)</sup>     | \$400,000   | \$268,972   |

### Notes:

- (1) This category consists of fees for services performed in order to comply with generally accepted auditing standards (GAAS). In some cases, these may include an allocation of fees for tax services or accounting consultations, to the extent such services were necessary to comply with GAAS.
- (2) This category consists of fees paid for services performed in respect of assurance and related services, (e.g. due diligence and accounting consultations) in connection with strategic transactions, attest services not required by statute or regulation, and consultations regarding financial accounting and reporting standards.
- (3) This category consists of fees paid for services performed by the external auditor's tax professionals, except those services required to comply with GAAS. Such services included tax compliance, tax planning and tax advice.
- (4) This category consists of fees paid for all other services performed by our external auditor that are not covered by any of the other categories.

## **ITEM 17. ADDITIONAL INFORMATION**

Additional information about the Company, including the documents referenced below, may be found on SEDAR at [www.sedar.com](http://www.sedar.com).

Additional information, including directors' and officers' remuneration, options to purchase securities and interests of insiders in material transactions, is contained in the Company's management information circular for the most recent annual meeting of shareholders that involved the election of directors. Additional financial information is provided in the Company's audited consolidated financial statements and management's discussion and analysis for the year ended December 31, 2009, which are included in the Company's annual report to shareholders.

Copies of this Annual Information Form, together with any document incorporated by reference in this Annual Information Form and the management information circular and annual report referenced above, as well as any of the Company's interim financial statements for the periods after December 31, 2009, are available, upon request, from the General Counsel and Corporate Secretary at Sun Life Financial Tower, 150 King Street West, Suite 2401, Toronto, Ontario, Canada M5H 1J9. When the Company's securities are in the course of distribution pursuant to a short form prospectus or a preliminary short form

prospectus has been filed in respect of a distribution of the Company's securities, the Company will provide one copy of each of the foregoing documents (as well as any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus). At any other time, the Company will provide one copy of any of the foregoing documents and may require payment of a reasonable charge for such copy if the request is made by a person who is not one of the Company's security holders.

## Schedule A

### TIMMINCO LIMITED

#### AUDIT COMMITTEE CHARTER

##### **I. PURPOSE**

The Board of Directors of Timminco Limited (the “Corporation”) has established the Audit Committee (the “Committee”) to augment and improve financial disclosure and ensure legal compliance by the Corporation with respect to financial reporting and related matters. The Committee shall assist the Board of Directors in fulfilling its corporate governance and oversight responsibilities with respect to accounting and financial reporting processes, internal financial controls, financial risk management systems and internal and external audit functions. In general, the Committee will:

- (i) review quarterly and annual financial statements, prior to their review and approval by the Board of Directors, and satisfy itself with the fairness and consistency of the auditing practices used;
- (ii) review and approve the annual financial statements of the pension funds of the Corporation and its material subsidiaries;
- (iii) recommend to the Board of Directors the selection of the Corporation’s external auditors (which must be in good standing with the Canadian Public Accountability Board) to be nominated for appointment by the shareholders, as well as any external auditor required to perform other audit, review or attest services, and the compensation of all such auditors;
- (iv) ensure the integrity of the audit process, including monitoring audits to ensure sufficient managerial independence and reporting as well as the external auditor’s qualifications and independence;
- (v) pre-approve all audit services and permitted non-audit services to be provided to the Corporation by its external auditors;
- (vi) serve as liaison between the external auditors and the Corporation;
- (vii) obtain assurances from management with respect to relationships with regulators, and the accuracy and timeliness of filings with regulatory authorities; and
- (viii) perform any other duty as may be assigned by the Board from time to time or as may be required by the *Canada Business Corporations Act*, the *Securities Act* (Ontario) and all regulations, policies, rules and instruments under applicable securities laws, and any other applicable legislation.

## **II. RESPONSIBILITIES**

The Committee has the following specific responsibilities:

### **1. Financial Reporting - General**

The Committee shall periodically review and discuss with management and the external auditor, as appropriate, the following:

- (a) the Corporation's financial disclosure control policies and procedures as well as any impact these may have on the internal control over financial reporting;
- (b) the Corporation's internal financial control system at least annually to ensure that it is current and effective;
- (c) significant financial reporting issues;
- (d) any correspondence with regulators or published reports which raise material issues that may have a significant effect on the Corporation's financial statements;
- (e) any reports prepared by the external auditors and provided to the Committee relating to significant financial reporting issues including the Corporation's selection, application and disclosure of accounting principles and the effects, if any, on the Corporation's financial statements;
- (f) any recommendation made by the external auditors in the course of reviewing the Corporation's financial reporting or accounting processes;
- (g) changes in accounting policies, audit plan and control systems;
- (h) practices and procedures adopted by management to ensure continuing compliance with financial disclosure, audit and filing requirements; and
- (i) any other matter pertaining to auditing standards, laws or regulations the Committee determines necessary for discussion or review.

### **2. Preparation and Release of Financial Information**

With respect to preparing and releasing financial information, the specific responsibilities of the Committee include:

- (a) reviewing the selection of accounting policies and audit plan for effectiveness;
- (b) reviewing and understanding the results of the external, independent audit;
- (c) satisfying itself as to the fairness, consistency and timeliness of the annual and periodic financial statements;

- (d) reviewing, from time to time, with the Chief Executive Officer and Chief Financial Officer of the Corporation their certificates under Multilateral Instrument 52-109 or any other applicable regulatory requirement;
- (e) presenting the approved financial statements to the Board of Directors for final approval;
- (f) reviewing and recommending to the Board of Directors for approval prior to public disclosure: the Corporation's annual and quarterly financial statements (whether stand alone or included in a prospectus or other offering document) and any related management's discussion and analysis (MD&A); and all earnings press releases
- (g) reviewing portions of the Corporation's annual information form (AIF) and management information circular for any annual or special meeting of shareholders containing information within the Committee's mandate;
- (h) reviewing all other press releases and public disclosures that contain material financial information or future earnings guidance regarding the Corporation, including the type and presentation of information to be included in such press releases or other disclosures (in particular, the use of "pro forma" or "adjusted" non-GAAP information); and
- (i) reviewing all material forward-looking financial information and future-oriented financial information publicly disclosed by the Corporation in filings with regulatory authorities, and the Corporation's policy for updating such information.

### **3. Internal Audit**

The Committee, in consultation with the Corporation's management, has the authority to engage, or shall delegate the authority to management to engage, the services of an accountant or accounting firm, other than the Corporation's external auditors, to perform supplemental reviews, special projects or other internal audit functions as necessary from time to time.

### **4. External Audits - Appointment and Authorization of Services**

The Committee has the authority to retain and oversee the activities of the external auditors, including the resolution of disagreements between the Corporation's management and the external auditor with respect to financial reporting. The Committee is authorized to determine the compensation, fees and all other terms of the external auditor's engagement, and to terminate the services of the external auditors, as the Committee may deem necessary or appropriate.

All external auditors shall report directly to the Committee.

At least annually, the Committee shall review and pre-approve the performance of all audit and lawfully permitted non-audit services, as well as the fees for such services. The Committee may delegate this function to the Committee's Chair so that, in the event of an issue arising between meetings of the Committee, such issues may be handled appropriately;

provided, however, that the Chair shall fully report all action taken pursuant to this delegated authority at the next ensuing Committee meeting. The Committee need not approve in advance any non-audit services where:

- (a) the aggregate amount of all such non-audit services provided to the Corporation constitutes not more than 5% of the total amount of revenues paid by the Corporation to the external auditor during the fiscal year in which the non-audit services are provided;
- (b) such services were not recognized by the Corporation at the time of the engagement to be non-audit services; and
- (c) such services are promptly brought to the attention of the Committee and approved prior to the completion of the audit by the Committee or by one or more members of the Committee to whom authority to grant such approvals has been delegated by the Committee.

The Committee shall meet with external auditors prior to the audit to confirm the planning and staffing of the audit.

#### **5. Oversight of Independence and Qualifications of External Auditors**

In order to ensure the independence of the external auditors, at least annually the Committee shall review the relationship between the auditors and the Corporation. Additionally, the Committee shall review all professional services provided by the external auditors to the Corporation for propriety. The Committee shall provide a report of its findings to the Board of Directors, including recommendations for action to ensure the continued independence of the external auditors.

As part of the review process, the Committee shall obtain a report by the external auditors describing:

- (a) the firm's internal quality control procedures; and
- (b) any material issues raised by the most recent internal quality-control review or the audit firm or by any other governmental or professional authorities or any private sector regulatory board within the preceding five years.

The Committee is responsible for ensuring compliance by the external auditors with independence requirements and shall obtain, at least annually, from the external auditors their certificate as to their independence from the Corporation.

### **III. OTHER POWERS AND RESPONSIBILITIES**

#### **1. Complaint Procedures**

The Committee is responsible for establishing and administering adequate procedures by which any concerns or complaints about any internal accounting and controls or any internal or external auditing issues or disagreements are received and resolved. These procedures

must allow for confidential and anonymous submissions by employees of the Corporation of concerns regarding questionable auditing or accounting matters.

The Committee shall ensure that all documents and records related to any complaint and investigation (where applicable) are retained for a period of five years, and that no person shall destroy any corporate or audit related records that may be subject to or related to an investigation by the Corporation or any federal, state or regulatory body.

The Committee shall annually assess the adequacy of these procedures.

## **2. Charter and Committee Review**

The Committee shall review and assess the adequacy of the Committee Charter annually and report to the Board of Directors the results of such assessment. Any recommendations are to be put before the Board of Directors for approval.

The Committee shall also perform an annual review of the Committee's performance and report to the Board of Directors on the results of such evaluation.

## **3. Examinations and Investigations**

The Committee may conduct such examinations, investigations or inquiries, and/or engage special accounting, legal or other advisors the Committee deems necessary.

## **4. Hiring Policies**

The Committee shall review and approve the Corporation's hiring policies regarding employees and former employees of the current and former external auditors.

## **5. Access**

In discharging its responsibilities, the Committee shall have full and direct access to all books, records, facilities and personnel of the Corporation.

# **IV. MEMBERSHIP AND ORGANIZATION OF COMMITTEE**

## **1. Qualifications**

The Committee is to be comprised of not less than three members, each of whom must be a director of the Corporation, and:

- (a) independent; and
- (b) financially literate (i.e., have 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 financial statements of the Corporation),,

in each case as determined in accordance with, and subject to available exemptions under, applicable laws.

**2. Chair**

The Board of Directors shall appoint one Committee member to serve as the Chair of the Committee.

**V. CONDUCT OF MEETINGS**

**1. Frequency**

The Committee shall meet at least four times per year, and at least once per calendar quarter. Additional meetings shall be scheduled as required or as requested by the Corporation.

**2. Quorum**

A majority of the Committee members, present in person or by video or telephone conference facilities, shall constitute quorum for the transaction of business.

**3. Notice**

The auditors are entitled to receive notice of every meeting of the Committee and submit agenda items as well as attend any meeting should they so choose.

**4. Non Committee Member Attendees**

The Committee may request that any director, officer or employee of the Corporation, or any other person from whom the Committee would like advice or counsel, attend any meeting to provide such information or guidance.

**5. Minutes**

A Committee member or the Corporate Secretary of the Corporation shall keep written minutes of the Committee meetings. The minutes are to be maintained with the books and records of the Corporation.

**6. Delegation of Authority**

The Committee has the authority to delegate to one or more of its members where appropriate except where otherwise prohibited by law or regulation.

Approved by the Board of Directors on March 17, 2008.