

IN THE MATTER OF A HEARING UNDER SECTIONS 179 AND 198 OF THE  
SECURITIES ACT, R.S.A. 2000, C S.4 AND SECTIONS 104 AND 127 OF THE  
SECURITIES ACT, R.S.O. 1990, C S.5

IN THE MATTER OF  
MANGROVE PARTNERS

-and-

IN THE MATTER OF  
TRANSALTA CORPORATION

AMENDED APPLICATION  
OF MANGROVE PARTNERS

TAKE NOTICE that pursuant to sections 179 and 198 of the *Securities Act*, R.S.A. 2000, c S4 (the “ASA”) and sections 104 and 127 of the *Securities Act*, R.S.O. 1990, c S5 (the “OSA”) Mangrove Partners (“Mangrove”) applies for a joint hearing of the Alberta Securities Commission (the “ASC”) and the Ontario Securities Commission (the “OSC”) in relation to TransAlta’s 2019 annual and special meeting of shareholders (the “2019 ASM”) and a proposed \$750 million transaction (the “**Brookfield Transaction**”) between TransAlta Corporation (“TransAlta”) and Brookfield BRP Holdings (Canada) Inc. (“**Brookfield**”) pursuant to the terms of an Investment Agreement, dated March 22, 2019, between TransAlta and Brookfield (the “**Investment Agreement**”).

**PART I - ORDER SOUGHT:**

1. Mangrove applies for:
  - (a) an order, if required, granting Mangrove leave to commence this application;
  - (b) an order that the application be heard in a joint hearing by the Commissions;

- (c) an order cease trading any securities of TransAlta issued, or to be issued, under or pursuant to the Investment Agreement (as defined below), until such time as the following conditions have been satisfied:
- (i) TransAlta submits the Brookfield Transaction and the Investment Agreement to a vote (the “**Shareholder Vote**”) of disinterested holders of TransAlta common shares (the “**Shares**”), excluding Brookfield, any joint actor of Brookfield in respect of the Brookfield Transaction, and any other holder of Shares having a material interest in the Brookfield Transaction, which Shareholder Vote may be held either at the 2019 ASM or another meeting called for the purpose of the Shareholder Vote;
  - (ii) TransAlta provides the holders of Shares with full and accurate disclosure at least 30 days prior to the Shareholder Vote of the following information, and analysis of the implications of that information for purposes of the Brookfield Transaction and the Shareholder Vote:
    - (A) a clear articulation of how management and the Board determined to explore a potential transaction involving a sale of an interest in the Alberta hydroelectric generation assets that are the subject of the Brookfield Transaction (the “**Hydro Assets**”);
    - (B) a description of the background to the Brookfield Transaction, including a detailed chronology of TransAlta’s contacts with Brookfield relating to the Hydro Assets, details of when TransAlta first approached Brookfield, and details of all previous contacts with respect to a possible transaction;
    - (C) a description of the involvement of RBC Global Asset Management Inc. (“**RBC GAM**”) in negotiations leading up to the Brookfield Transaction, including when TransAlta approached RBC GAM, what confidential information regarding the Brookfield Transaction

and other undisclosed information of TransAlta was shared with RBC GAM, and what considerations were given by the Board to whether sharing such information was in the necessary course of business under applicable securities law;

- (D) a description of other discussions with Brookfield regarding other potential transactions involving TransAlta assets or Shares and the particulars of such potential transactions;
- (E) a description of any communications received in any form by TransAlta in the prior 12 months from Brookfield or other shareholders regarding changes to the Board;
- (F) disclosure of any *bona fide* prior offers received by TransAlta during the 24-month period prior to the date of the circular for the (i) the acquisition of an interest in Hydro Assets, (ii) the acquisition of 20% or more of the outstanding Shares or (iii) the acquisition of any material interest in any other assets of TransAlta, including any portion of its interest TransAlta Renewables;
- (G) a detailed description of the mandate of the special committee of the Board established on March 9, 2019 (the “**Special Committee**”);
- (H) discussion of the review and approval process adopted by the Board of Directors of TransAlta (the “**Board**”) and the Special Committee with respect to the Brookfield Transaction;
- (I) a discussion of the basis on which the Board decided to finalize and enter into the Investment Agreement before the 2019 ASM or the mailing of the meeting circular;
- (J) a discussion of the reasons that the Board determined to obtain an irrevocable voting commitment from RBC GAM after the Investment Agreement was entered into;

- (K) a discussion of what prejudice, if any, TransAlta would suffer if the negotiation of the Brookfield Transaction had been deferred until after 2019 ASM;
- (L) a detailed description of CIBC's engagement, including details on when CIBC was initially retained, how TransAlta came to retain it, whether other financial advisors were considered, the changes, if any, in the scope and terms of the retainer over time, and the specific fees CIBC is being paid for its work;
- (M) a detailed description of the "Material Financial Terms" of the Brookfield Transaction reviewed by CIBC and on which CIBC gave its view to the Board;
- (N) a detailed description of the March 11, 2019 presentation provided by CIBC to the Board regarding its initial analysis concerning a potential transaction with Brookfield and certain alternatives thereto;
- (O) discussion of any advice given by CIBC on whether the Brookfield Transaction was of a type or nature for which CIBC would be unable to provide a fairness opinion, and the Board's decision not to obtain a fairness opinion;
- (P) inclusion in the circular of all written reports received by the Board and any committee of the Board with respect to the financial advice received relating to the Brookfield Transaction;
- (Q) details regarding the comparable transactions involving sales of interests in hydroelectric generation assets considered by the Board and supporting the Board's acceptance of a 13X EBITDA multiple for the Hydro Assets;

- (R) a description of the voting covenants under the Investment Agreement requiring Brookfield to vote Shares owned by it in accordance with all recommendations of the Board and the impact of such voting covenant on control of TransAlta during the 36 month standstill period under the Investment Agreement, including after giving effect to increases of ownership of Shares by Brookfield to 9% and 19.9% of the outstanding Shares, and including the impact on the effectiveness of TransAlta's majority voting policy;
- (S) a comparison of Brookfield's financial interest in Shares relative to its interest in the securities to be issued pursuant to the Investment Agreement, including at 4.9%, 9% and 19.9% of the outstanding Shares, assuming current trading prices for the Shares as well as at \$14 and \$17 per share;
- (iii) the Brookfield Transaction and the Investment Agreement receive the approval of a simple majority of the Shares voted in the Shareholder Vote;
- (iv) TransAlta postpones the 2019 ASM to a date no earlier than June 1, 2019;
- (v) TransAlta issues a new circular in respect of the 2019 ASM;
- (vi) if the Shareholder Vote is not held at the 2019 ASM, TransAlta provides the information required under paragraph (ii) above in the management proxy circular for the 2019 ASM;
- (vii) Brookfield undertakes not to vote any of the Shares owned by it, or any entity affiliated or associated with it, on the election of directors at the 2019 ASM; and
- (viii) TransAlta releases RBC GAM and any other shareholders who may have provided voting commitments from all voting commitments for the 2019 ASM and any meeting of shareholders called to approve the Brookfield Transaction;

- (d) an interim order, if necessary, requiring TransAlta to postpone the 2019 ASM to a date to be set by the Commissions to allow this matter to proceed to a hearing on a date to be set by the Commissions;
- (e) an order by the OSC cease trading the issuance by TransAlta of any Series 1 First Preferred Shares (the “Subject Preferred Shares”) of TransAlta pursuant the Investment Agreement, until such time as TransAlta has either:
  - (i) obtained a receipt for a final prospectus for the issuance of the Subject Preferred Shares; or
  - (ii) TransAlta has obtained minority approval for the issuance of the Subject Preferred shares in accordance with Rule 56-501 –Restricted Shares;
- (f) an order by the OSC that the prospectus exemptions under Ontario securities law do not apply to the issuance of the securities issued, or to be issued, under or pursuant to the Investment Agreement in Ontario; and
- (g) such further and other relief as counsel may advise and the Commissions may deem appropriate.

## **PART II - GROUNDS**

### **TransAlta Corporation**

2. TransAlta is a corporation incorporated under the *Canada Business Corporations Act*, and headquartered in Calgary, Alberta. Its common shares are listed for trading on the Toronto and New York Stock Exchanges. The Alberta Securities Commission is its principal regulator.

3. TransAlta owns and operates a fleet of power generation assets. This includes significant hydroelectric generation assets (the “**Hydro Assets**”) in Alberta, which represent TransAlta’s most attractive and highly valued assets, and which account for 90% of the corporation’s hydroelectric generation. In the merchant power business, hydroelectric generation assets consistently garner amongst the highest valuations for generation assets.

### **Mangrove, and its Interest in TransAlta**

4. Mangrove is a Cayman Islands exempted company. It provides investment management services on a discretionary basis to certain privately offered pooled investment vehicles intended for sophisticated individual and institutional investors. Mangrove's investment strategy concentrates on systematically underfollowed investments and inefficient markets.

5. In 2018, Mangrove identified TransAlta as a potential investment, noting that the value of the Hydro Assets was likely worth more than the entire market capitalization of the company. Mangrove began purchasing shares of TransAlta on June 28, 2018, through an investment fund managed by Mangrove.

### **Mangrove Initiates Discussions with TransAlta**

6. In January 2019, Mangrove advised TransAlta's CEO that it was a TransAlta shareholder. On January 18, 2019, Mangrove filed a Schedule 13G beneficial ownership report with the United States Securities and Exchange Commission ("SEC") disclosing that it owned a 9.4% interest in TransAlta's common shares. TransAlta acknowledged the Schedule 13G filing and suggested that Mangrove meet with the CEO of TransAlta and the Chair of the Board in February 2019.

7. Mangrove met with TransAlta executives in February 2019 to discuss TransAlta's strategy. It also had meetings with other TransAlta shareholders.

### **The Cooperation Agreement with Bluescape**

8. On March 6, 2019, Mangrove entered into a Cooperation Agreement with Bluescape Energy Partners LLP, Cove Key Bluescape Holdings LP, and several other associated entities (collectively, "Bluescape"). As a result of the Cooperation Agreement, Mangrove and Bluescape became joint actors with respect to their investment in TransAlta (collectively the "Group").

### **Further Meetings with TransAlta**

9. On March 7, 2019, representatives of Mangrove and Bluescape met with TransAlta's CEO, CFO and Manager, Investor Relations. Mangrove had advised TransAlta's CEO that it had formed the Group with Bluescape in advance of the meeting. At the meeting, Mangrove and Bluescape

expressed the view that TransAlta would benefit from adding new directors to the Board, and discussed Bluescape's track record for positive change.

10. At the meeting, Mangrove and Bluescape also advised TransAlta that they had entered into the Cooperation Agreement, and that as a result they were required to file a report on Schedule 13D with the SEC no later than March 15, 2019. Mangrove and Bluescape stated that they would not file their Schedule 13D or the Cooperation Agreement any earlier than required by SEC rules, in order that the parties could continue private discussions regarding potential enhancements to the Board for the benefit of the company and all TransAlta shareholders.

11. TransAlta and Mangrove continued to communicate with each other over the days that followed. During the course of those communications, Mangrove indicated that it was in the process of preparing its slate of directors for the 2019 ASM which was then scheduled to take place on April 16, 2019.

#### **TransAlta Postpones the 2019 ASM**

12. On March 14, 2019, TransAlta announced that it was postponing the 2019 ASM to April 26, 2019.

#### **Mangrove Files a Schedule 13D Report**

13. On March 15, 2019, the Group filed a beneficial ownership report on Schedule 13D with the SEC disclosing that collectively the Group members beneficially owned 28,534,296 common shares of TransAlta, representing 10.0% of the issued and outstanding shares. The report also disclosed that members of the Group had spoken to, and intended to continue to speak with, representatives of the Board and management of TransAlta to discuss enhancing shareholder value and seeking Board representation. The Group issued a press release announcing that it had filed the report. Markets reacted favourably to the disclosure of Mangrove and Bluescape's interest in TransAlta.

#### **Continued Discussions with TransAlta**

14. Discussions between the Group and TransAlta continued through to Friday, March 22, 2019. In light of their inability to reach an acceptable arrangement with TransAlta for the addition



of new directors to the Board, the Group prepared to submit a notice of intention to nominate directors at the 2019 ASM. As TransAlta had previously announced that the deadline for the submission of a notice of intention to nominate directors was March 25, 2019, Mangrove and Bluescape planned to submit a notice prior to market open on that day.

### **The Investment Agreement, and details of the Brookfield Transaction**

15. At 7:00 a.m. on Monday, March 25, 2019 TransAlta issued a press release disclosing that it had entered into the Investment Agreement with Brookfield on Friday, March 22, 2019. At the time, Brookfield held just under 5% of TransAlta's Shares. The transaction revolves around the Hydro Assets, which consist of 813 MW of generation capacity, approximately 90% of TransAlta's total hydroelectric generation portfolio.

16. Brookfield's investment consists of two tranches of TransAlta securities, \$350 million in the form of Exchangeable Debentures, and \$400 million in the form of Redeemable Preferred Shares (together, the "Exchangeable Securities"). The Exchangeable Securities will both have an annual coupon rate of 7.0% and will be convertible at Brookfield's option into an equity interest in an entity to be created to hold the Hydro Assets after December 31, 2024.

17. The Investment Agreement also requires Brookfield to buy additional common shares of TransAlta in the market in order to increase Brookfield's ownership to at least 9% of the issued and outstanding common shares, and allows Brookfield to increase its ownership to a maximum of 19.9%. Brookfield is not required to purchase shares at prices above \$10 per share. Brookfield's top-up option (described below) is conditional on it owning at least 8.5% of the issued and outstanding shares of TransAlta, so there is a significant incentive to acquire that minimum share ownership.

18. Brookfield has received a \$7.5 million (1%) "structuring fee" and will receive a further \$15 million (2%) "commitment fee" on closing of the first \$350 million tranche of its investment. In addition, the Investment Agreement provides for the appointment of two Brookfield nominees to the Board as long as Brookfield owns all of the Exchangeable Securities, and for the formation of an operating committee with respect to the Hydro Assets for which Brookfield will receive \$1.5 million annually in return for the participation of two Brookfield employees on the committee.

19. The Investment Agreement provides that the conversion of the Exchangeable Securities will be determined based on a valuation of the Hydro Assets at the time of conversion equal to a 13x multiple of the average annual EBITDA for the Hydro Assets. In its announcement of the Brookfield Transaction, TransAlta estimates that on conversion Brookfield would acquire an approximately 30% to 35% interest in the Hydro Assets. The Investment Agreement allows Brookfield to increase this ownership interest. It gives Brookfield an option through December 2028 to top-up its ownership in the Hydro Assets to as much as 49% at the same EBITDA multiple, exercisable if Brookfield owns at least 8.5% of the issued and outstanding common shares of TransAlta.

20. The Investment Agreement includes a provision that allows the Board to postpone the closing of the Brookfield Transaction to 30 days after the 2019 ASM, and to terminate the Brookfield Transaction without liability, provided TransAlta pays the \$15 million commitment fee to Brookfield (the “Go-Shop Option”). The Go-Shop Option is only available if at least two non-management nominees are elected to the Board at the 2019 ASM. Otherwise, the Go-Shop Option is unavailable, and TransAlta will be bound to close the first \$350 million tranche of the transaction within three business days of the 2019 ASM.

21. The Go-Shop Option ceases to be available if a shareholder is unsuccessful in winning a proxy contest to elect two directors. The Investment Agreement does not contain an exclusivity or non-solicitation provision, such that the Board is free, even at this time, to canvass the market for alternative transactions. The Board could also receive and respond to unsolicited proposals that may be superior to the Brookfield Transaction, even if incompatible with the terms of the Brookfield Transaction. The Board has indicated that it did not, and does not intend to, do so.

#### **The Press Release and RBC Solicitation**

22. In its March 25, 2019 press release announcing the Investment Agreement (which agreement appears to have been substantially negotiated and executed in 48 hours), TransAlta stated that RBC GAM had agreed to support TransAlta’s management’s proposed director nominees.

23. RBC GAM is headquartered in Toronto, Ontario. RBC GAM is the largest shareholder of TransAlta, owning 12.4% of the outstanding Shares.

24. The number of shares represented at TransAlta's annual meetings has typically averaged just 46% of the outstanding Shares. RBC GAM's binding commitment to support management's slate, together with the additional 4.9% of outstanding Shares held by Brookfield that management will have the right vote, could amount to an insurmountable hurdle for any shareholder proposing a rival slate of nominees.

25. Moreover, RBC GAM's commitment to support management's nominees may well preclude the election of two non-management nominees, resulting in the loss of the Go-Shop Option. Based on disclosure of the terms of the RBC GAM voting agreement in TransAlta's Circular (as defined below), RBC GAM does not have the ability to support non-management nominees in order to preserve the Go-Shop Option in the event a superior transaction emerges before the 2019 ASM.

26. When TransAlta secured RBC GAM's voting agreement, TransAlta had not filed its information circular for the 2019 ASM; notice of the meeting had not been made available; shareholders had no information about the full composition of the management slate; and the extensive information TransAlta is required by law to provide to shareholders before soliciting their proxies (including corporate governance disclosure and executive compensation disclosure) had not been published.

27. TransAlta's request of RBC GAM to agree to vote in favour of management's nominees was in effect a request to execute the management proxy and not execute a form of proxy solicited by Mangrove or any other shareholder, therefore violate the proxy solicitation rules set out in the OSA and the *Canada Business Corporations Act*.

#### **The Information Circular for the 2019 ASM**

28. On April 1, 2019, TransAlta filed its Management Information Circular for the 2019 ASM (the "**Circular**"), issued a press release announcing the Circular, and posted an updated investor presentation to its website. In these public documents, and other elements of its PR campaign,

TransAlta has attacked the Group, and made the Brookfield Transaction the focus of this board election. It is unsurprisingly urging shareholders to support management's nominees.

29. The Circular and TransAlta's other disclosures provide no business objective for negotiating the Brookfield Transaction on a compressed timeline, or for announcing it with material portions of the transaction unsettled and captured only in term sheets.

30. In the Circular and TransAlta's other disclosures, TransAlta has indicated to its shareholders that if they fail to support management's nominees to the Board, the Brookfield Transaction will be terminated, upended or imperiled.

31. TransAlta's counsel has effectively conceded that by introducing the Go-Shop Option in the Investment Agreement, TransAlta has turned the 2019 ASM into a "referendum" on the Brookfield Transaction, even though the Board has not explicitly put the Brookfield Transaction to a vote of Shareholders.

32. Instead TransAlta seeks to coerce Shareholders into supporting the election of management's nominees at the 2019 ASM by threatening Shareholders that a vote against management would terminate, upend or imperil the Brookfield Transaction. In this respect alone, the Brookfield Transaction is an abusive defensive tactic to protect Board control in the face of a proxy contest.

33. TransAlta's counsel has conceded that due to the centrality of the Brookfield Transaction to the board election at the 2019 ASM, Shareholders require robust disclosure relating to the Brookfield Transaction. However, the Circular falls far short of providing the requisite level of disclosure.

34. The Circular contains numerous disclosures and omissions that shed further light on the Brookfield Transaction. Among the many troubling disclosures and omissions:

- (a) the same Special Committee was responsible for engagement with the Group, shareholders and evaluation of the Brookfield Transaction;

- (b) the Board approved the Brookfield Transaction on March 22, 2019, the same day that the Board resolved to reject a proposal from the Group regarding Board representation;
- (c) the Board did not require any material amount of time following its receipt of the recommendation of the Special Committee on March 22, 2019 before unanimously approving the Brookfield Transaction and rejecting the Group's proposal for Board representation;
- (d) the Circular did not disclose the date on which the Special Committee was created or its mandate;
- (e) the Circular did not disclose when TransAlta had engaged CIBC as financial advisor or its mandate;
- (f) the Board did not obtain a fairness opinion while failing to provide full particulars of why that was not done;
- (g) the Circular did not disclose a detailed timeline, or even the date of commencement of negotiations with Brookfield, nor did it describe the nature of the modifications or the principal points of negotiation with Brookfield;
- (h) CIBC did not contact other potential investors on behalf of TransAlta; and
- (i) the Circular states that Shareholders are not being asked to vote on the Brookfield Transaction, notwithstanding TransAlta's submission to the Commissions that the election of directors is a "referendum" on the transaction.

35. The Circular states that RBC GAM's voting commitment to vote the 12.4% of the Shares it holds in favour of management's nominees was obtained through execution of a voting and support agreement with TransAlta on March 24, 2019. (the "Support Agreement"). The description of the Support Agreement in the Circular describes a comprehensive agreement requiring RBC GAM to cause the shares over which it has voting control to be voted in favour of management nominees.

36. The Support Agreement terminates on conclusion of the 2019 ASM, unless terminated earlier by mutual consent. The irrevocable nature of the Support Agreement means that RBC GAM cannot vote to support non-management nominees, which is necessary for the Go-Shop Option to be available to TransAlta.

### **The Brookfield Transaction is Clearly Abusive and the Commissions Must Intervene**

37. The Commissions both have a broad public interest jurisdiction to intervene and make orders to remedy such behaviour where the public interest requires.

38. As set out below, the Brookfield Transaction is clearly abusive of the shareholders of TransAlta, as well as the capital markets, and falls squarely within the public interest jurisdiction of the Commissions. The public interest is squarely engaged. The Commissions must exercise their jurisdiction to remedy the abuse and protect the integrity of Canada's capital markets.

39. Moreover, the Investment Agreement contains a number of features designed to entrench TransAlta's management, and act in a prophylactic fashion in relation to any potential takeover bid that Brookfield might launch. This was done in the face of an imminent proxy contest that the Board knew it was facing. The apparent entrenchment objectives motivating the Brookfield Transaction, its accelerated negotiation, the lack of any fairness opinion or disclosure of the financial advice received by the Board, and the effect of the Investment Agreement in giving TransAlta management control over a significant block of common shares are clearly abusive of TransAlta shareholders and undermine investor confidence in Canadian capital markets.

40. The Investment Agreement contains a comprehensive standstill that includes a requirement that Brookfield vote all shares owned by it in accordance with the Board's recommendation at all shareholders meetings on all matters at least through to 2022 (36 months after closing of the initial funding of the investment). The result is that the Board would have effective control of the 4.9% block of shares owned by Brookfield (plus any additional interests that will be acquired to fulfill the terms of the Investment Agreement, from a minimum of 9% to 19.9%) for the next four annual meetings and any special meetings called during that time.

41. The voting commitment in the Investment Agreement was immediately effective (even before the closing of the Brookfield Transaction) such that it will apply to the election of

management nominees to the Board at the upcoming 2019 ASM, the meeting at which TransAlta fully expected management's nominees to be challenged.

42. Even in uncontested meetings, TransAlta's management will be able to wield this voting power to vote in favour of Say-on-Pay votes, and to counter withhold votes in uncontested director elections for purposes of TransAlta's majority voting policy, undermining these core elements of board accountability in the Canadian capital markets.

43. The effect of the voting covenant imposed by the Investment Agreement is to nullify the voting rights of Brookfield over all Shares it owns and to convey those voting rights to management which owns only a small. This will result in the Board, which collectively owns approximately 0.125% of the outstanding Shares having approximately 73 votes for every Share owned by the Board, assuming that Brookfield increases its ownership to 9% as required.

44. In contrast the voting power of the holders of Shares other than management will be diluted and reduced to approximate 0.9 votes per share.

45. This dilution to the voting power of the holders of Shares constitutes the issuance of the Subject Preferred Shares a "stock distribution" under Ontario Rule 56-501 – *Restricted Shares* for which a prospectus exempt distribution is not available unless minority approval of the distribution is obtained.

46. Absent minority approval, TransAlta may not distribute the Subject Preferred Shares unless a preliminary prospectus and a prospectus have been filed and receipts have been obtained from the OSC Director.

47. The Investment Agreement does not specify the value that TransAlta management ascribed to the voting support and standstill provisions. However, the beneficiaries of that value are not TransAlta shareholders generally, but rather the incumbent management and Board who will now be able to protect their positions by wielding a 20%-plus voting interest in the company.

48. While the Brookfield Transaction is clearly abusive due to its management entrenchment features and as a result of being a rushed sale of crown jewel assets to a significant shareholder in the face of a proxy contest, the Brookfield Transaction also significantly undervalues the Hydro

Assets and represents a substantial transfer of value from TransAlta to Brookfield. Prevailing market prices and valuations of Canadian hydroelectric assets generally garner valuations at EBITDA multiples significantly higher than 13x, up to 20x. Further, the future nature of the actual conversion of the Exchangeable Securities into an ownership interest means that today's benchmarking may not be tomorrow's value. This is especially so given the imminent expiry of the power purchase agreements in place with the government of Alberta.

49. TransAlta has not disclosed any facts that would suggest that it solicited counter-bids or marketed the Hydro Assets before agreeing to sell them to Brookfield. In fact, TransAlta management has, as recently as the last quarter of 2018, made public statements that suggested it did not have reason to explore a sale of an interest in the Hydro Assets, or the need to raise cash through such a transaction or otherwise.

50. TransAlta is selling this interest in the Hydro Assets at a valuation that is very favourable to Brookfield. TransAlta has effectively sold a large minority interest in its Hydro Assets at a significant discount relative to the true value.

51. TransAlta has bound the fate of the Go-Shop Option together with the outcome of its board election by making the continued availability of the Go-Shop Option contingent on the subsequent election of two non-management nominees to the Board.

52. Shareholders were only advised on March 25, 2019 that the Go-Shop Option was dependent on at least two non-management nominees being nominated and elected by shareholders at the 2019 ASM. As March 25, 2019 was also the deadline for submitting a notice of intention to nominate directors, shareholders were given mere hours to learn of and respond to the fact that the Go-Shop Option would expire on March 25, 2019 if shareholders did not submit any nominees.

53. Mangrove submitted a notice to nominate directors on March 25, 2019, which keeps the Go-Shop Option alive. However, the likely outcome of the 2019 ASM remains heavily weighted in favour of management as a result of the significant voting rights assigned to management pursuant to the Investment Agreement.



54. By successfully campaigning for the election of the full management slate at the 2019 ASM, the Board will be acting contrary to the best interests of the Company by causing the loss of the valuable Go-Shop Option.

55. The Board's should be receptive to all potential superior options available to the company, and, unless it has already exhaustively searched for alternatives, it should be taking active steps to try to achieve better options for TransAlta than presented by the Brookfield Transaction. By soliciting support for management's slate at the 2019 ASM, the Board has foreclosed the mechanism by which it would otherwise have been able to pursue such options.

### **Conclusion**

56. Entering into an agreement with a shareholder having a toe-hold shareholding under which the company agrees to sell that shareholder a 49% minority interest in assets critical to the company, and encumbering those assets with a right of first refusal, in the face of a looming proxy fight is clearly unfair and abusive to both Shareholders and the integrity of the capital markets.

57. To protect the public interest, the Commissions should make the orders sought which will ensure that Shareholders are given a fair opportunity to vote for directors without the vote constituting a "referendum" on the Brookfield Transaction, and to vote for or against the Brookfield Transaction, based on full and fair disclosure of the events leading up to it, the rationale behind it, possible alternatives, and the overall benefit or lack thereof to the company.

58. Both the ASC and the OSC have jurisdiction over the matters in issue in this proceeding given where TransAlta is based, the exchanges on which the Shares are listed, the residency of RBC GAM in Ontario, and the places in which the conduct complained of took place.

### **PART III - APPLICABLE COMMISSION RULES**

59. Alberta Securities Commission, *Rules of Practice and Procedure for Commission Proceedings*, Rule 15-501, s 3.4; Ontario Securities Commission, *Rules of Procedure and Forms*, Rule 16 (1) and (2), Ontario Rule 56-501 – Restricted Shares.

### **PART IV - EVIDENCE AND CASE LAW TO BE RELIED UPON**

60. Affidavit of Nathaniel August, sworn April 8, 2019, and the exhibits thereto.
61. The following cases, to be supplemented as counsel may advise:
  - (a) *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37
  - (b) *Re Arc Equity Management (Fund 4) Ltd.*, 2009 ABASC 390
  - (c) *Re Canadian Tire Corp.* (1987), 10 OSCB 857
  - (d) *Re Catalyst Capital Group Inc.* (2016) 39 OSCB 4079
  - (e) *Re Central GoldTrust (Trustees of)* (2015), 38 OSCB 10768
  - (f) *Re Coastal Pacific Mining Corp.*, 2016 ABASC 301
  - (g) *Re Eco Oro Minerals Corp.*, 40 OSCB 5321
  - (h) *Hecla Mining Company*, 2016 ONSEC 32
  - (i) *Re Magna International Inc. et al.* (2010), 34 OSCB 1290
  - (j) *Re MI Developments Inc.* (2009), 32 OSCB 126
  - (k) *Re Patheon Inc.*, 32 OSCB 6445
  - (l) *Re Platinum Equities Inc.*, 2014 ABASC 71
  - (m) *Re PointNorth Capital Inc.*, 2017 ABASC 121

**PART V - NAME AND CONTACT INFORMATION OF COMPANY SUBJECT TO THE APPLICATION**

62. TransAlta Corporation, 110 – 12 Avenue SW, Calgary AB T2R 0G7, Tel: 403-267-7110

Issued April 8, 2019, Amended April 11, 2019

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

855 – 2nd Street SW  
Suite 3500, Bankers Hall East Tower  
Calgary AB T2P 4J8

**Michael Barrack** LSO # 21941W  
Tel: 416-863-5280  
[michael.barrack@blakes.com](mailto:michael.barrack@blakes.com)

**R. Seumas M. Woods** LSO #30169I  
Tel: 416-863-3876  
[seumas.woods@blakes.com](mailto:seumas.woods@blakes.com)

**Darren J. Reed**  
Tel: 403-260-9640  
Fax: 403-260-9700  
[darren.reed@blakes.com](mailto:darren.reed@blakes.com)

Lawyers for the applicant Mangrove Partners

**Mangrove Partners v TransAlta Corporation**

**ALBERTA SECURITIES COMMISSION and  
ONTARIO SECURITIES COMMISSION**

**IN THE MATTER OF MANGROVE PARTNERS  
and TRANSALTA CORPORATION**

**NOTICE OF APPLICATION**

---

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers & Solicitors

199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

855 – 2nd Street SW  
Suite 3500, Bankers Hall East Tower  
Calgary AB T2P 4J8

**Michael Barrack**  
Tel: 416-863-5280  
[michael.barrack@blakes.com](mailto:michael.barrack@blakes.com)

**R. Seumas M. Woods LSO #301691**  
Tel: 416-863-3876  
[seumas.woods@blakes.com](mailto:seumas.woods@blakes.com)

**Darren J. Reed**  
Tel: 403-260-9640  
Fax: 403-260-9700  
[darren.reed@blakes.com](mailto:darren.reed@blakes.com)

Lawyers for the applicant