

Alumina files ‘Answer and Counterclaim’ in US court proceedings

- **Alumina refutes all substantive elements of Alcoa’s claim**
- **Alumina counterclaims that Alcoa’s planned ‘separation’ would breach AWAC joint venture agreements and cannot proceed without Alumina’s consent**
- **Alcoa separation would trigger first option rights for Alumina**
- **Trial scheduled for 20 September 2016**

Alumina Limited (Alumina) today released its ‘answer and counterclaim’ filed in response to the ‘complaint’ recently brought by Alcoa.

Alumina has refuted all substantive elements of Alcoa’s claim and made its own counterclaim. Alumina’s counterclaim provides a detailed explanation of Alumina’s rights under the AWAC joint venture agreements, and seeks court declarations to both prevent Alcoa taking further steps in its separation without complying with its obligations under the AWAC agreements, and to receive offers to acquire Alcoa’s interests in the various AWAC companies under its first option rights.

The key points of the Alumina filing are as follows:

- The AWAC joint venture arrangements prohibit either party from transferring its interests in the AWAC joint venture agreements without the acceptance and agreement of the other party.
- Under Alcoa’s planned separation it is seeking to exit AWAC and will substitute a new unaffiliated legal entity to hold Alcoa’s existing interests in the AWAC joint venture.
- Alcoa must obtain Alumina’s consent to assign its rights and obligations under the AWAC arrangements to a new legal entity. Alcoa’s separation plan would breach the AWAC joint venture agreements, and as currently constituted, Alcoa’s planned separation cannot proceed without Alumina’s consent.
- Alcoa’s reliance on the previous Western Mining Corporation (WMC) demerger as a defence is without merit. The structure currently proposed by Alcoa is fundamentally different to the WMC demerger referred to in Alcoa’s complaint.
- Alcoa’s separation transaction will trigger various first option rights over Alcoa’s AWAC interests in favour of Alumina.
- As a result of the separation, Alumina will seek to assume rights in respect of the sale of its equity share of alumina and bauxite produced by AWAC.

Alumina is seeking court declarations to:

- prevent Alcoa taking further steps in its separation without Alumina’s consent;
- enforce its first option rights to receive offers from Alcoa to acquire Alcoa’s AWAC companies; and
- entitle Alumina to exercise rights in respect of the sale of its equity share of AWAC alumina and bauxite production.

Alumina Limited CEO, Peter Wasow, said: "The AWAC joint venture agreements have governed our relationship with Alcoa for over 20 years. We consider that Alcoa's plan to substitute a new entity into the joint venture without our consent is a clear breach of these fundamental agreements. We understand how important the resolution of this matter is for Alcoa's separation and have tried to negotiate with Alcoa to reach an agreement that is commercially acceptable for both parties. Alcoa has chosen instead to bring this matter before the courts. We are committed to pursuing and protecting our rights and the interests of our shareholders through the court process."

A copy of Alumina's redacted answer and counterclaim is attached to this release. Particular attention is drawn to Alumina's counterclaim, which commences on page 25. The counterclaim sets out specific provisions of the AWAC joint venture agreements that are relevant to Alcoa's proposed separation. Alcoa has applied to the court for various parts of Alumina's answer and counterclaim to remain confidential. The redactions in the attached document are a result of that process.

The Court has set a trial date of 20 September 2016.

Copies of publicly available court documents relevant to the proceeding are available at www.aluminalimited.com



Stephen Foster
Company Secretary

27 June 2016

Neither Alumina nor any other person warrants or guarantees the future performance of Alumina or any return on any investment made in Alumina securities. This document may contain certain forward-looking statements, including forward-looking statements within the meaning of the US Private Securities Litigation Reform Act of 1995. The words "anticipate", "aim", "believe", "expect", "project", "estimate", "forecast", "intend", "likely", "should", "could", "will", "may", "target", "plan" and other similar expressions (including indications of "objectives") are intended to identify forward-looking statements. Indications of, and guidance on, future financial position and performance and distributions, and statements regarding Alumina's future developments and the market outlook, are also forward-looking statements.

Any forward-looking statements contained in this document are not guarantees of future performance. Such forward-looking statements involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of Alumina and its directors, officers, employees and agents that may cause actual results to differ materially from those expressed or implied in such statements. Those risks, uncertainties and other factors include (without limitation): (a) material adverse changes in global economic conditions, alumina or aluminium industry conditions or the markets served by AWAC; (b) changes in production or development costs, production levels or sales agreements; (c) changes in laws, regulations or policies; (d) changes in alumina or aluminium prices or currency exchange rates; (e) Alumina Limited does not hold a majority interest in AWAC and decisions made by majority vote may not be in the best interests of Alumina Limited; and (f) the other risk factors summarised in Alumina's Annual Report 2015. Readers should not place undue reliance on forward-looking statements. Except as required by law, Alumina disclaims any responsibility to update or revise any forward-looking statements to reflect any new information or any change in the events, conditions or circumstances on which a statement is based or to which it relates.

This presentation contains certain non-IFRS financial information. This information is presented to assist in making appropriate comparisons with prior year and to assess the operating performance of the business. Where non-IFRS measures are used, definition of the measure, calculation method and/or reconciliation to IFRS financial information is provided as appropriate or can be found in the Alumina Limited's ASX Full-Year Report for the period ended 31 December 2015.

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALCOA INC.,

Plaintiff,

v.

ALUMINA LIMITED, ALUMINA
(USA) INC., and ALUMINA
INTERNATIONAL HOLDINGS PTY,
LIMITED,

Defendants.

PUBLIC VERSION

DATED: JUNE 24, 2016

C.A. No. 12385-CB

ALUMINA LIMITED, ALUMINA
(USA) INC., and ALUMINA
INTERNATIONAL HOLDINGS PTY,
LIMITED,

Counterclaim Plaintiffs,

v.

ALCOA INC., ALCOA AUSTRALIAN
HOLDINGS PTY LTD, ARCONIC
INTERNATIONAL HOLDING
COMPANY, ASC ALUMINA, INC.,
REYNOLDS METALS COMPANY,
and REYNOLDS METALS
EXPLORATION, INC.,

Counterclaim Defendants.

**ANSWER, DEFENSES, AND COUNTERCLAIMS OF
DEFENDANTS ALUMINA LIMITED,
ALUMINA (USA) INC., AND ALUMINA INTERNATIONAL
HOLDINGS PTY, LTD. TO THE VERIFIED COMPLAINT**

Defendants Alumina Limited, Alumina (USA) Inc., and Alumina International Holdings Pty, Ltd. (collectively, “Defendants”), by their undersigned attorneys, hereby answer the Verified Complaint (the “Complaint”) filed by the plaintiff, Alcoa Inc. (the “Plaintiff”),¹ as follows:²

NATURE OF THE ACTION

1. Alcoa brings this action for declaratory relief to forestall continuing threats by Defendants to attempt to interfere with Alcoa’s plan to separate its businesses into two companies unless Alcoa gives in to a series of baseless and improper demands.

ANSWER: Defendants deny the allegations contained in paragraph 1, including that Plaintiff is entitled to any relief in the action, except admit that Plaintiff seeks a declaration as described in paragraph 1 and that Plaintiff has announced an intention to separate its business into two companies.

2. In September 2015, Alcoa announced that it plans to enhance shareholder value by separating into two separate publicly traded companies. One company will contain Alcoa’s historic “primary products” aluminum, bauxite, mining and refining businesses, as well as certain rolling facilities. The other

¹ Unless otherwise noted, capitalized terms in this Answer, Defenses, and Counterclaims of Defendants Alumina Limited, Alumina (USA) Inc., and Alumina International Holdings Pty, Ltd. to the Verified Complaint shall have the meanings set forth in the Complaint.

² To avoid any doubt, Defendants deny the allegations of the Complaint except with respect to those specific matters expressly admitted herein.

company will contain manufacturing and engineering businesses that Alcoa has developed more recently that participate in the aerospace, automobile, construction solutions and commercial transportation markets. The separation's purpose is to sharpen the strategic focus and to optimize the capital structure of each of the two companies, and also to make each of them individually more attractive to long-term investors than they may be on a consolidated basis, as their separate business lines present different investment profiles that can attract varying groups of investors.

ANSWER: Defendants admit that Plaintiff made the announcement described in paragraph 2 and respectfully refer the Court to that announcement for a full and complete statement of its contents. Defendants lack sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in paragraph 2, and therefore deny them.

3. Defendants are participants, directly and through subsidiaries, with Alcoa in a joint "Enterprise" known as Alcoa World Alumina and Chemicals ("AWAC"). Defendants have groundlessly claimed that their participation in AWAC gives them a right to block the separation, and have threatened to create a cloud over the transaction unless Alcoa grants them wholly unwarranted, highly valuable concessions with respect to AWAC's ownership and operation.

ANSWER: Defendants admit the allegations in the first sentence of paragraph 3, and deny the remaining allegations contained in paragraph 3.

4. The separation will not divide any of the Alcoa assets or businesses that are part of AWAC. AWAC consists of the parties' respective interests in the alumina refining, bauxite mining and, to a very small degree, aluminum production businesses. All of Alcoa's interests in AWAC are now part of Alcoa's "primary products" business, and all of that interest will remain consolidated within the company that will contain that primary products business following the separation. Importantly, AWAC does not include any of the Alcoa manufacturing and engineering businesses that the other company will contain. Defendants thus have no participation or interest in any of the manufacturing and engineering businesses

that will be separated from the primary products business.

ANSWER: Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 4, and therefore deny them.

5. Nor will the separation have any operational or other adverse effects on AWAC. Not only will Alcoa's interests in AWAC remain consolidated in a company that retains the Alcoa name, but they will continue to be operated by the same management team as they are now and will remain governed by the same agreements with Defendants as they are now.

ANSWER: Defendants deny the allegations contained in paragraph 5.

6. Nevertheless, Defendants have claimed that Alcoa cannot separate out its non-AWAC businesses without Defendants' consent and without affording Defendants a broad array of first-refusal rights. Defendants' claims are completely contrary to the parties' agreements. There is nothing in the parties' agreements regarding AWAC that provides Defendants with consent or any other rights with respect to Alcoa's separation.

ANSWER: Defendants deny the allegations contained in paragraph 6 and respectfully refer the Court to Alumina Limited's correspondence with Plaintiff for an accurate and complete description of the positions expressed therein.

7. That is clear not simply from the face of the agreements, but also from Defendants' own conduct. Defendants claim the right to block Alcoa's separation notwithstanding that Defendants previously completed a similar separation of their own without Alcoa's consent and without affording Alcoa any first-refusal rights. In a 2002 "demerger," Defendant Alumina's predecessor, Western Mining Corporation Holdings Limited ("WMC"), also separated into two publicly traded companies — one of which (Alumina) contained WMC's interest in AWAC and remained in AWAC, and the other of which contained WMC's non-AWAC business interests. The substance and result of WMC's separation and Alcoa's separation are the same: a separation into two separate companies, one holding the AWAC interests and the other holding non-AWAC interests. And in doing its own

separation, WMC made clear that, under the AWAC agreements, Alcoa's consent to the separation was not required, that Alcoa had no first-refusal right, and that Alcoa had no cognizable interests in WMC's non-AWAC businesses.

ANSWER: Defendants deny the allegations contained in paragraph 7 and respectfully refer the Court to the documents effectuating the WMC demerger for an accurate and complete statement of their contents.

8. But despite having themselves effected a similar separation without Alcoa's consent, Defendants have persisted in claiming consent and first-refusal "rights" as to Alcoa's parallel separation in an attempt to extract changes to the parties' contractual AWAC relationships. In a series of communications, most directly in letters dated April 1, 2016 and May 24, 2016, Defendant Alumina threatened that unless Alcoa acceded to a series of demands to completely reform the AWAC agreements to Defendants' benefit, Defendants would take certain "other actions" to interfere with the separation. These threatened actions include making public statements about the separation and Defendants' objections to it that would harm Alcoa by casting a cloud over the separation, and disrupting AWAC's operations by purporting to "assume" marketing rights that Alumina does not have.

ANSWER: Defendants deny the allegations contained in paragraph 8, but admit that Alumina Limited sent Plaintiff letters regarding Plaintiff's planned business separation, including letters dated April 1, 2016 and May 24, 2016, and respectfully refer the Court to those letters for an accurate and complete statement of their contents.

9. Accordingly, Alcoa hereby seeks declaratory judgment with respect to the parties' rights under the AWAC agreements, including, in particular, that Defendants have no right to block, and have no consent or first-refusal rights in connection with, Alcoa's separation, and that the separation does not entitle Defendants to assume AWAC marketing rights.

ANSWER: Defendants admit that Alcoa purports to bring this action for a declaratory judgment, and deny that paragraph 9 contains allegations to which a response is required and further deny that Plaintiff is entitled to the relief it seeks.

PARTIES AND JURISDICTION

10. Plaintiff Alcoa is a corporation organized under the laws of the Commonwealth of Pennsylvania with its headquarters in New York. Alcoa is a global leader in the aluminum and bauxite industry, as well as in other lightweight metals technology, engineering and manufacturing. Alcoa is publicly traded on the New York Stock Exchange.

ANSWER: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, except admit that Alcoa purports to be a corporation organized under the laws of the Commonwealth of Pennsylvania with its headquarters in New York, is engaged in various commercial activities in connection with Defendants, and its common stock is traded on the New York Stock Exchange.

11. Defendant Alumina Limited (“Alumina”) is a company incorporated in the State of Victoria, Australia. Alumina is listed on the Australian Securities Exchange and the Over-the-Counter market in the United States.

ANSWER: Defendants admit the allegations contained in paragraph 11.

12. Defendant Alumina (USA) Inc. (“Alumina USA”) is a corporation organized under the laws of the State of Delaware, and is a subsidiary of Alumina.

ANSWER: Defendants admit the allegations contained in paragraph 12.

13. Defendant Alumina International Holdings PTY, Limited (“Alumina International”) is a company incorporated in the State of Victoria, Australia. Alumina USA and Alumina International are referred to herein as the “Alumina

Subsidiaries.”

ANSWER: Defendants admit the allegations contained in paragraph 13.

14. Alumina, directly or through subsidiaries, and the Alumina Subsidiaries are parties to the agreements related to AWAC that Defendants claim give them consent and/or first-refusal rights over Alcoa’s separation. As described more fully at ¶¶ 20-23 below, these agreements include:

(a) The operating agreement of Alcoa World Alumina, LLC (“AWA”), which is a Delaware limited liability company that holds significant assets of AWAC. The Alumina Subsidiaries are parties to the AWA operating agreement (the “AWA LLC Agreement,” attached hereto as Exhibit A) and, as described below, all Defendants actively and materially participate in AWA’s management. Defendants have claimed that the Alumina Subsidiaries’ consent is required under the AWA LLC Agreement for Alcoa to proceed with its separation, and Alumina has indicated to Alcoa that such consent will not be forthcoming unless Alcoa accedes to its demands.

(b) The amended “Enterprise Funding Agreement,” to which Alumina is a party. Ex. B. Defendants contend that Alumina’s consent is required under the Enterprise Funding Agreement for Alcoa to proceed with its separation, and Alumina has indicated to Alcoa that such consent will not be forthcoming unless Alcoa accedes to its demands. The Enterprise Funding Agreement provides that “the courts sitting in the State of Delaware will have exclusive jurisdiction over the parties with respect to the resolution of any disputes involving judicial proceedings arising out of or in connection with this document.” Ex. B § 6.

(c) The Formation Agreement, to which all Defendants are party. Ex. C. Defendants contend that their consent is required under the Formation Agreement for Alcoa to proceed with its separation, and Alumina has indicated to Alcoa that such consent will not be forthcoming unless Alcoa accedes to its demands. The Formation Agreement provides that it “has been executed and delivered in . . . the State of Delaware.” Ex. C § 13.07.

ANSWER: Defendants deny the allegations contained in paragraph 14,

except admit that Alumina Limited, directly or indirectly, is party to certain

AWAC-related agreements and that Defendants are entitled to certain rights in connection with Plaintiff's proposed separation transaction, and respectfully refer the Court to the agreements referred to in paragraph 14 for an accurate and complete statement of their contents.

15. Jurisdiction over Alumina USA is proper as it is a resident of the State of Delaware and may be served at the office of its registered agent pursuant to 8 *Del. C.* § 321 and 10 *Del. C.* § 3111. In addition, jurisdiction over Alumina and the Alumina Subsidiaries is proper for each of the following reasons: (a) under 6 *Del. C.* § 18-109(a) because they each participate materially in the management of AWA, a Delaware limited liability company; (b) because Alumina has consented to exclusive jurisdiction in Delaware in the Enterprise Funding Agreement; and (c) because Defendants are party to and are claiming rights under the Formation Agreement, which was executed and delivered in Delaware.

ANSWER: Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 15.

FACTUAL BACKGROUND

A. The AWAC Enterprise

16. In December 1994, the Aluminum Company of America (now known as Alcoa Inc. and referred to as "Alcoa" or "Plaintiff" herein) and WMC (Alumina's predecessor) agreed to combine their interests in bauxite mining, alumina refining and the Alcoa inorganic industrial chemicals operations, as well as certain integrated aluminum fabricating and smelting operations, to form a worldwide "Enterprise," known as "AWAC." The AWAC Enterprise is conducted through several so-called "Enterprise Companies."

ANSWER: Defendants deny the allegations contained in paragraph 16 and respectfully refer the Court to the AWAC formation documents for an accurate and complete statement of their contents.

17. As a general matter, Alcoa (directly or through subsidiaries) holds 60% of the interest in AWAC and each of the Enterprise Companies, and WMC (directly or through subsidiaries) holds 40% of the interest in AWAC and each of the Enterprise Companies. Reflecting Alcoa's majority ownership, the parties agreed that Alcoa is the "industrial leader" of AWAC and provides the operating management of AWAC and of all Enterprise Companies, including with respect to the marketing of AWAC products. Ex. D (Charter of the Strategic Council) § 1(b).

ANSWER: Defendants deny the allegations contained in paragraph 17, deny that those allegations provide a fair and complete description of AWAC, and respectfully refer the Court to the Charter of the Strategic Council, a copy of which is annexed to the Complaint as Exhibit D, for an accurate and complete statement of its contents.

18. Today, AWAC is one of the world's largest alumina businesses. Its Enterprise Companies employ over 7,000 people to mine and refine bauxite and to produce and provide alumina to the world's aluminum smelters.

ANSWER: Defendants admit the first sentence of paragraph 18, and deny that the remainder of the allegations in paragraph 18 reflect a fair and complete description of the Enterprise Companies and therefore deny them.

19. Over the years, the parties have entered into various agreements to form and govern AWAC and the Enterprise Companies and to manage their operations (collectively, the "AWAC Agreements"). The AWAC Agreements include the following.

ANSWER: Defendants deny the allegations contained in paragraph 19, deny that the AWAC Agreements referred to in paragraphs 20-23 constitute all of the parties' relevant agreements concerning the formation, governance and operational management of AWAC and the Enterprise Companies, and

respectfully refer the Court to all of the AWAC Agreements for an accurate and complete statement of their contents.

20. On December 21, 1994, Alcoa and WMC entered into a “Charter of the Strategic Council,” referred to herein as the “Charter.” Ex. D. The Charter sets forth general principles and policies for the governance of the Enterprise Companies. The Charter provides that it shall be construed and enforced in accordance with the laws of the State of Delaware. *See* Ex. D (Charter) § 13. The Charter creates a Strategic Council that serves as “the principal forum for [Alcoa] and [Alumina (as successor to WMC)] to provide direction and counsel to the affiliated companies within their worldwide Enterprise regarding strategic and policy matters.” *See id.* § 1(a). Consistent with the overall 60%-40% AWAC ownership framework, the Strategic Council consists of five members, three appointed by Alcoa and two appointed by Alumina — but certain matters require an 80% super-majority vote. *See id.* §§ 2, 4. The Charter further provides that Alcoa and Alumina “shall direct and cause their representatives on any Enterprise Company Boards, entities or operations to carry out the direction established by and implement the decisions of the Strategic Council.” *See id.* § 1(a).

ANSWER: Defendants deny the allegations contained in paragraph 20, except admit that on or about December 21, 1994, Aluminum Company of America and WMC entered into the Charter of the Strategic Council, a copy of which is annexed to the Complaint as Exhibit D, and respectfully refer the Court to that document for an accurate and complete statement of its contents.

21. Also on December 21, 1994, Alcoa (along with one of its subsidiaries), WMC and the predecessors of the Alumina Subsidiaries entered into a Formation Agreement to form the Enterprise and certain of the Enterprise Companies through which the Enterprise would be conducted. *See* Ex. C (Formation Agreement) § 2.01. The Formation Agreement provides that it shall be construed and enforced in accordance with the laws of the State of Delaware. *See id.* § 13.07.

ANSWER: Defendants deny the allegations contained in paragraph 21, except admit that Aluminum Company of America and WMC and certain of their affiliates entered into the Formation Agreement, a copy of which is annexed to the Complaint as Exhibit C, and respectfully refer the Court to the Formation Agreement for an accurate and complete statement of its contents.

22. Likewise on December 21, 1994, the parties entered into the AWA LLC Agreement to establish and govern the operations of AWA, a Delaware limited liability company that is one of the primary Enterprise Companies and that holds, directly or indirectly, significant AWAC assets, including those in the United States, Brazil, Guinea, Suriname, and Liberia. Since its initial adoption, the AWA LLC Agreement has been amended to reflect the Alumina Subsidiaries as signatories (through their predecessor entities) and to reflect that Alumina is the successor to WMC. The current version of the AWA LLC Agreement is the Second Amendment to and Restatement of Limited Liability Company Agreement, dated as of December 31, 2002, which is attached hereto as Exhibit A. The AWA LLC Agreement provides that it shall be governed by, and construed in accordance with, the laws of the State of Delaware. *See* Ex. A (AWA LLC Agreement) § 15.13.

ANSWER: Defendants deny the allegations contained in paragraph 22, except admit that the parties, directly or indirectly or through their predecessors, entered into the AWA LLC Agreement on or about December 21, 1994, and that the current version of the AWA LLC Agreement is the Second Amendment and Restatement of Limited Liability Company Agreement, dated December 31, 2002, and respectfully refer the Court to those documents for an accurate and complete statement of their contents.

23. On May 16, 1995, Alcoa and WMC entered into a letter agreement

(the “Side Letter”) to clarify certain aspects of the operation of the AWA LLC Agreement and Charter. Ex. E. On June 10, 2010, Alcoa and Alumina entered into the amended Enterprise Funding Agreement regarding funding of certain AWAC activities. Ex. B.

ANSWER: Defendants deny the allegations contained in paragraph 23, except admit that Alcoa and WMC entered into a May 16, 1995 letter agreement, a copy of which is annexed to the Complaint as Exhibit E, and on June 10, 2010, Alcoa, Alumina Limited, and others entered into the Amendment Agreement amending the Enterprise Funding Agreement, a copy of which is annexed to the Complaint as Exhibit B, and respectfully refer the Court to those documents for an accurate and complete statement of their contents.

24. Alumina and the Alumina Subsidiaries actively and materially participate in the management of AWA:

(a) Under the AWA LLC Agreement, AWA is governed by a board consisting of five “Representatives,” three of whom are selected by Alcoa and its subsidiaries and two of whom are selected by the Alumina Subsidiaries. See Ex. A § 6.1(b). Each Representative is expressly defined as an “agent” of the appointing Member and may only vote the “Percentage Interest” of such Member. See *id.* §§ 6.1(c), 6.4. Decisions by the Board are governed by the voting of “Percentage Interests” by the Representatives, and certain matters require an 80% super-majority vote. See *id.* §§ 5.3, 6.4. As such, AWA is managed by its Members (including the Alumina Subsidiaries) acting principally through agents who are only permitted to vote the appointing Member’s Percentage Interest.

(b) Under the Charter, Alumina appoints two-fifths of the Strategic Council to “provide direction and counsel to the affiliated companies within their worldwide Enterprise regarding strategic and policy matters.” Ex. D (Charter) § 1(a). Alumina is further required to “direct and cause [its] representatives on any Enterprise Company Boards, entities or operations to carry out the direction established by and implement the decisions of the

Strategic Council.” Id. The Enterprise Company Boards include the board of AWA, and Alumina is thus required to direct the votes of the AWA board Representatives appointed by the Alumina Subsidiaries.

(c) Alumina and the Alumina Subsidiaries actively and materially participate in meetings of the AWA board. Among other things, the board minutes identify the two Board Representatives appointed by the Alumina Subsidiaries as being Representatives of Alumina itself and reflect the regular attendance and active participation of Alumina’s general counsel.

(d) Indeed, in connection with the WMC demerger discussed below, Alumina represented and secured a tax opinion on the basis that it and its subsidiaries “actively participate[] in the management of the [AWA] business” and are “not a passive investor” in that business. Ex. F (WMC Limited Scheme Booklet) at 270. In connection with this, Alumina represented to the accounting firm providing the tax opinion that it participates in the “overall supervision and management” of AWA through its membership on the Strategic Council and that its and its subsidiaries’ officers and employees “participate in the management” of AWA in multiple ways. Id. at 268-70.

ANSWER: Defendants deny the allegations contained in paragraph 24, and respectfully refer the Court to the documents referenced in paragraph 24 for an accurate and complete statement of their contents.

B. WMC’s “Demerger”

25. In 2001, after AWAC had existed for 7 years, WMC came to the view that while the AWAC arrangement was profitable, it was causing its share price to be undervalued. In particular, WMC formed the view that investors or potential acquirers interested in WMC’s substantial non-AWAC businesses — principally, its nickel, copper, uranium and fertilizer businesses — were not assigning adequate value to WMC’s interests in AWAC. WMC determined that shareholder value would be maximized by separating its AWAC and non-AWAC businesses into two separate publicly traded companies.

ANSWER: Defendants deny the allegations contained in paragraph 25, except admit that WMC completed a demerger in 2002 and respectfully refer the Court to the documents effectuating that transaction for an accurate and complete statement of their contents.

26. Accordingly, in or about December 2002, WMC effected a “demerger” under Australian law, through which it separated its AWAC interests from the majority of its other assets. Specifically, WMC was separated into two companies: Alumina and WMC Resources Ltd. Alumina holds WMC’s former interests in AWAC, as well as certain other assets related to the alumina and aluminum businesses, and continues to be subject to the AWAC Agreements. WMC Resources Ltd., in turn, holds WMC’s former principal non-AWAC assets and is not subject to the AWAC Agreements.

ANSWER: Defendants deny the allegations contained in paragraph 26, except admit that WMC completed a demerger in 2002 and respectfully refer the Court to the documents effectuating that transaction for an accurate and complete statement of their contents.

27. Accordingly, following the demerger, Alumina was the owner of WMC’s AWAC interests and succeeded WMC as Alcoa’s co-participant in the Enterprise, but it had a considerably different financial and commercial profile than WMC. Alcoa was no longer a co-participant in AWAC with a company holding a diversified portfolio of businesses other than the AWAC interests. Instead, its co-participant — Alumina — was a substantially smaller company with substantially less financial wherewithal and a lower credit rating than WMC.

ANSWER: Defendants deny the allegations contained in paragraph 27, except admit that WMC completed a demerger in 2002 and respectfully refer the

Court to the documents effectuating that transaction for an accurate and complete statement of their contents.

28. Nevertheless, WMC effected its separation without securing Alcoa's consent and without providing Alcoa with any first-refusal rights. Instead, WMC filed a "Demerger Scheme Booklet" advising that Alcoa's consent was not required and that Alcoa did not have any first-refusal or other rights in connection with the demerger. The Demerger Scheme Booklet further made clear that the reason for the demerger was to remove WMC's non-AWAC interests from any perceived connection with the AWAC Agreements, and that Alcoa had no grounds to object because it had no cognizable interest in WMC's non-AWAC interests. *See Ex. F.*

ANSWER: Defendants deny the allegations contained in paragraph 28, except admit that WMC completed a demerger in 2002 and respectfully refer the Court to the documents effectuating that transaction and the Demerger Scheme Booklet, a copy of which is annexed to the Complaint as Exhibit F, for an accurate and complete statement of their contents.

C. Alcoa's Planned Separation and Alumina's Objections

29. In 2015, the Alcoa Board reached a conclusion similar to the one WMC previously reached: that Alcoa's overall shareholder value would be maximized by separating its AWAC and non-AWAC interests into two independent publicly traded companies. On September 28, 2015, Alcoa announced its plan to separate into two such companies. Similar to WMC's demerger, following Alcoa's separation, the two separate companies will be comprised as follows: one company will hold all of Alcoa's interests in AWAC, as well as the rest of Alcoa's historic "primary products" businesses and certain rolling facilities; and the other company will comprise most of Alcoa's non-AWAC interests, in which neither AWAC nor Defendants has any participation or interest. Upon completion of the separation, Alcoa shareholders will own all of the outstanding shares of both companies. Alcoa is targeting to complete the separation in the second half of 2016.

ANSWER: Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 29, and therefore deny them. Defendants also deny that Alcoa's separation is "[s]imilar to WMC's demerger," admit that paragraph 29 purports to refer to certain public statements of Alcoa, and respectfully refer the Court to those statements for an accurate and complete statement of their contents.

30. The separation, moreover, is structured to maintain continuity in AWAC's business. All of Alcoa's AWAC interests remain consolidated in one company. And that company will retain the Alcoa name and will be run by the same management team that currently operates Alcoa's AWAC interests. The management, operation, assets and products of AWAC will thus remain unchanged.

ANSWER: Defendants deny the allegations contained in paragraph 30.

31. In short, WMC's and Alcoa's separations have the same effect: each accomplishes the separation of AWAC and non-AWAC interests into two separate companies.

ANSWER: Defendants deny the allegations contained in paragraph 31.

32. Nevertheless, and notwithstanding WMC's statements that Alcoa had no rights or cognizable interest regarding WMC's own separation or WMC's non-AWAC interests, Defendants have sought to claim that Alcoa may not proceed with its separation without their consent and without providing them with a host of first-refusal rights and other significant benefits.

ANSWER: Defendants deny the allegations contained in paragraph 32, except admit that Alumina Limited has sent Alcoa communications concerning Defendants' rights. Defendants respectfully refer the Court to those communications for an accurate and complete statement of their contents.

33. By letter dated November 12, 2015, Alumina claimed that “Alumina Limited’s rights under the AWAC Agreements are affected as a result of the separation,” but did not specify what those rights were or how they were allegedly affected.

ANSWER: Defendants deny the allegations contained in paragraph 33, except admit that Alumina Limited sent Alcoa a letter dated November 12, 2015 and respectfully refer the Court to that letter for an accurate and complete statement of its contents.

34. By letter dated January 27, 2016, Alumina claimed that it had concerns with Alcoa’s proposed separation and how it could potentially affect AWAC, but did not specify the nature of its concerns.

ANSWER: Defendants deny the allegations contained in paragraph 34, except admit that Alumina Limited sent Alcoa a letter dated January 27, 2016, which was sent in confidence and without prejudice, and Defendants object to any reference to, or reliance on, the letter by Alcoa in this proceeding.

35. Thereafter, by letter dated April 1, 2016, Alumina asserted that it intended to try to block or interfere with Alcoa’s separation unless Alcoa met a series of demands. Specifically:

(a) Alumina’s letter claimed that Alcoa could not proceed with the separation absent Defendants’ consent and without also providing Defendants with multiple rights of first refusal. Alumina’s letter did not explain the basis for these claims, apart from asserting that they arose from unidentified provisions of the “AWAC Agreements.”

(b) Alumina’s letter claimed that the separation would involve an improper “assignment” under the AWAC agreements. Alumina’s letter did not explain the basis for this claim, apart from asserting that it arose from unidentified provisions of “the key AWAC agreements” and “general principles of contract law.”

(c) Alumina’s letter claimed that Defendants would be adversely affected because the separation of Alcoa’s non-AWAC interests would result in “the financial and commercial profile” of its AWAC co-participant being “inferior” to that of the pre-separation Alcoa. Alumina’s letter did not explain why this alleged effect was any different in degree or nature from that produced by its own demerger or what the basis was for any claimed right to require its co-participant’s “financial and commercial profile” to include businesses unrelated to AWAC.

ANSWER: Defendants deny the allegations contained in paragraph 35, except admit that Alumina Limited sent Plaintiff a letter dated April 1, 2016, and respectfully refer the Court to that letter for an accurate and complete statement of its contents.

36. Alumina’s April 1, 2016 letter further claimed that the separation would improperly “assign[], “transfer[]” or “delega[te]” Alcoa’s role as manager of AWAC without Alumina’s allegedly necessary consent and would leave AWAC without any “effective management arrangement in place post-Separation.” The letter asserted that this entitled Alumina to “assume” the rights to manage and market “its pro-rata share of AWAC product.”

ANSWER: Defendants deny the allegations contained in paragraph 36, except admit that Alumina Limited sent Plaintiff a letter dated April 1, 2016, and respectfully refer the Court to that letter for an accurate and complete statement of its contents.

37. Alumina’s April 1, 2016 letter continued that Defendants would refuse to provide their allegedly necessary consent for the separation unless Alcoa (a) made Defendants a host of offers allowing them to purchase various elements of Alcoa’s AWAC interests and (b) gave in to a series of demands for other significant benefits, including in particular changes to the existing AWAC arrangements to Alumina’s benefit. The letter concluded by stating that, unless Alcoa met Alumina’s demands, Alumina would “take other actions” to interfere

with the separation, and that if Alcoa proceeded with the separation process, Alumina would “bring forward action.” In other communications, Alumina has indicated that these threatened actions include making public statements about the separation and Alumina’s objections to it, thereby harming Alcoa by creating a cloud on the separation.

ANSWER: Defendants deny the allegations contained in paragraph 37, except admit that Alumina Limited sent Plaintiff a letter dated April 1, 2016, and respectfully refer the Court to that letter for an accurate and complete statement of its contents.

38. Most recently, by letter dated May 24, 2016, Alumina reiterated its claims and threats that it intended to try to block or interfere with Alcoa’s separation unless Alcoa met its demands by June 8, 2016. This letter further threatened that Alumina would take “all necessary action” to interfere with the separation if Alcoa even took certain preparatory steps for it, in particular filing a Form 10 with the Securities and Exchange Commission in June, which Alcoa must do if it is to complete a potentially lengthy process with the SEC within the planned timetable for the separation. And although this letter, unlike Alumina’s prior letters, purported to explain the basis for Alumina’s claims and to specify the provisions of the AWAC Agreements upon which it relies, the “explanation” consists of distortions of the Agreements and mischaracterizations of the separation.

ANSWER: Defendants deny the allegations contained in paragraph 38, except admit that Alumina Limited sent Plaintiff a letter dated May 24, 2016, and respectfully refer the Court to that letter for an accurate and complete statement of its contents.

39. In reality, none of the AWAC Agreements provides that Alcoa needs Alumina’s consent to the separation or needs to provide Alumina with any first-refusal rights in connection with the separation. Nor does the separation involve an improper “assignment” of Alcoa’s rights or obligations under any of those

Agreements. Just as WMC's own separation did not impinge on Alcoa's rights under those Agreements, Alcoa's separation does not impinge on Defendants' rights.

ANSWER: Defendants deny the allegations contained in paragraph 39.

40. Likewise, the separation does not improperly assign, transfer or delegate Alcoa's role as manager of AWAC, leave AWAC without effective management, or entitle Alumina to rights to manage AWAC or to market any part of its production.

ANSWER: Defendants deny the allegations contained in paragraph 40.

COUNT I
(DECLARATORY JUDGMENT REGARDING CONSENT
RIGHTS, RIGHTS OF FIRST REFUSAL AND ASSIGNMENT)

41. Plaintiff incorporates the allegations of paragraphs 1 through 40, as if fully set forth herein.

ANSWER: Defendants restate and incorporate by reference their responses to paragraphs 1 through 40, as if fully set forth herein.

42. Pursuant to Court of Chancery Rule 57 and 10 *Del. C.* § 6501, this Court has authority to declare the rights, status, or other legal relations of the parties before it. In addition, pursuant to 6 *Del. C.* § 18-111, this Court has jurisdiction over any action to interpret, apply or enforce the provisions of a Delaware limited liability company agreement, or the duties and obligations of the members or managers of a Delaware limited liability company.

ANSWER: Paragraph 42 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 42.

43. Given the parties' dispute as to whether Alumina and/or the Alumina Subsidiaries have consent or first-refusal rights with respect to the separation, and whether the separation involves an improper "assignment" under the AWAC

Agreements, an actual justiciable controversy ripe for judicial determination exists between Plaintiff and Defendants.

ANSWER: Paragraph 43 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 43.

44. Pursuant to 10 *Del. C.* §§ 6501 *et seq.*, Plaintiff is entitled to a declaratory judgment that Alumina and the Alumina Subsidiaries have no consent or first-refusal rights with respect to Alcoa’s planned separation and that the separation does not involve an improper “assignment” of Alcoa’s rights or obligations under the AWAC Agreements.

ANSWER: Defendants deny the allegations contained in paragraph 44.

COUNT II
(DECLARATORY JUDGMENT REGARDING MARKETING RIGHTS)

45. Plaintiff incorporates the allegations of paragraphs 1 through 44, as if fully set forth herein.

ANSWER: Defendants restate and incorporate by reference their responses to paragraphs 1 through 44, as if fully set forth herein.

46. Pursuant to Court of Chancery Rule 57 and 10 *Del. C.* § 6501, this Court has authority to declare the rights, status, or other legal relations of the parties before it. In addition, pursuant to 6 *Del. C.* § 18-111, this Court has jurisdiction over any action to interpret, apply or enforce the provisions of a Delaware limited liability company agreement, or the duties and obligations of the members or managers of a Delaware limited liability company.

ANSWER: Paragraph 46 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 46.

47. Given the parties' dispute as to whether the separation would improperly assign, transfer or delegate Alcoa's role as manager of AWAC, leave AWAC without effective management, or entitle Alumina to rights to manage or market any part of AWAC, an actual justiciable controversy ripe for judicial determination exists between Plaintiff and Defendants.

ANSWER: Paragraph 47 states legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 47.

48. Pursuant to 10 *Del. C.* §§ 6501 *et seq.*, Plaintiff is entitled to a declaratory judgment that the separation would not improperly assign, transfer or delegate Alcoa's role as manager of AWAC, would not leave AWAC without effective management, and would not entitle Alumina to rights to manage AWAC or to market any part of its production.

ANSWER: Defendants deny the allegations contained in paragraph 48.

DEFENSES

Defendants assert the following defenses and reserve the right to assert other defenses or claims when and if they become appropriate and/or available in this action. The statement of any defense herein does not assume the burden of proof for any issue as to which the applicable law places the burden of proof on Plaintiff.

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

Plaintiff's claims are barred, in whole or in part, by the Complaint's failure to plead claims with the requisite specificity.

Third Defense

Plaintiff's claims fail to plead an actual case or controversy and therefore the Court lacks subject matter jurisdiction.

Fourth Defense

Plaintiff's claims are barred, in whole or in part, and are premature because Plaintiff failed to comply with the dispute resolution provisions in Section 13.1 of the AWA LLC Agreement, Section 6 of the Enterprise Funding Agreement, Article XII of the Formation Agreement, and Section 11 of the Charter of the Strategic Council. Defendants remain prepared to participate in the procedures provided for in those provisions either before or concurrently with the conduct of this action.

Fifth Defense

Plaintiff's claims are barred, in whole or in part, because the Complaint fails to plead claims that are ripe for judicial determination.

Sixth Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's inequitable conduct, unclean hands, and anticipatory breach of the AWAC Agreements.

Seventh Defense

Plaintiff's claims are barred, in whole or in part, by laches, equitable estoppel, waiver or other equitable bars.

Eighth Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's own actions and failures to act.

Ninth Defense

Plaintiff's claims and the allegations on which they are based are impermissibly vague, ambiguous and devoid of critical information, and Defendants reserve the right to request further clarification.

Tenth Defense

Defendants currently have insufficient knowledge or information upon which to form a belief as to other potential affirmative defenses that may be available to them, and expressly reserve the right to amend or supplement this Answer and affirmative defenses, as well as to assert any and all additional or alternative defenses under any applicable law or regulations, in the event that discovery reveals that such defenses are available.

RELIEF REQUESTED

WHEREFORE, Defendants respectfully request that the Court enter an Order:

- A. dismissing the Complaint with prejudice;
- B. granting Defendants the relief requested on their counterclaims;
- C. awarding Defendants their reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with this matter;

D. granting to Defendants such other and further relief the Court deems just and proper.

VERIFIED COUNTERCLAIMS

Defendants Alumina Limited (“Alumina Limited”), Alumina International Holdings Pty Ltd (“Alumina International”) and Alumina (USA) Inc. (“Alumina (USA),” together with Alumina Limited and Alumina International, “Counterclaim Plaintiffs”) by and through their undersigned counsel, state as follows for their verified counterclaim (“Counterclaim”) against Alcoa Inc. (“Alcoa”), Alcoa Australian Holdings Pty Ltd (“AAH”), Arconic International Holding Company (“AIHC”), ASC Alumina, Inc. (“ASC”), Reynolds Metals Company, and Reynolds Metals Exploration, Inc. (collectively, “Counterclaim Defendants”), and allege as follows on the basis of knowledge with respect to Counterclaim Plaintiffs and information and belief with respect to all other matters:

NATURE OF ACTION

1. In 1995, Alcoa and Alumina Limited formed a commercial enterprise known as Alcoa World Alumina and Chemicals (“AWAC” or the “Enterprise”) to combine and operate Alcoa’s and Alumina Limited’s respective worldwide interests in bauxite mining, alumina refining, inorganic industrial chemicals operations and certain integrated aluminum fabrication and smelting operations. AWAC operates through a series of Enterprise Companies that are

owned, directly or indirectly, by Alcoa and Alumina Limited on a 60%/40% basis, respectively.

2. In September 2015, Alcoa announced that its board of directors approved a plan to separate Alcoa into two separate publicly traded companies—the “Upstream Company,” which will use the Alcoa name and be comprised of Alcoa’s bauxite mining, alumina refining and aluminum production businesses (including the Enterprise), and the “Value-Add Company,” which will be comprised of Alcoa’s rolled products, engineered products, transportation and construction businesses (the “Alcoa Separation” or “the Separation”). Alcoa further announced that the Alcoa Separation was expected to be completed in the second half of 2016, and, upon completion, Alcoa shareholders will own the shares of both the Upstream Company and the Value-Add Company.

3. Shortly after the Alcoa Separation announcement in September 2015, Alumina Limited approached Alcoa to develop a better understanding of the impact of the Alcoa Separation on AWAC. Specifically, Alumina Limited sought to understand the structure of the Alcoa Separation to determine the parties’ rights and obligations under various agreements governing the Enterprise. For months thereafter, despite ongoing requests by Alumina Limited, Alcoa provided Alumina Limited little information about the Separation. In December 2015, Alcoa provided Alumina Limited general information regarding the proposed form of the

Separation. It was not until March 2016 that Alcoa provided Alumina Limited a presentation depicting certain of the steps that it intends to take in connection with the Separation. Those steps include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. The Alcoa Separation implicates, and would violate, significant rights and interests that Alumina Limited possesses under the agreements governing AWAC. Specifically, as detailed below, Alumina Limited possesses consent, option, and marketing and sale rights that have been, or will be, triggered or implicated by the Alcoa Separation.

5. Alumina Limited has repeatedly advised Alcoa of such rights and interests and has requested that Alcoa acknowledge and comply with its contractual obligations. Alcoa has refused to do so or even to engage in a detailed discussion of the parties' rights and construction of the relevant agreements, and instead has now filed this action. Despite publicly castigating Alumina Limited for what Alcoa mischaracterizes as "opportunistic" and "emotional" attempts to extract concessions from Alcoa in connection with the Separation, and although it purports in this action to seek declaratory relief construing the parties' rights under various AWAC-related agreements, Alcoa fails to advise the Court of basic facts

relating to: (i) the structure of the Separation, including the manner in which Alcoa proposes to deal with its AWAC interests, and (ii) the consent and option rights contained in the operative AWAC Agreements.

6. By this action, Counterclaim Plaintiffs seek permanent relief in the form of declaratory judgments, injunctive relief, and an award of specific performance compelling Alcoa to comply with its contractual obligations.

PARTIES

A. The Alumina Counterclaim Plaintiffs

7. Counterclaim Plaintiff Alumina Limited, previously known as Western Mining Corporation Holdings Limited (“WMC”), is incorporated and maintains its principal place of business in Victoria, Australia and is, and at all relevant times has been, carrying on business as a resource company involved in bauxite mining, alumina refining and aluminum smelting operations internationally.

8. Counterclaim Plaintiff Alumina International, previously known as Westminer International Holdings Pty Limited (“Westminer International Holdings”), is incorporated and maintains its principal place of business in Victoria, Australia and is a wholly owned subsidiary of Alumina Limited.

9. Counterclaim Plaintiff Alumina (USA), previously known as

WMC Alumina (USA) Inc. (“WMC Alumina”), is incorporated and maintains its principal place of business in the State of Delaware and is a wholly owned subsidiary of Alumina International.

B. The Alcoa Counterclaim Defendants

10. Counterclaim Defendant Alcoa, Inc. (“Alcoa”), previously known as Aluminum Company of America Inc., is a company formed under the laws of the Commonwealth of Pennsylvania and is, and at all relevant times has been, carrying on business internationally in aluminum production, including mining, refining and smelting, and in other industries, including engineering, rolled products, transportation and construction.

11. Counterclaim Defendant Alcoa Australian Holdings Pty Ltd. (“AAH”), is an indirect wholly owned subsidiary of Alcoa and is formed under the laws of Australia.

12. Counterclaim Defendant Arconic International Holding Company (“AIHC”), previously known as Alcoa International Holdings Company, is a wholly owned subsidiary of Alcoa and was formed under the laws of the State of Delaware.

13. Counterclaim Defendant ASC Alumina, Inc. (“ASC”) is a corporation that was formed under the laws of the State of Delaware and is an indirect wholly owned subsidiary of Alcoa.

14. Counterclaim Defendant Reynolds Metals Company is a corporation that was formed under the laws of the State of Delaware and is a wholly owned subsidiary of Alcoa.

15. Counterclaim Defendant Reynolds Metals Exploration, Inc. is a corporation that was formed under the laws of the State of Delaware and is an indirect wholly owned subsidiary of Alcoa.

JURISDICTION

16. This Court has subject matter jurisdiction over the claims set forth herein pursuant to 10 *Del. C.* § 341, 18-111 and 6 *Del. C.* § 2708.

17. Personal jurisdiction over Alcoa and the Alcoa subsidiaries is proper for one or more of the following reasons: (a) Alcoa is the named plaintiff in this action; (b) the Alcoa subsidiaries are Delaware entities; and/or (c) each consented to jurisdiction in Delaware pursuant to 8 *Del. C.* § 109(a) or pursuant to one or more of the governing AWAC Agreements described below.

FACTUAL BACKGROUND

A. AWAC Enterprise

18. On or about January 1, 1995, Alcoa and Alumina Limited formed a commercial enterprise known as AWAC to combine and operate Alcoa's and Alumina Limited's respective worldwide interests in bauxite mining, alumina refining, inorganic industrial chemicals operations and certain integrated aluminum

fabrication and smelting operations.

19. AWAC is comprised of a group of operating entities owned jointly, directly or indirectly, by Alcoa and Alumina Limited (each an “Enterprise Company,” and collectively, the “Enterprise Companies”). Pursuant to the Formation Agreement an Enterprise Company must be an affiliate of Alcoa or Alumina Limited.

20. At all times since 1995, AWAC (through the Enterprise Companies) has conducted business in bauxite mining, alumina refining, inorganic industrial chemical operations, aluminum fabrication and smelting operations internationally. As of January 1, 2016, the Enterprise Companies included: (a) Alcoa of Australia Ltd. (“AofA”), an Australian company that is jointly owned by AAH (owning a 60% interest) and Alumina Limited (owning a 40% interest); (b) Alcoa World Alumina, L.L.C. (“AWA”), previously known as Alcoa Alumina & Chemicals, L.L.C., a Delaware limited liability company the current members of which are Alcoa, ASC, Reynolds Metals Company (a subsidiary of Alcoa) and Reynolds Metals Exploration, Inc. (a subsidiary of Alcoa) (together holding 60% of the interests in AWA) and Alumina International and Alumina (USA) (together holding 40% of the interests in AWA); (c) Alcoa Caribbean Alumina Holdings LLC, a company incorporated in the State of Delaware, jointly owned by ASC (owning a 60% interest) and Alumina International (owning a 40% interest); (d)

AWA Saudi Limited, a company incorporated in Hong Kong Special Administrative Region of the People's Republic of China, jointly owned by Alcoa Saudi Limited (owning a 60% interest) and Alumina International (owning a 40% interest); (e) Alúmina Española, S.A. ("Alúmina Española"), a company incorporated in Spain, jointly owned by Alcoa Inespal S.L. (owning a 60% interest) and Westminer Acquisition (UK) Limited (owning a 40% interest); and (f) Alcoa World Alumina Brasil Ltda ("AWA Brasil"), a company incorporated in Brazil, jointly owned by (i) Alcoa Alumínio S.A., AIHC and Grupiara Participacoes S.A. (collectively owning a 60% interest), and (ii) Alumina Brazil Holdings Pty Ltd, Butia Participacoes S.A. and Alumina Limited do Brasil S.A. (collectively owning a 40% interest).

B. The Relevant AWAC Agreements

21. **Formation Agreement.** AWAC was established on or around January 1, 1995, pursuant to a Formation Agreement, dated December 21, 1994, by and among Alcoa (then known as ACOA), AIHC, ASC, Alumina Limited (then known as WMC), Alumina International (then known as Westminer International Holdings) and Alumina (USA) (then known as WMC Alumina). A copy of the

Formation Agreement is attached to the Complaint as Exhibit C and is incorporated by reference.

22. **The Charter.** The Charter of the Strategic Council (the “Charter”) sets forth the principles and policies for the management of the Enterprise Companies and certain rights and obligations of the parties with regard to their respective interests in Enterprise Companies. The Charter established a “Strategic Council” of AWAC to provide direction and counsel to the Enterprise Companies. The Charter further established Alcoa (then referenced as ACOA) as the “industrial leader” of AWAC. Specifically, Section 1 of the Charter provides in pertinent part:

(a) Strategic Council. The Strategic Council will be the principal forum for ACOA and WMC to provide direction and counsel to the affiliated companies within their worldwide Enterprise regarding strategic and policy matters. . . . ACOA and WMC shall direct and cause their representatives on any Enterprise Company Boards, entities or operations to carry out the direction established by and implement the decisions of the Strategic Council.

(b) Industrial Leadership. Under the general direction of and consistent with the decisions of the Strategic Council, ACOA shall be the industrial leader of the Enterprise. ACOA shall provide the operating management of the Enterprise and of all affiliated Enterprise Companies.

A copy of the Charter is attached to the Complaint as Exhibit D and is incorporated by reference.

23. The Formation Agreement and the Charter each provide that, subject to certain limited exceptions, Alcoa and its affiliates shall have a 60% interest in the Enterprise Companies and Alumina Limited and its affiliates shall have a 40% interest in the Enterprise Companies. Specifically, Section 2.01 of the Formation Agreement provides in pertinent part:

ACOA and WMC hereby agree to form the Enterprise Companies, including by making conforming amendments to existing entities, to combine in the Enterprise Companies the ownership of ACOA's and WMC's worldwide interests in bauxite mining, alumina refining and the ACOA inorganic industrial chemicals operations as well as certain integrated aluminum fabricating and smelting operations conducted by the Enterprise Companies. . . . ACOA and its Affiliates shall have a 60% interest in each of the Enterprise Companies WMC and its Affiliates shall have a 40% interest in all of the Enterprise Companies Unless otherwise agreed, it is the intention of ACOA and WMC that their ownership interests in each of the Enterprise Companies shall be 60/40 respectively and the parties shall act and exercise rights such that this 60/40 ratio will be achieved and maintained in any future acquisition of minority interests in any Enterprise Company, joint ventures, or new assets or companies.

Similarly, the Introduction to the Charter provides in pertinent part:

ACOA and its affiliates shall have a 60% interest in the Enterprise. WMC and its affiliates shall have a 40% interest in the Enterprise. . . . It is the intention of ACOA and WMC that their ownership interests in the Enterprise shall be 60/40 respectively and the parties shall act and exercise rights such that this 60/40 ratio will be achieved or maintained in any future

acquisitions of minority interests in any Enterprise Company, joint ventures or new assets or companies.

24. **The Option Agreement.** In 1995, Alcoa and Alumina Limited determined that it was necessary and appropriate to memorialize further certain option rights. Accordingly, on or about May 16, 1995, Alcoa and Alumina Limited entered into a letter agreement (the “Option Agreement”) pursuant to which Alcoa granted Alumina Limited a first option on each of: (1) Alcoa’s transfer of its initial 9% interest of any Enterprise Company; and (2) Alcoa’s transfer of affiliates holding any Enterprise Company interests. A copy of the Option Agreement is attached to the Complaint as Exhibit E and is incorporated by reference.

25. **AWA 2002 LLC Agreement.** AWA is a Delaware limited liability company and is one of the Enterprise Companies that is owned 60% by Alcoa and/or its affiliates and 40% by Alumina Limited and/or its affiliates. On or about December 31, 1994, Alcoa (then known as ACOA), ASC, Alumina International (then known as Westminer International Holdings) and Alumina (USA) (then known as WMC Alumina) entered into the Amended and Restated Limited Liability Company Agreement of Alcoa Alumina & Chemicals, L.L.C., dated as of December 31, 1994 (the “AWA 1995 LLC Agreement”).

26. On or about December 31, 2002, following Alcoa’s acquisition

of Reynolds Metals Company, the members amended the terms of the AWA 1995 LLC Agreement to add Reynolds Metals Company and Reynolds Metals Exploration, Inc. (both subsidiaries of Alcoa) as members of the company and entered into the Second Amendment to and Restatement of Limited Liability Company Agreement of AWA (the “AWA 2002 LLC Agreement”).³ The AWA 2002 LLC Agreement is governed by Delaware law. A copy of the AWA 2002 LLC Agreement is attached hereto as Exhibit 1 and is incorporated by reference.

27. **Enterprise Funding Partnership Agreement.** On or about September 18, 2006, AAH and Alumina Limited, as the sole shareholders of AofA, formed a partnership to provide funding to AofA and other Enterprise Companies for certain activities of AWAC (the “Enterprise Funding Partnership”).

28. On or about September 18, 2006, Alumina Limited and AAH entered into the Enterprise Funding Partnership Agreement, which established the Enterprise Funding Partnership.

29. On or about September 18, 2006, Alcoa, Alumina Limited, AAH, AofA and the Enterprise Funding Partnership entered into an agreement with respect to the payment of dividends by AofA and the funding of certain activities of AWAC

³ The AWA 2002 LLC Agreement is the same in all relevant respects as the AWA 1995 LLC Agreement, except for the addition of Reynolds Metals Company and Reynolds Metals Exploration, Inc. as members in 2002.

(the “Enterprise Funding Agreement”). A copy of the Enterprise Funding Agreement is attached to the Complaint as Exhibit B and is incorporated by reference.

30. The Enterprise Funding Agreement is governed by the law in force in Victoria, Australia, except that Delaware law governs the interpretation of certain dispute resolution procedures. Specifically, Clause 12.1 of the Enterprise Funding Agreement provides in pertinent part:

Except to the extent that the law in force in the State of Delaware (USA) will govern the interpretation and operation of the dispute resolution procedures referred to in clause 6 (but not the substantive issues the subject of the relevant dispute or difference), this document is governed by the law in force in Victoria, Australia.

C. The AWAC Agreements Give Alumina First Option Rights, Consent Rights and Marketing Rights, and Restrict Alcoa From Transferring or Delegating Its Obligations.

1. First Option Rights

31. The Formation Agreement and the Charter each provide that the governance documents for the Enterprise Companies would include provisions granting Alumina Limited and Alcoa a first option on transfers of the other’s interests and a fair opportunity to purchase such interests. Specifically, Section 11.02 of the Formation Agreement provides in pertinent part:

Each of the governance documents for the Enterprise Companies shall be amended to include provisions regarding a first option

regarding the transfer of interests, . . . addressing[:] the transferability of interests, maximization of market value of the interest for sale, ensuring a fair chance for the non-selling party to purchase the interest for sale [and] concerns of the non-selling party regarding the identity of potential buyers (e.g., direct competitors).

Section 12(c) of the Charter similarly provides:

Each of the governance documents for the affiliated companies includes provisions regarding a first option regarding the transfer of interests, . . . addressing[:] the transferability of interests, maximization of market value of the interest for sale, ensuring a fair chance for the non-selling party to purchase the interest for sale [and] concerns of the non-selling party regarding the identity of potential buyers (e.g., direct competitors).

As explained further below, Article IX of the AWA 2002 LLC Agreement contains provisions granting first option rights.

32. In addition, with respect to the 9% option grant, the Option

Agreement provides in pertinent part:

Notwithstanding the provisions of Section 12 of the Charter, Section 9.2 of the [AWA 1995 LLC Agreement] and the conforming provisions in any other constitutional document of any Enterprise Company, ACOA hereby grants to WMC or an Affiliate a first option on such 9% of the initial interest in each Enterprise Company that ACOA or an Affiliate desire to transfer to a third party.

. . .

The procedure for this first option shall be the same as described in the [AWA 1995 LLC Agreement] *except* that: . . . The consideration, including the price paid, to ACOA for any such interest shall be determined without considering any diminution in value due to the grant of this first option. . . .

33. The Alcoa Separation implicates this option because it will result in a transfer of the first 9% of Alcoa's interests in the Enterprise Companies to a third party within the meaning of this provision.

34. With respect to the transfer of affiliates holding any Enterprise Company interests, the Option Agreement provides in pertinent part:

It was not the intention of the parties to permit the free transfer of Affiliates that hold interests in an Enterprise Company. To prevent this, we hereby confirm our understanding that ACOA and WMC shall have a first option with respect to the other's transfer of all or part of the interest of [Westminer International Holdings], [WMC Alumina], ASC [], or any other Affiliate of ACOA or WMC designated to hold any or all of ACOA's or WMC's Percentage Interest in any Enterprise Company.

...

Such transfers shall include the sale, assignment or transfer by gift, operation of law or otherwise of an interest in such Affiliate.

...

The procedure for this first option shall be the same as described in the [AWA 1995 LLC Agreement].

35. The Alcoa Separation implicates this option because it will result in various transfers of Alcoa affiliates holding interests in Enterprise Companies within the meaning of this provision.

36. Consistent with the Option Agreement, the AWA 2002 LLC Agreement generally restricts any and all transfers (broadly defined to include any sale, transfer or assignment) of interests in AWA (other than, in certain circumstances and subject to satisfying certain conditions, transfers to an

“Affiliate”). The AWA 2002 LLC Agreement specifically prohibits any member from transferring its interest in AWA to a third party without providing the other members with an offer to purchase the interests. Section 9.1 provides in pertinent part:

(a) *Transfers Other Than to Affiliates of Members.* [N]o Member may sell, transfer or assign (hereinafter in this Article IX referred to interchangeably as “Transfer”) to any individual or entity (each a “Transferee”) all or any portion of an Interest (including, without limitation, any interest in Company capital, income, gain, loss, deduction or credit, or any items thereof) unless (i) such Transfer is expressly permitted under this Article IX, and (ii) such Transferee first executes an instrument reasonably satisfactory to the Board, accepting and agreeing to all of the terms and conditions of this Agreement (including specifically, without limitation, this Article IX), including a counterpart signature page to this Agreement. . . .

(b) *Transfers to Affiliates of Members.* Notwithstanding the provisions of Subsection (a) of this Section 9.1, any Member may, without the consent of any other Members, and without first making any Offer to other Members as described in Section 9.3(b) hereof, Transfer all or any portion of such Member’s Interest to an Affiliate . . . of such Member, provided, however, that (i) such Affiliate must satisfy all of the requirements of Subsection (a) of this Section 9.1 that are applicable to Transfers to Transferees that are not Affiliates of Members; and (ii) no such Transfer to such Affiliate shall be permitted under this Subsection (b) if such Transfer would result in the transferring Member’s breaching the provisions of Section 9.3(a) hereof (relating to the 21% Limitation) with respect to any portion of the Interest the transferring Member desires to Transfer to such Affiliate. . . .

37. Under the AWA 2002 LLC Agreement, “Affiliate of ACOA”

means:

any entity, directly or indirectly, controlling, controlled by, or under common control with ACOA. Without limiting the generality of the foregoing, an entity shall be deemed to be in control of or to be controlled by another entity if such entity holds fifty percent (50%) or more of the outstanding voting equity interest in such other entity or such other entity holds fifty percent or more of its outstanding voting equity interest.

The Formation Agreement has an essentially identical definition of “Affiliate.”

38. Section 9.3(b) of the AWA 2002 LLC Agreement states that, except as otherwise provided in Sections 9.1(b) and 9.2 of the AWA 2002 LLC Agreement, if Alcoa (or any of its affiliates) desires to transfer all or any portion of its interest in AWA, that member must first make a written offer to sell such interest or portion thereof to the Alumina-affiliated members. Specifically, Section 9.3(b) of the AWA 2002 LLC Agreement provides:

Except as otherwise provided in Section 9.1(b) or Section 9.2⁴ hereof, if at any time during the term of this Agreement any Member desires to Transfer all or any portion of its Interest (including without limitation, the Transfer of all or any portion of a Designated Percentage Interest with the prior written consent of the requisite Members pursuant to Subsection (a) of this Section 9.3), such Member shall first make an offer in writing delivered to all of the other Members (an “Offer”) to sell such Interest or portion thereof to the other Members in accordance with the provisions of Section 9.4 and 9.5 hereof. For purposes of this Subsection (b) and Section 9.4 and 9.5

⁴ Section 9.2 is described in paragraph 41 below.

hereof, so long as ACOA[,] ASC[,] RMC and RMC Exploration, or any of them, has any Interest and WMC-D and WMC-F, or either of them, also has any Interest, the aggregate Interests of ACOA, ASC, RMC and RMC Exploration shall be treated as a single Member unit (the “ACOA Unit”) and WMC-D and WMC-F shall likewise be treated as a single Member unit (the “WMC Unit”), and any offers with respect to the ACOA Unit or any portion thereof shall be made to and may be accepted by only the WMC Unit, and likewise any Offers with respect to the WMC Unit or any portion thereof shall be made to and may be accepted by only the ACOA Unit.

39. Section 9.4 of the AWA 2002 LLC Agreement provides that, following the receipt of an Offer, each of the other AWA members has, for forty-five days, the option to purchase or decline to purchase its pro rata share of the transferring member’s interest available for sale upon the same terms and conditions as specified in the Offer. During this forty-five-day period, the transferring member must furnish to all other members such information as they may reasonably require to enable them to establish the *bona fides* of the Offer. Specifically Section 9.4 of the AWA 2002 LLC Agreement provides in pertinent part:

For a period of forty-five (45) days from and after the receipt of an Offer from any Member (the “Transferring Member”), each of the other Members (each a “Purchasing Member”) shall have the option (each an “Option”) either to: (a) purchase (either directly or by an Affiliate of the Purchasing Member) its pro rata share of the Transferring Member’s Interest available for sale based upon such Purchasing Member’s then current Percentage Interest in the Company (excluding the Transferring Member’s Percentage Interest) upon the same terms and conditions as

specified in the Offer; or (b) decline to purchase the Transferring Member's Interest so available, in which case the remaining Member may purchase said Interest. During the foregoing forty-five (45) day period, the Transferring Member shall furnish to all other Members such further evidence as they may reasonably require to enable them to establish the *bona fides* of the Offer.

40. Under Section 9.5(b) of the AWA 2002 LLC Agreement, if the non-transferring members do not exercise their options to purchase within the forty-five-day period, then the transferring member may (subject to the satisfaction of certain conditions) transfer its interest that is the subject of the Offer to a third party upon the same or more stringent terms and conditions as specified in the Offer. Specifically, Section 9.5(b) provides in pertinent part:

If the Purchasing Members do not exercise their respective Options to purchase all of the Transferring Member's Interest . . . or fail to elect any Option granted . . . within the said forty-five (45) day period, then the Transferring Member may sell its Interest that is the subject of the Offer to a third party upon the same or more stringent terms and conditions as specified in the Offer, provided that the prospective purchaser is not a Competitor . . . of any Purchasing Member; *provided, however*, that the prospective purchaser, concurrently with such sale, agrees in a written undertaking, in form and substance reasonably acceptable to the Board, to be bound by the terms of this Agreement and the Charter and to be a party to this Agreement in place of the Transferring Member.

41. Section 9.2(a) of the AWA 2002 LLC Agreement permits the Alcoa members to reduce their 60% interest in AWA to 51% by transferring its

initial 9% interest without making a first offer to the Alumina-affiliated members for that interest and without obtaining the Alumina-affiliated members' consent (unless the transfer was to an "active investor," in which case the transfer must comply with the requirements of Section 9.2(b)). However, the Option Agreement expressly obligates Alcoa and its affiliates to make a first offer to Alumina Limited with respect to a transfer of the initial 9% interest. Accordingly, Alcoa may not transfer the initial 9% interest in AWA without first making an offer to Alumina Limited.

42. Section 9.6 of the AWA 2002 LLC Agreement provides that no transfer in violation of Article IX "shall be valid or effective, and the Company, the Members and the Board shall not recognize the same for the purpose of making any distributions to Members with respect to such Interest or part thereof."

43. Section 14.2 of the AWA 2002 LLC Agreement provides that the AWA "shall dissolve, and its affairs shall be wound up upon," among other things,

the death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member of the Company or the occurrence of any other event under the Act that terminates the continued membership of a Member in the Company, unless within ninety (90) days after the occurrence of such an event, all of the remaining Members agree in writing to continue the business of the Company and to the appointment, if necessary or desired, effective as of the date of such event of one or more additional Members

44. Section 9.1(a) of the AWA 2002 LLC Agreement provides that AWA will not dissolve upon a transfer accomplished pursuant to Section 9.1(a) or (b). Specifically, Section 9.1(a) provides in pertinent part:

The Transferee of a Transfer of all or any portion of an Interest that satisfies all of the foregoing requirements of this Subsection (a) or all of the requirements of Subsection (b) of this Section 9.1 shall be admitted as a Member of the Company effective immediately prior to the effective time of such Transfer; if the Member who made such Transfer assigned its entire Interest, such Member shall cease to be a member of the Company immediately following such admission; and the Company shall not dissolve, and the business of the Company shall be continued by the remaining Members (including the Transferee) without dissolution.

45. A transfer of a member's interest not in accordance with the provisions of Article IX could result in the transferor's ceasing to be a member and will constitute a "Liquidating Event" of AWA under Section 14.2 of the AWA 2002 LLC Agreement, requiring dissolution of AWA and winding up of its affairs absent written agreement by all the remaining members to continue the business.

2. Consent Rights

46. Under Section 12(b) of the Charter, Alcoa may transfer an initial 9% interest in any Enterprise Company; however, Alcoa must obtain Alumina Limited's consent for such transfers if the transferee is an "active investor." Specifically, Section 12(b) provides in pertinent part:

ACOA may reduce its proportionate ownership share in the

affiliated companies in the Enterprise from 60% to 51% at its election. If the proposed buyer is a passive investor who will not have representation on the Strategic Council nor any of the boards of the affiliated companies, WMC's consent to the sale is not required. . . . If the proposed buyer is an active investor who is intended by ACOA to have representation on any of the boards of the affiliated companies or the Strategic Council, ACOA must obtain the consent of WMC to the sale, which consent shall not be unreasonably withheld.

47. Section 13.05 of the Formation Agreement also prohibits each party from assigning its rights under the agreement without the other's prior written consent. Specifically, Section 13.05 provides:

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however, that neither party may assign its rights hereunder without the prior written consent of the other party.* (emphasis added)

48. Further, the AWA 2002 LLC Agreement expressly provides that no member may assign or delegate, in whole or in part, any right, remedy, duty or obligation arising thereunder without obtaining the prior express written consent of the other members and that any attempt to do so without such consent is void.

Specifically, Section 15.3 of the AWA 2002 LLC Agreement provides:

This Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, legal representatives and assigns. This Agreement and any right or remedy or any duty or obligation arising hereunder shall not be assignable or delegable in whole or in part by any Member without the express prior written consent of the other Members hereto and any such attempt to do so shall be deemed *void ab*

initio.

49. To the extent the Alcoa-affiliated members purport to assign or delegate any of their obligations under the AWA 2002 LLC Agreement to a non-Member, that assignment or delegation would require the express prior written consent of the Alumina-affiliated members.

50. Like other documents governing AWAC, the Enterprise Funding Agreement requires the prior consent of each party before a party may assign any of its rights or obligations under the agreement. Specifically, Clause 11.1 of the Enterprise Funding Agreement provides in pertinent part:

Subject to clauses 11.2 and 11.3, a party may only assign, dispose of, encumber, declare a trust over or otherwise create an interest in or deal with any of its rights or obligations under this document, or attempt or purport to do so, with the prior consent of each other party.

51. To the extent Alcoa purports to assign or delegate any of its rights or obligations under the Enterprise Funding Agreement, that assignment or delegation would require the express prior consent of Alumina Limited.

3. Rights to Sell Alumina and Bauxite

52. Under Section 5(a)(ii) of the Charter, the Enterprise shall be responsible for selling alumina to Alcoa at arm's length prices as well as to third parties.

53. Neither the Charter nor any of the other AWAC Agreements provides that Alcoa in its capacity as industrial leader has the exclusive and unfettered right to control the sale of alumina or bauxite on behalf of the Enterprise participants. Rather, any such sales by Alcoa have been, and may be, made only pursuant to a delegation to Alcoa as an agent for each of the Enterprise participants.

54. As a result, under the Charter, Alcoa and Alumina Limited as Enterprise participants are each permitted to authorize and direct the industrial leader of the Enterprise regarding the sale of alumina and bauxite produced by the Enterprise to the extent of and in accordance with each parties' interest in the Enterprise. As the members of the Enterprise, Alcoa and Alumina Limited also are each permitted to authorize and direct an Enterprise Company regarding the sale of alumina and bauxite produced by the Enterprise to the extent of and in accordance with each parties' interest in the Enterprise.

4. Restriction on Assignment or Transfer of Obligations

55. As stated above, the Charter established Alcoa as the "industrial leader" of AWAC. *See* ¶ 22, *supra*. The Charter contains no provision allowing Alcoa to assign the Charter or any of its obligations thereunder.

56. As described further below, absent Alumina Limited's consent, the Alcoa Separation impermissibly seeks to delegate Alcoa's obligations as

industrial leader to a third party (Upstream Company). A delegation of those obligations without Alumina Limited's consent would not be effective. In that event, Alcoa and Alumina Limited would each be permitted to authorize and direct an Enterprise Company regarding the sale of alumina and bauxite since Upstream Company would be without authority to do so.

D. The Alcoa Separation

57. As discussed above, under the terms of the Alcoa Separation, Alcoa will bifurcate into two separate publicly traded companies—the “Upstream Company,” which will use the Alcoa name and be comprised of Alcoa's bauxite mining, alumina refining and aluminum production businesses (including the Enterprise), and the “Value-Add Company,” which will be comprised of Alcoa's rolled products, engineered products, transportation and construction businesses.

58. On June 10, 2016, Alcoa provided Counterclaim Plaintiffs with a document purporting to describe certain aspects of the Alcoa Separation (the “Separation Description”). According to the Separation Description, Alcoa will form Upstream Company as a new Delaware entity that will initially be a wholly owned subsidiary of Alcoa. Although this entity will later be renamed “Alcoa Corporation,” as Alcoa publicly announced in its September 29, 2015 Form 8-K, “[t]he Upstream Company can operate under the Alcoa name through legal

assignment of the name while the Value-Add Company can be given a new name while retaining the legal identity of the existing Alcoa.”

59. On June 10, 2016, after commencement of this action, Alcoa served on Defendants its Separation Description, which as described below, identifies in general terms certain steps involved in the transfer of Alcoa’s interests in the Enterprise Companies that are necessary for the Separation. To date, despite repeated requests by Alumina Limited, Alcoa has declined to specify the form or legal means by which it will divest of its equity interests in the Enterprise Companies. Nonetheless, the Separation Description confirms Alcoa’s intention, as part of the Separation, to transfer all of its direct or indirect interests in AWAC to Upstream Company. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- [REDACTED]

- [REDACTED]

- [REDACTED]

61. [REDACTED]

[REDACTED]

62. The steps that Alcoa will undertake to effect the Separation are part of an integrated transaction [REDACTED]

[REDACTED]

Each of the steps described in the Separation Description is an integrated, interdependent and indispensable part of Alcoa’s announced plan to pursue the Separation, which was described in Alcoa’s September 28, 2015 Form 8-K as a singular “transaction” that “is expected to be completed in the second half of

2016.” [REDACTED]

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

64. Consistent with Alcoa’s steadfast refusal to address the issue with Alumina Limited, the Separation Description says nothing about the transfer of Alcoa’s rights, interests and obligations under the AWAC Agreements. In fact, a footnote in the Separation Description cautions that the document “describes those aspects of the separation transaction that involve movement of Alcoa’s interests in AWAC entities” but “does not detail other aspects of the separation.” Nor does the Separation Description purport to set out a definitive plan by Alcoa to proceed as outlined in that document. Rather, the same footnote continues: “Although this statement reflects the presently intended separation transaction, Plaintiff reserves the right to modify the separation transaction. Plaintiff will inform Defendants of any material modifications that are inconsistent with this statement.”⁵

⁵ Counterclaim Plaintiffs reserve their right to amend or supplement their Counterclaims based on any new or different information regarding the Separation provided by Alcoa or revealed in discovery.

65. Of particular relevance to this action, the Separation will result in the transfer to Upstream Company of Alcoa's direct and indirect interests in the various AWAC companies. To date, Alcoa has neither explained to Alumina Limited whether the Separation also will involve an assignment or delegation of Alcoa's or its affiliates' rights and obligations under the various AWAC Agreements, nor identified the party or parties that Alcoa contends will perform its obligations under those agreements following the Separation. Unless such an assignment or delegation of Alcoa's and its affiliates' rights and obligations under the various AWAC Agreements occurs, the Enterprise Companies will not be controlled by a party to the AWAC Agreements, which is fundamental to the AWAC Enterprise, and expressly required under the terms of the AWAC Agreements.

66. In connection with the Alcoa Separation, if Alcoa intends to assign, and cause to be assigned, either expressly or otherwise, to Upstream Company all of Alcoa's and its affiliates' respective rights, remedies, duties and obligations under the agreements governing AWAC such that Alcoa will no longer be subject to any duties or obligations under such agreements, Alcoa cannot do so without the consent of Alumina Limited.

E. The Separation Purports Unilaterally to Impose on Counterclaim Plaintiffs a Weaker, Riskier Enterprise Associate than Alcoa

67. The Separation improperly purports to impose on Counterclaim Plaintiffs a co-venturer that they did not choose, do not want and that is substantially weaker and riskier than Alcoa. Indeed, as Alcoa itself has disclosed to its stockholders, Upstream Company will face a number of material risks as a result of the Separation. For example, as disclosed in Alcoa's Form 10-K filed on February 19, 2016, Upstream Company will be a "smaller, less diversified" company than Alcoa and will have a "narrower business focus and may be more vulnerable to changing market conditions, such as changes in aluminum industry conditions, which could result in increased volatility in . . . cash flows, working capital and financing requirements and could materially and adversely affect the . . . business, financial condition and results of operations."

68. Alumina Limited has substantial concerns regarding continuing the Enterprise with Upstream Company, a new, untested, and far more risky counterparty than Alcoa. Alcoa itself recognized these legitimate concerns when disclosing to its stockholders in its February 19, 2016 Form 10-K that:

Uncertainty related to the proposed separation may lead suppliers, customers and other parties with which Alcoa currently does business or may do business in the future to terminate or attempt to negotiate changes in existing business relationships, or to consider entering into business relationships with parties other than Alcoa. These disruptions could have a material and adverse effect on Alcoa's

businesses, financial condition, results of operations and prospects, or the businesses, financial condition, results of operations and prospects of the independent companies resulting from the separation.

F. Alumina's Assertion of Its Rights Under the AWAC Agreements

69. Beginning November 2015, Alumina Limited advised Alcoa that the proposed transfers contemplated by the Alcoa Separation were subject to certain rights under the AWAC Agreements. Alumina Limited subsequently advised Alcoa that Alumina Limited and its affiliates, as applicable, are entitled to receive various written offers in respect of the transfers contemplated by the Alcoa Separation, including: (a) offers under the Option Agreement; and (b) an offer under the AWA 2002 LLC Agreement in respect of the transfers of the AWA interests held by Counterclaim Defendants and other Alcoa affiliates to Upstream Company. In order to avoid any possible interference with Alcoa's schedule for the Separation, Alumina Limited requested that Alcoa make the offers referred to in subparagraphs (a) and (b) above as soon as possible.

70. In response, Alcoa dithered, delayed and evaded. Despite Alumina Limited's repeated requests to Alcoa to acknowledge and recognize the consent and option rights described above, Alcoa at first declined to engage at all and then to do so meaningfully. Nor has Alcoa ever explained the basis on which it contends that Alumina Limited has no such rights. After months of dodging and weaving regarding its position concerning Alumina's rights, on May 11, 2016,

Alcoa informed Alumina that Alcoa “strongly disagrees” that Alumina Limited has consent rights in connection with the Alcoa Separation but did not explain the basis for that assertion. By letter dated May 24, 2016, Alumina Limited set forth its understanding of the Alcoa Separation and requested that Alcoa provide “undertakings” or assurances confirming its position regarding the same issues. The letter also noted that little information about certain aspects of the Alcoa Separation had been provided by Alcoa to Alumina Limited. Alcoa did not respond. Three days later, on May 27, 2016, Alcoa filed this action seeking declaratory relief that no such consent or option rights exist. At no time, including in its Complaint in this action, has Alcoa endeavored to explain why it believes that the consent and option provisions described above do not apply to the Alcoa Separation.

G. Alcoa Has Failed to Seek and Obtain Proper Consent

71. To date, Alcoa has failed to seek and obtain the prior written consent of Alumina Limited, Alumina International and Alumina (USA) under the Formation Agreement in violation of Section 13.05 of the Formation Agreement and has refused to recognize any such obligation.

72. Alcoa has also failed to seek and obtain Alumina Limited’s consent to the assignment of Alcoa’s rights and the delegation of Alcoa’s duties and obligations under the Charter and has refused to recognize any such obligation.

73. Alcoa and ASC have failed to seek and obtain the prior written consent of Alumina International and Alumina (USA) to the assignment and delegation of the AWA 2002 LLC Agreement and of Alcoa and ASC's rights, remedies, duties and obligations under that agreement in violation of Section 15.3 of the AWA 2002 LLC Agreement and have refused to recognize any such obligation.

74. Alcoa also has failed to seek and obtain Alumina Limited's prior consent to the assignment of its rights and obligations under the Enterprise Funding Agreement in violation of Section 11.1 of the Enterprise Funding Agreement and has refused to recognize any such obligation.

75. By virtue of its allegations in this action, Alcoa has made clear that it does not intend, in connection with the Alcoa Separation, to abide by its contractual obligations to seek or obtain any of the required consents under the agreements as set forth herein and has refused to recognize any such obligation or even to discuss its interpretation of the AWAC Agreements with Alumina in any manner other than through litigation of this action. Accordingly, Counterclaim Plaintiffs are entitled to an order declaring that Counterclaim Defendants are prohibited from implementing the Alcoa Separation unless and until the applicable Counterclaim Defendants seek and obtain the consent of Alumina Limited, Alumina International and Alumina (USA) (as applicable) to the assignment and

delegation of Counterclaim Defendants' respective rights and obligations under each of the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement.

H. Alumina Limited's Entitlement to Receive an Offer—Transfer of Initial 9%

76. By approving the plan for the Alcoa Separation and taking steps to carry out the Alcoa Separation, Alcoa has expressed its intent to transfer at least 9% of Alcoa's and its affiliates' interests in each Enterprise Company to a third party, namely Upstream Company.

77. As alleged above, under the Option Agreement, Alumina Limited has a first option on the 9% initial interest of Alcoa and/or its affiliates in each Enterprise Company and is entitled to receive an offer therefor pursuant to the procedures set forth in the AWA 2002 LLC Agreement. To date, Alcoa has failed or refused to make such an offer in violation of the Option Agreement.

78. Alumina Limited is, and at all relevant times has been, willing and able to perform its obligations under the Option Agreement.

79. Alumina Limited is therefore entitled to: (a) a declaration that, pursuant to the Option Agreement, Alcoa is required to make an offer to Alumina Limited for the initial 9% interest in each Enterprise Company in accordance with the procedures set forth in the AWA 2002 LLC Agreement; (b) an order of specific

performance requiring that Alcoa make an offer to Alumina Limited for the initial 9% interest in each Enterprise Company pursuant to (and otherwise comply with the requirements of) the Option Agreement in accordance with the procedures set forth in the AWA 2002 LLC Agreement; and (c) an order enjoining Alcoa from effecting the Alcoa Separation until such time that Alcoa makes an offer to Alumina Limited for the initial 9% interests in each Enterprise Company pursuant to (and otherwise in compliance with the requirements of) the Option Agreement in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

I. Alumina Limited’s Entitlement to Receive an Offer—Transfers of Affiliates and Transfers of Shares In Upstream Company

80. By approving the plan for the Alcoa Separation and taking steps to carry out the Alcoa Separation, Alcoa has expressed its desire to transfer each of its affiliates that were designated to hold, directly or indirectly, interests in any Enterprise Company, [REDACTED]

[REDACTED]

[REDACTED]

81. As alleged above, Alumina Limited has a first option with respect to (i) Alcoa’s transfer (directly or indirectly) of each of its affiliates’ interests in the Enterprise Companies to Upstream Company; and (ii) [REDACTED]

[REDACTED] Alumina Limited is

entitled to receive offers therefor pursuant to the procedures of the AWA 2002 LLC Agreement. To date, Alcoa has failed or refused to make such offers in violation of the Option Agreement. By virtue of its allegations in this action, Alcoa has made clear that it does not intend, in connection with the Alcoa Separation, to make such offers.

82. Alumina Limited is, and at all relevant times has been, willing and able to perform its obligations under the Option Agreement.

83. Alumina Limited is therefore entitled to: (a) a declaration that, pursuant to the Option Agreement, Alcoa is required to make an offer to Alumina Limited with respect to (i) the transfer of each Alcoa affiliate's interest in each Enterprise Company in accordance with the procedures set forth in the AWA 2002 LLC Agreement; and (ii) [REDACTED] in accordance with the procedures set forth in the AWA 2002 LLC Agreement; (b) an order of specific performance requiring that Alcoa make an offer to Alumina Limited for (i) the transfer of each Alcoa affiliate's interest in each Enterprise Company pursuant to the Option Agreement and in accordance with the procedures set forth in the AWA 2002 LLC Agreement; and (ii) [REDACTED] [REDACTED] in accordance with the procedures set forth in the AWA 2002 LLC Agreement; and (c) an order enjoining Alcoa from effecting the Alcoa Separation until such time that Alcoa makes an offer to Alumina Limited for (i) the

transfer of each Alcoa affiliate's interest in each Enterprise Company pursuant to the Option Agreement and in accordance with the procedures set forth in the AWA 2002 LLC Agreement; and (ii) [REDACTED] in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

J. Alumina International and Alumina (USA)'s Entitlement to Receive an Offer—Transfers of AWA Interests

84. By approving the plan for the Alcoa Separation and taking steps to carry out the Alcoa Separation, Alcoa and each of ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. have expressed their respective intent to transfer all of their respective interests in AWA to a third party, namely Upstream Company.

85. As alleged above, Alumina International and Alumina (USA) are each entitled pursuant to Section 9.3 of the AWA 2002 LLC Agreement to receive a written offer for the AWA interests held by each of Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc.

86. To date, each of Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. has failed or refused to make such offers in violation of Section 9.3 of the AWA 2002 LLC Agreement.

87. Each of Alumina International and Alumina (USA) is, and at all relevant times has been, willing and able to perform its obligations under the AWA 2002 LLC Agreement.

88. Alumina International and Alumina (USA) are therefore entitled to: (a) a declaration that, pursuant to the AWA 2002 LLC Agreement, each of Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. is required to make an offer for the interests in AWA held by each of them to Alumina International and Alumina (USA); (b) an order of specific performance requiring that each of Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. make an offer to Alumina International and Alumina (USA) for their respective interests in AWA pursuant to and in accordance with the AWA 2002 LLC Agreement; and (c) an order enjoining Alcoa from effecting the Alcoa Separation until such time that Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. make an offer to Alumina International and Alumina (USA) for their respective interests in AWA pursuant to and in accordance with the AWA 2002 LLC Agreement.⁶

⁶ Similar to the AWA 2002 LLC Agreement, the Shareholders' Agreement governing AofA contains first option and consent rights in the event of a transfer of all or part of a shareholder's interest. Alumina Limited's rights under that agreement may also be implicated depending on the final structure and steps used to effectuate the Separation. Pursuant to Court of Chancery Rule 44.1, notice is hereby provided that claims or defenses involving the AofA Shareholders'

K. The Separation Would Leave AWAC Without Its Contractually-Designated (and Required) Manager

89. Under the Charter, Alcoa is designated as the industrial leader of AWAC and must provide the operating management of the Enterprise, under the general direction of, and consistent with the decisions of, the Strategic Council. As industrial leader, Alcoa “shall act in a manner that is fair and reasonable to the parties, WMC and to Alcoa in managing the related activities of Alcoa within the Enterprise with those outside the Enterprise” and Alcoa “shall ensure that any dealings between the Enterprise and [Alcoa] shall be conducted on an arm’s length basis.”

90. The Charter does not permit Alcoa unilaterally to abdicate or delegate its role as the AWAC industrial leader. Upstream Company cannot assume that role in connection with the Alcoa Separation without Alumina Limited’s agreement. Nor, as stated above, can Alcoa properly bifurcate the holding of its equity interests in AWAC while somehow maintaining its obligations under the AWAC Agreements, including its obligation to continue as industrial leader of the AWAC Enterprise.

Agreement and the Enterprise Funding Agreement discussed in Paragraph 29, above, may raise issues of the law of Victoria, Australia.

91. Alcoa may not assign or delegate its managerial or other obligations (including its obligation to be industrial leader and its obligations to provide the operating management of AWAC or the Enterprise Companies) to Upstream Company without Alumina Limited's consent. Even if such a structure were contractually possible and legally permissible, it would hinder the ability of AWAC and the Enterprise Companies to function as a commercial enterprise and render Alcoa's role as AWAC's industrial leader entirely ineffectual and thereby impair the value of Counterclaim Plaintiffs' interests in AWAC and the Enterprise Companies.

92. Following the Separation, Alcoa will not be able to discharge its obligations under the Charter, including its obligations as industrial leader of the Enterprise. Accordingly, the Separation would leave AWAC without its contractually-designated (and required) manager and would hinder AWAC's purpose and ability to operate as a commercial enterprise and therefore improperly impair the value of Counterclaim Plaintiffs' interests in the Enterprise.

L. Alumina Limited's Assumption of Marketing Rights in the Event of Alcoa's Wrongful Assignment or Delegation of Its Obligations Under the Charter

93. As explained above, with regard to alumina produced by the Enterprise, Section 5(a)(ii) of the Charter provides that "the Enterprise" shall be responsible for selling alumina to Alcoa at arms' length prices and to third parties.

No provision of the Charter, or of any other AWAC Agreement, purports expressly to confer upon Alcoa any right to sell alumina, otherwise than in its capacity as a participant of the Enterprise. As such, Alcoa is in the same position as Alumina Limited. Alcoa nevertheless wrongfully contends that Alumina Limited, which is also a participant in the Enterprise, does not possess any right to direct or control the sale of alumina.

94. In the event Alcoa wrongfully attempts to assign or delegate its obligations under the Charter without Alumina Limited's consent, Alumina Limited will be entitled to exercise its right to direct and control Enterprise Companies in connection with the sale of alumina and bauxite in accordance with, and in order to protect, its interest in the AWAC Enterprise. Indeed, absent the exercise of such rights by Alumina Limited, AWAC would not be able to function effectively and the value of Counterclaim Plaintiffs' interests in AWAC would be diminished or entirely impaired.

COUNT I

Breach of Contract and Declaratory Judgment (Formation Agreement, Charter, AWA 2002 LLC Agreement and Enterprise Funding Agreement – Consent Rights)

95. Counterclaim Plaintiffs reallege the allegations set forth in paragraphs 1 through 94 above as if fully set forth herein.

96. The Alcoa Separation is subject to the Counterclaim Plaintiffs' consent rights under the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement. Alcoa has failed and/or refused to seek and obtain the consent of Counterclaim Plaintiffs to its assignment and delegation of its rights and obligations under the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement.

97. Alcoa has thereby breached and/or anticipatorily breached such agreements by expressing its intent to proceed with the Alcoa Separation without obtaining such consents.

98. Counterclaim Plaintiffs are entitled to: (a) a declaration that, pursuant to the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement, Alcoa and ASC (as applicable) are required to seek and obtain the consent of Alumina Limited, Alumina International and Alumina (USA) (as applicable) prior to any assignment or delegation of (i) Alcoa's rights and obligations under each of the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement and (ii) ASC's rights and obligations under each of the Formation Agreement and the AWA 2002 LLC Agreement; and (b) an order of specific performance requiring that Alcoa and ASC (as applicable) seek and obtain the consent of Alumina Limited, Alumina International and Alumina (USA) (as

applicable) prior to the assignment and delegation of (i) Alcoa's rights and obligations under each of the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement and (ii) ASC's rights and obligations under each of the Formation Agreement and the AWA 2002 LLC Agreement.

99. Alcoa's commencement of this litigation demonstrates that an actual controversy exists between Counterclaim Plaintiffs and Counterclaim Defendants regarding the proper interpretation of the terms and provisions of the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement.

100. Counterclaim Plaintiffs have no adequate remedy at law and are threatened with irreparable loss, injury and damage unless the Court grants the equitable relief requested.

COUNT II
Breach of Contract and Declaratory Judgment (Option Agreement – Transfer of Initial 9%)

101. Counterclaim Plaintiffs reallege the allegations set forth in paragraphs 1 through 100 above as if fully set forth herein.

102. The Alcoa Separation is subject to Alumina Limited's 9% option rights under the Option Agreement. Alcoa has failed and/or refused to make Alumina Limited an offer for Alcoa's and/or its affiliates' 9% interest in

each Enterprise Company and to otherwise comply with its obligations in respect thereof.

103. Alcoa has thereby breached or intends to breach the Option Agreement.

104. Alumina Limited is entitled to a declaration that, pursuant to the Option Agreement, Alcoa is required to make an offer to Alumina Limited for the initial 9% interest in each Enterprise Company in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

105. Alcoa's commencement of this litigation demonstrates that an actual controversy exists between Alumina Limited and Alcoa regarding the proper interpretation of the terms and provisions of the Option Agreement.

106. Alumina Limited is entitled to an order of specific performance requiring that Alcoa make an offer to Alumina Limited for the initial 9% interest in each Enterprise Company pursuant to the Option Agreement, and in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

107. Alumina Limited has no adequate remedy at law and is threatened with irreparable loss, injury and damage unless the Court grants the equitable relief requested.

COUNT III

Breach of Contract and Declaratory Judgment (Option Agreement – Transfers of Affiliates and Transfer of Shares in Upstream Company)

108. Counterclaim Plaintiffs reallege the allegations set forth in paragraphs 1 through 107 above as if fully set forth herein.

109. The Alcoa Separation is subject to Alumina Limited's affiliate option rights under the Option Agreement. Alumina Limited has a first option with respect to (i) Alcoa's transfer (directly or indirectly) of each of its affiliates' interests in the Enterprise Companies to Upstream Company and (ii) [REDACTED]

110. Alcoa has failed and/or refused to make Alumina Limited an offer for (i) such affiliates' interests and (ii) [REDACTED]

[REDACTED] By virtue of its allegations in this action, Alcoa has made clear that it does not intend, in connection with the Alcoa Separation, to make such an offer.

111. Alcoa has thereby breached or intends to breach the Option Agreement.

112. Alumina Limited is entitled to a declaration that, pursuant to the Option Agreement, Alcoa is required to make an offer to Alumina Limited with respect to (i) the transfer of each Alcoa affiliate's interest in each Enterprise

Company in accordance with the procedures set forth in the AWA 2002 LLC Agreement and (ii) [REDACTED] in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

113. Alcoa's commencement of this litigation demonstrates that an actual controversy exists between Alumina Limited and Alcoa regarding the proper interpretation of the terms and provisions of the Option Agreement.

114. Alumina Limited is entitled to an order of specific performance requiring that Alcoa make an offer to Alumina Limited for (i) the transfer of each Alcoa affiliate's interests in each Enterprise Company pursuant to the Option Agreement and in accordance with the procedures set forth in the AWA 2002 LLC Agreement and (ii) [REDACTED] pursuant to the Option Agreement and in accordance with the procedures set forth in the AWA 2002 LLC Agreement.

115. Alumina Limited has no adequate remedy at law and is threatened with irreparable loss, injury and damage unless the Court grants the equitable relief requested.

COUNT IV
Breach of Contract and Declaratory Judgment
(AWA 2002 LLC Agreement – Transfers of AWA Interests)

116. Counterclaim Plaintiffs reallege the allegations set forth in paragraphs 1 through 115 above as if fully set forth herein.

117. The Alcoa Separation is subject to Alumina International's and Alumina (USA)'s option rights under the AWA 2002 LLC Agreement. Counterclaim Defendants have failed and/or refused to make Alumina International and Alumina (USA) an offer for Counterclaim Defendants' interests in AWA.

118. Counterclaim Defendants have thereby breached the AWA 2002 LLC Agreement.

119. Alumina International and Alumina (USA) are entitled to a declaration that, pursuant to the AWA 2002 LLC Agreement, Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. are required to make an offer for the interests in AWA held by each of them to Alumina International and Alumina (USA).

120. Alcoa's commencement of this litigation demonstrates that an actual controversy exists between Counterclaim Plaintiffs and Counterclaim Defendants regarding the proper interpretation of the terms and provisions of the AWA 2002 LLC Agreement.

121. Alumina International and Alumina (USA) are entitled to an order of specific performance requiring that Alcoa, ASC, Reynolds Metals Company and Reynolds Metals Exploration, Inc. make an offer to Alumina

International and Alumina (USA) for their interests in AWA pursuant to and in accordance with the AWA 2002 LLC Agreement.

122. Counterclaim Plaintiffs have no adequate remedy at law and are threatened with irreparable loss, injury and damage unless the Court grants the equitable relief requested.

COUNT V

Breach of Contract and Declaratory Judgment (Implied Covenant of Good Faith and Fair Dealing)

123. Pursuant to Court of Chancery Rule 57 and 10 *Del. C.* § 6501, this Court has authority to declare the rights, status, or other legal relations of the parties before it.

124. The Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement are contracts that incorporate an implied covenant of good faith and fair dealing requiring Counterclaim Defendants to act fairly and in good faith, act reasonably to fulfill the intent of the parties under the contracts, and to refrain from arbitrary and unreasonable conduct that has the effect of preventing Counterclaim Plaintiffs from receiving the fruits of their bargain.

125. To the extent the AWAC Agreements do not expressly address a transaction such as the Separation, Counterclaim Defendants' obligation of good faith and fair dealing prohibits them from transferring Alcoa's direct and indirect

AWAC-related interests, rights or obligations as part of the Separation without the consent of Counterclaim Plaintiffs or from structuring the Separation in any way that would impair or diminish the ability of AWAC and the Enterprise Companies to carry out their commercial purposes or conduct their business activities.

126. Counterclaim Defendants have breached, or intend to breach, the implied covenant of good faith and fair dealing by attempting to transfer their interests, rights and obligations under the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement without obtaining the consent of Counterclaim Plaintiffs.

127. Counterclaim Plaintiffs are entitled to a declaration that Counterclaim Defendants' transfer of interests, rights and obligations under the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement without obtaining the consent of Counterclaim Plaintiffs is a violation of the implied covenant of good faith and fair dealing.

COUNT VI
Declaratory Judgment (Management of AWAC and Marketing Rights)

128. Pursuant to Court of Chancery Rule 57 and 10 *Del. C.* § 6501, this Court has authority to declare the rights, status, or other legal relations of the parties before it.

129. Alcoa's commencement of this litigation demonstrates that an actual justiciable controversy ripe for judicial determination exists between Counterclaim Plaintiffs and Counterclaim Defendants regarding Alumina Limited's marketing and sale rights and whether the Separation would constitute an improper attempt to assign, transfer or delegate Alcoa's role as industrial leader of AWAC and leave AWAC without effective management.

130. Alcoa may not assign or delegate its obligations under the AWAC Agreements without Alumina Limited's consent. Any attempt by Alcoa to effect such an assignment or delegation without Alumina Limited's consent, would breach the AWAC Agreements and would be improper.

131. Alcoa may not continue as industrial leader of the AWAC Enterprise pursuant to the AWAC Agreements without the required equity interest in the Enterprise Companies contemplated by the AWAC Agreements. Any attempt by Alcoa to continue as industrial leader of the AWAC Enterprise without maintaining the necessary equity interest in the Enterprise Companies to enable it to act in that capacity, would breach the AWAC Agreements and would be improper.

132. No provision of the Charter, or of any other AWAC Agreement, purports expressly to confer upon Alcoa any right to sell alumina, otherwise than in its capacity as a participant of the Enterprise. As such, Alcoa is

in the same position as Alumina Limited. Alcoa nevertheless wrongfully contends that Alumina Limited, which is also a participant in the Enterprise, does not possess any right to direct or control the sale of alumina.

133. In the event Alcoa wrongfully attempts to assign or delegate its obligations under the Charter without Alumina Limited's consent, Alumina Limited will be entitled to exercise its right to direct and control Enterprise Companies in connection with the sale of alumina and bauxite in accordance with, and in order to protect, its interest in the AWAC Enterprise.

134. Pursuant to 10 *Del. C.* §§ 6501 *et seq.*, Counterclaim Plaintiffs are entitled to a declaratory judgment that

(a) Alcoa is required to seek and obtain the consent of Counterclaim Plaintiffs prior to any assignment or delegation of Alcoa's obligations under the Charter and its obligations as industrial leader of the Enterprise;

(b) Alcoa may not continue as industrial leader of the AWAC Enterprise pursuant to the AWAC Agreements without the required equity interest in the Enterprise Companies contemplated by the AWAC Agreements;

(c) under the Charter, in respect of alumina produced by the AWAC Enterprise, Alumina Limited has the right either to (i) take its

proportionate share of alumina; or (ii) procure the relevant Enterprise Company to sell its proportionate share of alumina to third parties on the terms negotiated by Alumina Limited;

(d) under the Charter, in respect of bauxite produced by the AWAC Enterprise, Alumina Limited has the right either to (i) take its proportionate share of bauxite or (ii) procure the relevant Enterprise Company to sell its proportionate share of bauxite to third parties on the terms negotiated by Alumina Limited;

(e) following the Alcoa Separation, Alumina Limited will be entitled to enforce its rights as set forth in subparagraphs (c)-(d) above.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiffs pray for judgment as follows:

- (a) Permanently enjoining Counterclaim Defendants from taking any further steps in the Alcoa Separation unless and until Counterclaim Defendants comply with the Counterclaim Plaintiffs' consent rights and option rights under the Formation Agreement, the Charter, the AWA 2002 LLC Agreement and the Enterprise Funding Agreement (as applicable);
- (b) Declaring that Counterclaim Plaintiffs are entitled to receive offers pursuant to the Option Agreement and the AWA 2002 LLC Agreement;
- (c) Granting Counterclaim Plaintiffs the declaratory relief requested in paragraph 134 above;

- (d) Ordering Counterclaim Defendants promptly to deliver to Counterclaim Plaintiffs offers pursuant to the Option Agreement and the AWA 2002 LLC Agreement (as applicable);
- (e) Awarding money damages against Counterclaim Defendants, jointly and severally, for all losses and damages suffered by Counterclaim Plaintiffs as a result of the acts complained of herein, together with pre-judgment interest;
- (f) Awarding to Counterclaim Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees, expert fees, costs and expenses; and
- (g) Such other and further relief as the Court deems just and proper.

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Dated: June 17, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2016, a copy of the foregoing document was served via *File and ServeXpress* upon the following attorney[s] of record:

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