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*Counsel to the Foreign Representative*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 15
	)	
BOART LONGYEAR LIMITED <i>et al.</i> ,	)	Case No. 21-11465 (___)
	)	
Debtors in a Foreign Proceeding. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**MOTION FOR ORDER (I) SCHEDULING RECOGNITION HEARING  
AND (II) SPECIFYING FORM AND MANNER OF SERVICE OF NOTICE**

Nora R. Pincus, in her capacity as the duly authorized foreign representative (the “Foreign Representative”) of Boart Longyear Limited (“BLY”) and each of the other above-captioned debtors (collectively, the “Debtors” and, together with their non-debtor affiliates, “Boart Longyear”), with respect to the proceeding (the “Australian Proceeding”) pending before the Supreme Court of New South Wales, Sydney, Australia (the “Australian Court”), through which the Debtors seek sanction of two proposed schemes of arrangement (the “Schemes”) under the Corporations Act 2001 (Commonwealth of Australia) (the “Corporations Act”), respectfully represents as follows in support of this motion (the “Motion”):

<sup>1</sup> The debtors in these chapter 15 cases, along with the last three digits of each debtor’s Australian Company Number, are: Boart Longyear Limited (728), Boart Longyear Management Pty Limited (545), Boart Longyear Australia Pty Limited (025), Boart Longyear Investments Pty Limited (373), and Votrait No. 1609 Pty Limited (272).

## **BACKGROUND**

1. On this date (the “Petition Date”), each Debtor commenced a chapter 15 case (collectively, the “Chapter 15 Cases”) by filing a voluntary petition for relief under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) in this Court.

2. A comprehensive description of the Debtors’ businesses and operations, capital structure, the Australian Proceeding, and the events leading to the commencement of the Chapter 15 Cases can be found in the *Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Related Relief* [Docket No. 2] (the “Verified Petition”<sup>2</sup> and, together with the Voluntary Petition Forms [Docket No. 1 in each Chapter 15 Case], the “Petition”), filed contemporaneously herewith and incorporated in this Motion by reference.

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

5. The bases for the relief requested in this Motion are sections 1514 and 1515 of the Bankruptcy Code, rules 1007(a)(4), 2002(m), 2002(p), 2002(q), 9006(c)(1), and 9007 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and rules 2002-4, 9006-1, and 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

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<sup>2</sup> All capitalized terms not otherwise defined in this Motion have the meanings given to them in the Verified Petition.

**RELIEF REQUESTED**

6. The Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**: (a) setting September 17, 2021, or as soon thereafter as the Court’s calendar permits, as the date (the “Recognition Hearing Date”) for the hearing (the “Recognition Hearing”) on the relief sought in the Verified Petition; (b) setting 4:00 p.m. (prevailing Eastern Time) on September 10, 2021, or a date no less than seven (7) days prior to Recognition Hearing, as the deadline by which any responses or objections to the relief sought in the Verified Petition must be received (the “Objection Deadline”); (c) setting 4:00 p.m. (prevailing Eastern Time) on September 14, 2021, or a date no less than three (3) days prior to the Recognition Hearing, as the deadline by which the Foreign Representative and any other parties in interest may file replies to such responses or objections to the relief sought in the Verified Petition objections, if any (the “Reply Deadline”); (d) approving the form and manner of notice of the Petition and the Recognition Hearing (the “Notice”), substantially in the form attached hereto as **Exhibit 1** to the proposed Order; and (e) granting related relief.

**BASIS FOR RELIEF**

**A. The Recognition Hearing Date Should Be Set for September 17, 2021.**

7. “A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time.” 11 U.S.C. § 1517(c). Certain parties in interest must be given at least 21 days’ notice of the hearing on the petition for recognition of a foreign proceeding. Fed. R. Bankr. P. 2002(q)(1). In addition, objections and other responses to recognition must be presented no later than seven days before the recognition hearing, unless the Court orders otherwise. Fed. R. Bankr. P. 1012(b). Replies must be served so as to ensure actual receipt not later than 4:00 p.m. three (3) days before the return date. Local Bankruptcy Rule 9006-1(b).

8. Consistent with the Local Bankruptcy Rules and the Bankruptcy Rules, the Foreign

Representative respectfully requests that the Recognition Hearing Date be set for September 17, 2021, or as soon thereafter as the Court's calendar permits. In addition, the Foreign Representative requests that the Objection Deadline be set as 4:00 p.m. (prevailing Eastern Time) on the seventh day before the Recognition Hearing, which would be September 10, 2021, and the Reply Deadline be set for as 4:00 p.m. (prevailing Eastern Time) on the third day before the Recognition Hearing, which would be September 14, 2021.

**B. The Form and Manner of Service of the Notice Documents Should Be Approved.**

9. Notice of a recognition hearing must be provided to: (a) the debtor; (b) all persons authorized to administer the debtor's foreign proceedings; (c) entities against whom provisional relief under section 1519 of the Bankruptcy Code is sought; (d) parties to litigation pending in the United States to which the debtor is a party; and (e) such other entities as the Court may direct. Fed. R. Bankr. P. 2002(q)(1). Bankruptcy Rule 2002(q) does not direct the form and manner of such notice. Thus, the presiding court may designate the form and manner in which such notice shall be given. *See* Fed. R. Bankr. P. 2002(m) and 9007.

10. The Foreign Representative does not seek provisional relief under section 1519 of the Bankruptcy Code. Nor are any of the Debtors party to litigation pending in the United States. Instead, the Foreign Representative proposes service of the Notice and the Petition (the "Notice Documents") be made on the Debtors, the Debtors' major stakeholders, and applicable regulating bodies identified in Exhibit 2 to the proposed Order (collectively, the "Chapter 15 Notice Parties"), as well as any other entities as the Court may direct.

11. Further, the Foreign Representative proposes to effect service of the Notice Documents and other relevant pleadings and notices on the Chapter 15 Notice Parties by electronic mail to the extent email addresses are available, or otherwise by United States mail, first-class

postage prepaid within five (5) business days of entry of the order approving the relief sought in this Motion.

12. If any party files a notice of appearance in the Chapter 15 Cases, the Foreign Representative proposes to serve on such party, within ten (10) business days of the filing of such notice of appearance, a copy of the Notice Documents.

13. The form and manner of service described herein is consistent with Bankruptcy Rule 2002. As such, the Foreign Representative submits that such notice is adequate and sufficient notice of these Chapter 15 Cases, the relief sought in the Verified Petition, the time fixed for filing objections to the relief sought in the Verified Petition, and the time, date and place of the Recognition Hearing. The Foreign Representative will also provide the Chapter 15 Notice Parties with notice of all other pleadings filed in these Chapter 15 Cases in accordance with the Bankruptcy Code and Bankruptcy Rules.

14. Accordingly, the Foreign Representative respectfully requests that this Court approve the foregoing manner of notice and service of the Notice Documents pursuant to Bankruptcy Rules 2002 (m) and (q) and 9007.

**C. The Requirements of Section 1514(c) of the Bankruptcy Code Are Inapplicable and Should Be Waived.**

15. Out of an abundance of caution, the Foreign Representative also seeks to clarify that section 1514(c)'s notice requirements are not applicable to the Chapter 15 Cases. Section 1514(c) of the Bankruptcy Code deals with certain notice requirements in cases with "international aspects" commenced "under chapters other than" chapter 15. 8 Collier on Bankruptcy ¶ 1514.01 (16th ed. 2021).

16. However, to the extent applicable, the Foreign Representative requests that the Court waive the section 1514(c)'s requirements because the claims process will be handled through

the Australian Proceeding. Waiving these requirements and allowing foreign claims to be heard in the Australian Proceeding is consistent with principles of comity and cooperation among courts, as well as the ancillary nature of the Chapter 15 Cases.

17. Moreover, courts in this district routinely grant waivers of section 1514(c) in this context. *See, e.g., Petra Diamonds US\$ Treasury plc*, Case No. 20-12874 (MG) (Bankr. S.D.N.Y. Dec. 17, 2020); *Virgin Australia Holdings Ltd, et al.*, Case No. 20-11024 (SHL) (Bankr. S.D.N.Y. Apr. 29, 2020); *Odebrecht S.A., et al.*, Case No. 19-12731 (SMB) (Bankr. S.D.N.Y. Aug. 28, 2019).

#### **MOTION PRACTICE**

18. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

#### **NO PRIOR REQUEST**

19. No prior motion for the relief sought in this Motion has been made to this or any other court.

#### **NOTICE**

20. Notice of this Motion has been provided to the Chapter 15 Notice Parties, which include the Office of the United States Trustee for Region 2 and all persons required to receive notice under Bankruptcy Rule 2002(q). In light of the nature of the relief requested, no other or further notice need be provided.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Foreign Representative respectfully requests entry of the proposed order, attached hereto as **Exhibit A**, granting the relief requested and such other and further relief as the Court may deem proper.

New York, New York  
Dated: August 17, 2021

/s/ Dennis F. Dunne

Dennis F. Dunne

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*Counsel to the Foreign Representative*

**Exhibit A**

**Proposed Order**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 15
BOART LONGYEAR LIMITED <i>et al.</i> ,	)	Case No. 21-11465 (___)
Debtors in a Foreign Proceeding. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**ORDER (I) SCHEDULING HEARING AND  
(II) SPECIFYING FORM AND MANNER OF SERVICE OF NOTICE**

Upon the motion (the “Motion”)<sup>2</sup> of Nora R. Pincus, in her capacity as the Foreign Representative of the Debtors, for an order: (a) scheduling the Recognition Hearing; (b) approving the form and manner of the Notice; and (c) certain other relief; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157)(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410; and due and proper notice of the Motion having been provided, and no other or further notice being necessary; and the Court having reviewed and considered the Motion and the Verified Petition; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the relief requested in the Motion being in the best interest of the Debtors, their

<sup>1</sup> The debtors in these chapter 15 cases, along with the last three digits of each debtor’s Australian Company Number, are: Boart Longyear Limited (728), Boart Longyear Management Pty Limited (545), Boart Longyear Australia Pty Limited (025), Boart Longyear Investments Pty Limited (373), and Votraint No. 1609 Pty Limited (272).

<sup>2</sup> All capitalized terms not otherwise defined in this order shall have the meanings given to them in the Motion.

creditors, and other parties in interest; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted as set forth in this order.
2. The Recognition Hearing shall be held before this Court in Room [●] of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York, on [\_\_\_], 2021 at \_\_:\_\_ [●].m. (E.T.).
3. Responses or objections, if any, to the Verified Petition (each, a “Response”) shall be made in writing and shall set forth the basis therefor, and each Response must be filed electronically on the Court’s electronic case filing system in accordance with and except as provided in General Order M-399 and the Court’s Procedures for the Filing, Signing and Verification of Documents by Electronic Means (copies of each of which may be viewed on the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and a hard copy of such response or objection must be sent to the Chambers of the Honorable [\_\_\_\_\_], United States Bankruptcy Judge, so as to be received on or before \_\_\_\_\_, 2021 at 4:00 p.m. (prevailing Eastern Time).
4. The Foreign Representative and any other parties in interest may file replies to Responses, if any, in the same manner as described above on or before \_\_\_\_\_, 2021 at 4:00 p.m. (prevailing Eastern Time).
5. If no Response is timely filed and served as provided above, or if any Response is overruled by this Court at the Recognition Hearing, the Court may grant the relief requested by the Foreign Representative without further notice or hearing.
6. The form of the Notice annexed hereto as **Exhibit 1** is hereby approved.
7. The Foreign Representative shall serve copies of the Notice Documents by

electronic mail to the extent email addresses are available or otherwise by United States mail, first-class postage prepaid, upon the Chapter 15 Notice Parties identified on **Exhibit 2** hereto within five (5) business days after the entry of this Order. Such service shall constitute good and sufficient service and adequate notice of the Recognition Hearing.

8. The Foreign Representative shall serve the Notice Documents upon any party that files a notice of appearance in the Chapter 15 Cases within ten (10) business days of the filing of such notice of appearance, or as soon thereafter as practicable, if the Notice Documents have not already been served on such party or its counsel.

9. The notice requirements set forth in section 1514(c) of the Bankruptcy Code are inapplicable to the Chapter 15 Cases or, to the extent applicable, are hereby waived.

10. Service of the Notice Documents in accordance with this Order is hereby approved as adequate and sufficient notice and service for all purposes.

11. The Foreign Representative is authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order.

12. The requirements set forth in Local Bankruptcy Rule 9013-1 are satisfied.

13. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_ \_\_, 2021  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Notice**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 15
BOART LONGYEAR LIMITED <i>et al.</i> ,	)	Case No. 21-11465 (___)
Debtors in a Foreign Proceeding. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	
	)	

**NOTICE OF FILING OF PETITION,  
RECOGNITION HEARING AND RELATED RELIEF**

**PLEASE TAKE NOTICE** that on August 17, 2021, Nora R. Pincus, in her capacity as the duly authorized foreign representative (the “Foreign Representative”) of Boart Longyear Limited (“BLY”) and each of the other above-captioned debtors (collectively, the “Debtors” and, together with their non-debtor affiliates, “Boart Longyear”), with respect to the proceeding (the “Australian Proceeding”) pending before the Supreme Court of New South Wales, Sydney, Australia (the “Australian Court”), through which the Debtors seek sanction of two proposed schemes of arrangement (the “Schemes”) under the Corporations Act 2001 (Commonwealth of Australia) (the “Corporations Act”), filed a *Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Related Relief* [Docket No. 2] (the “Verified Petition”) with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), commencing cases under chapter 15 of the United States Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, among other things, the Foreign Representative seeks entry of an order recognizing the Australian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code and granting certain additional relief pursuant to sections 105(a), 1507, 1510, 1515, 1521, and 1525 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing to consider the relief requested in the Verified Petition for [●].m. (E.T.) on [\_\_], 2021 (the “Recognition Hearing”). At the hearing, the Court may order the scheduling of a case management conference to consider the efficient administration of the case.

**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to submit a response or objection to the relief sought in the Verified Petition must do so in writing setting forth the basis therefor, in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules for the Bankruptcy Court, which response or objection

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<sup>1</sup> The debtors in these chapter 15 cases, along with the last three digits of each debtor’s Australian Company Number, are: Boart Longyear Limited (728), Boart Longyear Management Pty Limited (545), Boart Longyear Australia Pty Limited (025), Boart Longyear Investments Pty Limited (373), and Votrait No. 1609 Pty Limited (272).

must be filed electronically with the Bankruptcy Court on its electronic case filing system in accordance with and except as provided in General Order M-399 and the Bankruptcy Court's Procedures for the Filing, Signing and Verification of Documents by Electronic Means (copies of each of which may be viewed on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) (and otherwise, on a compact disc (CD), preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, which CD shall be sent to the Office of the Clerk of the Bankruptcy Court, One Bowling Green, New York, New York 10004-1408). A hard copy of any response or objection shall be sent to the Chambers of the Honorable [\_\_\_\_\_], United States Bankruptcy Judge, One Bowling Green, New York, New York 10004-1408, and served upon counsel to the Foreign Representative, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Dennis F. Dunne, Esq. and Thomas R. Kreller, Esq.; and the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, **so as to be received by no later than 4:00 p.m. (E.T.), [●], 2021.**

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the relief sought in the Verified Petition must appear at the Recognition Hearing at the time and place set forth above. In light of the COVID-19 pandemic and the Court's General Order M-543 ("General Order M-543"), dated March 20, 2020, the Recognition Hearing will only be conducted telephonically.

**PLEASE TAKE FURTHER NOTICE** that parties wishing to participate in the Recognition Hearing must make arrangements through CourtSolutions LLC. Instructions to register for CourtSolutions LLC are attached to General Order M-543.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the relief sought in the Verified Petition without further notice.

**PLEASE TAKE FURTHER NOTICE** that the Recognition Hearing may be adjourned from time to time without further notice other than an announcement in open court, or a notice of adjournment filed with the Bankruptcy Court, of the adjourned date(s) at the hearing or any other further adjourned hearing.

Copies of the Verified Petition and all accompanying documentation are available to parties in interest on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> (a PACER login and password are required to retrieve a document) or upon written request to the counsel to the Foreign Representative (including by facsimile or e-mail) addressed to: Thomas R. Kreller, Milbank LLP, 2029 Century Park East, 33<sup>rd</sup> Floor, Los Angeles, California, 90067-3019, Telephone: (424) 386-4463, [tkreller@milbank.com](mailto:tkreller@milbank.com).

New York, New York  
Dated: \_\_\_\_\_, 2021

**Exhibit 2**

**Chapter 15 Notice Parties**

1. Office of the United States Trustee for Region 2
2. Australian Securities and Investments Commission
3. Australian Securities Exchange
4. Boart Longyear Limited
5. Boart Longyear Australia Pty Limited
6. Boart Longyear Investments Pty Limited
7. Boart Longyear Management Pty Limited
8. Votrant No. 1609 Pty Limited
9. Centerbridge Partners, L.P.
10. Kirkland & Ellis LLP, counsel to Centerbridge Partners, L.P.
11. Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the AHG
12. Ascribe Capital LLC
13. Corre Partners Management, LLC
14. First Pacific Advisors, LP
15. Nut Tree Capital Management, LP
16. Ares Management LLC
17. Delaware Trust Company as Trustee under the Unsecured Notes Indenture
18. U.S. Bank National Association as trustee under the Secured Notes Indenture
19. U.S. Bank National Association as collateral agent under the Secured Notes Indenture
20. U.S. Bank National Association as collateral agent for the Notes Secured Parties
21. Wilmington Trust, National Association, as agent under the Incremental Financing
22. Wilmington Trust, National Association, as agent under the Backstop ABL
23. Wilmington Trust, National Association, as agent under the Term Loan A
24. Wilmington Trust, National Association, as agent under the Term Loan B



25. PNC Bank, National Association, as lender and agent under the Existing ABL