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A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. NSD54 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

**IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 141 767 660)**

**JOHN RICHARD PARK AND JOANNE EMILY DUNN IN THEIR CAPACITIES AS JOINT AND
SEVERAL DEED ADMINISTRATORS OF ELLUME LIMITED (SUBJECT TO DEED OF
COMPANY ARRANGEMENT) (ACN 141 767 660)**

First Plaintiffs / First Applicants

**ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 141 767
660)**

Second Plaintiff / Second Applicant

Affidavit of: **John Richard Park**
Address: FTI Consulting, Level 20, Central Plaza 1, 345 Queen Street, Brisbane QLD
4000
Occupation: Registered Liquidator and Chartered Accountant
Date: 30 January 2023

Contents

Document number	Details	Paragraph	Page
1	Affidavit of John Richard Park in support of application for leave under section 444GA of the <i>Corporations Act 2001</i> (Cth) sworn 30 January 2023	5	
2	Exhibit JRP-2	6	6
4	Independent Expert Report of Jennifer Nettleton (KordaMentha) for Ellume Limited (Subject to Deed of	8	7-56

Filed on behalf of	First Plaintiffs / First Applicants		
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 30/01/23

Document number	Details	Paragraph	Page
	Company Arrangement) prepared dated 25 January 2023		
3	Explanatory Statement	10	57-72
4	Application to ASIC for the ASIC Relief	14	73-87

I, **John Richard Park**, of FTI Consulting Pty Limited (**FTI Consulting**), at Level 20, Central Plaza 1, 345 Queen Street, Brisbane QLD 4000, Registered Liquidator and Chartered Accountant, say on oath:

OVERVIEW

1. I am a Senior Managing Director of and the Head of Corporate Finance & Restructuring, Australia for FTI Consulting.
2. I am one of the two joint and several deed administrators of the Second Plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**), together with Ms Joanne Emily Dunn (together, the **Deed Administrators** and each a **Deed Administrator**).
3. I am authorised by Ms Dunn to make this affidavit on behalf of the Deed Administrators. Where I depose below to the view or views of the Deed Administrators, they are the view(s) which each I and Ms Dunn hold at the date of swearing this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at FTI Consulting have obtained through my role as a Voluntary Administrator and a Deed Administrator of the Company, which I believe to be true.
5. This is the second affidavit that I have sworn in these proceedings and in support of the originating process filed in these proceedings on 23 January 2023. I refer to and rely upon my affidavit sworn on 20 January 2023 and filed in these proceedings on 23 January 2023 (**First Affidavit**), and adopt the definitions contained therein except where otherwise indicated.
6. Exhibited to me at the time of swearing this affidavit is a bundle of documents to which I make reference in this affidavit marked "JRP-2" (**Exhibit JRP-2**). A reference to a page number in this affidavit is to a page number in the Exhibit JRP-2, unless otherwise stated.

Explanatory Statement

7. I refer to:

- (a) paragraph 83 of the First Affidavit, where I deposed that the Deed Administrators were preparing an Explanatory Statement in order to explain the nature of the Application and the proposed Share Transfer to various stakeholders, including the Shareholders, the creditors and the Company and ASIC; and
- (b) paragraph 84 of the First Affidavit, where I deposed that the Explanatory Statement would include an independent expert's report which would provide an independent opinion on whether the Share Transfer would unfairly prejudice the Shareholders, and that the report was due to be completed on or around 27 January 2023.

8. The Deed Administrators have now received the independent expert report of Ms Jennifer Nettleton, Partner of KordaMentha, dated 25 January 2023 (IER) for the purposes of:

- (a) a prospective application by the Deed Administrators pursuant to section 444GA of the Corporations Act to implement the proposed DOCA in respect of the Company;
- (b) ASIC granting relief from section 606 of the Corporations Act; and
- (c) inclusion in the Explanatory Statement to be made available to shareholders of the Company as part of the proposed sale and recapitalisation.

The IER is exhibited at pages 7 to 56 of **Exhibit JRP-2**.

9. Ms Nettleton's opinion on the value of the shares in the Company is set out in section 2.2 of the IER, and reads as follows:

Based on my assessment that there is a material shortfall of assets available to meet the claims against the Company, it is my opinion that the shares in the Company have nil value as at the date of this Report.

10. The Deed Administrators have now finalised the proposed Explanatory Statement (incorporating the IER), a draft of which is exhibited at pages 57 to 72 of **Exhibit JRP-2**.

Notice

11. As set out at paragraph 87 of the First Affidavit, the Deed Administrators propose to give notice of this application and to provide a copy of the Explanatory Statement to creditors of the Company and the Shareholders in the manner set out in the Originating Process as follows:

- (a) where the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Company), by notifying each such creditor and member via email;
 - (b) where the Deed Administrators do not have an email address for a creditor or member (or have received notification of non-delivery of a notice sent via email in accordance with 11(a) above) but the Deed Administrators have a postal address for that creditor or member (including from the books and records maintained by the Company), by sending material to each such creditor or member via post;
 - (c) by placing scanned, sealed copies on the website maintained by the Deed Administrators at <http://www.fticonsulting.com/creditors/ellume-limited>.
12. Based on my review of the books and records of the Company, and my dealings with creditors and members to date:
- (a) there are 971 creditors, of which
 - i. the Deed Administrators have the email address for 964 of the creditors;
 - ii. the Deed Administrators have a postal address (but no email address) for 7 of the creditors; and
 - iii. there are 0 creditors for which the Deed Administrators do not have an email or postal address;
 - (b) there are 93 members, of which:
 - i. the Deed Administrators have the email address for 92 of the members;
 - ii. the Deed Administrators have a postal address (but no email address) for 1 of the members; and
 - iii. there are 0 members for which the Deed Administrators do not have an email or postal address.

ASIC Relief

- 13. As set out at paragraph 97 to 100 of the First Affidavit, the Deed Administrations are preparing an application to ASIC for the ASIC Relief. A copy of the IER was required to be included in the ASIC Relief application.
- 14. On 27 January 2023, the Deed Administrators submitted an application to ASIC for the ASIC Relief. Exhibited at pages 73 to 87 of **Exhibit JRP-2** is a copy of that application.


 30/01/23

Sworn by the deponent
at Brisbane
in Queensland
on 30 January 2023
Before me:

)
)
)
)
)



Signature of deponent



Signature of witness

Ashleigh Mae Ubank, JP (Qual)



Certificate Identifying annexure

NSD 54 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations

**IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 141 767 660)**

**JOHN RICHARD PARK AND JOANNE EMILY DUNN IN THEIR CAPACITIES AS JOINT
AND SEVERAL DEED ADMINISTRATORS OF ELLUME LIMITED (SUBJECT TO DEED
OF COMPANY ARRANGEMENT) (ACN 141 767 660)**

First Plaintiffs / First Applicants

**ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT)
(ACN 141 767 660)**

Second Plaintiff / Second Applicant

This is the exhibit marked "JRP-2" now produced and shown to John Richard Park at the
time of swearing his affidavit on 30 January 2022


.....
Deponent

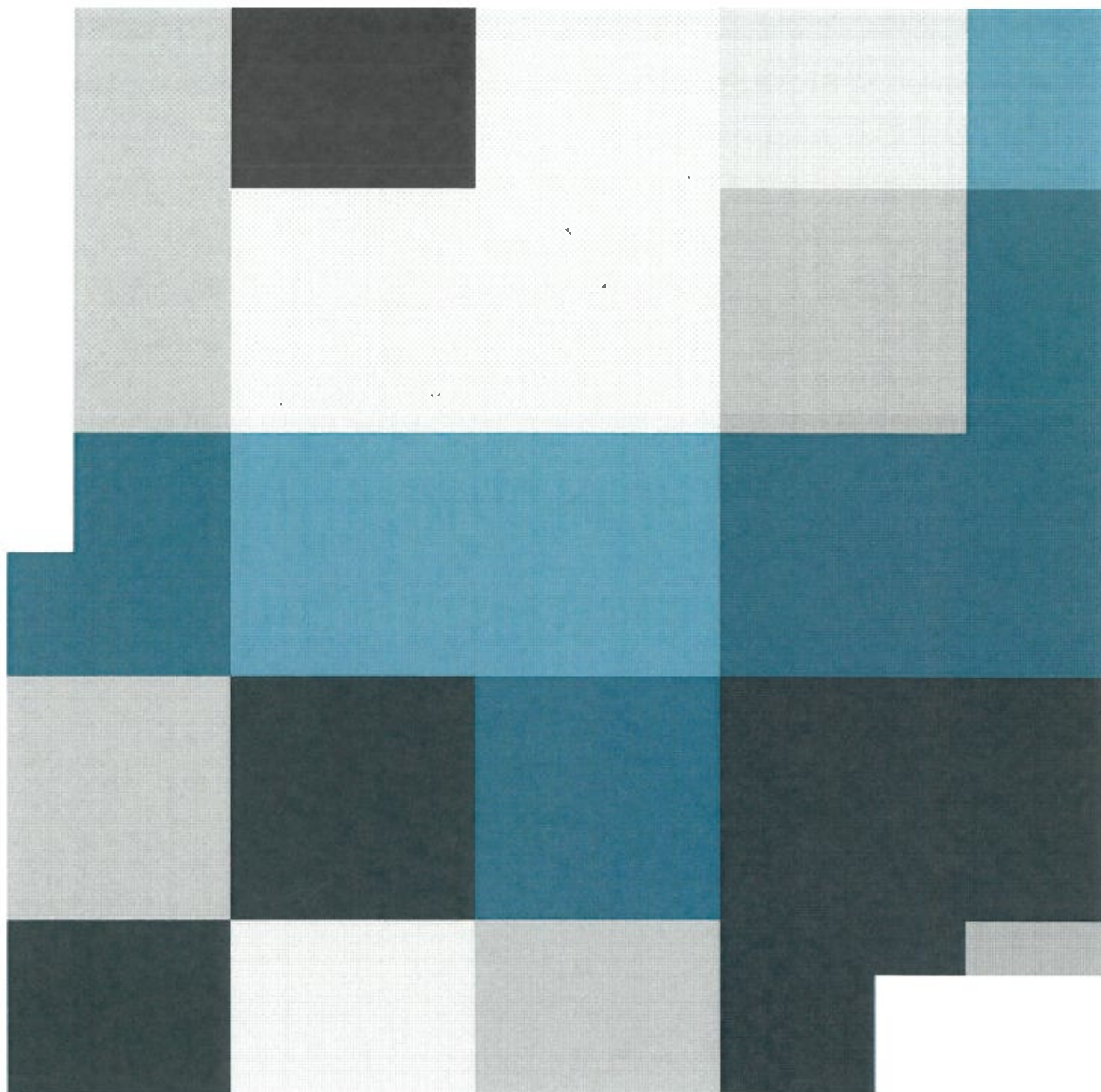

.....
Witness
Ashleigh Mae Ubank, JP (qual)



Annexure "JRP-2"

Bundle of paginated documents

Filed on behalf of	First Plaintiffs / First Applicants		
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Ellume Limited

(Subject to Deed of Company Arrangement)

Independent Expert Report of Jennifer Nettleton

25 January 2023

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Glossary

Abbreviation	Definition
\$	Australian dollars
ABL	Asset backed loan
Act	The Corporations Act 2001 (Cth)
Administrators	John Park and Joanne Dunn of FTI Consulting in their capacity as Administrators or subsequent capacity as Deed Administrators of the Company (as the context requires)
ASIC	Australian Securities and Investments Commission
the Company	Ellume Limited (Subject to Deed of Company Arrangement)
Convertible Notes	The unsecured Convertible Notes issued by the Company from time to time to QIAGEN and high net worth individuals
Court	The Federal Court of Australia
DoCA	The deed of company arrangement for the Company proposed by Hough
EBITDA	Earnings before interest, tax, depreciation, amortisation
Ellume NZ	Ellume NZ Pty Ltd, a company incorporated in New Zealand
Ellume US	Ellume USA LLC, a company incorporated under the laws of Delaware, United States of America
FDA	US Food and Drug Administration
FYXX	Financial year ended 30 June 20XX
Group	The Company and the Subsidiaries
High Case	Assessment of a high or better outcome in a liquidation scenario, compared to the lesser or Low Case
Hough	Hough Consolidated Pty Ltd
IM	Information Memorandum issued by the Administrators and dated 17 October 2022
IPO	Initial Public Offering
Lender Group	Certain Noteholders who provided funding to the Administrators totalling \$5.0 million
Low Case	Assessment of the low or lesser outcome in a liquidation scenario, compared to the better or High Case
Management	Senior employees of the Company
NDA	Non-Disclosure Agreement
Noteholder Pool	Part of the Hough Contribution, being USD 12.5 million available to Participating Noteholders
Noteholders	Holders of the unsecured Convertible Notes issued from time to time
PPSR	Personal Property Securities Register
QIAGEN	QIAGEN GmbH and QIAGEN NV Kvk
Regulatory Guide 111	Regulatory Guide 111 Content of Expert Reports published by ASIC in October 2020
Report	This Independent expert report
ROCAP	Report of Company Activities and Property pursuant to section 507 of the Act
Subsidiaries	Ellume USA LLC, a company incorporated under the laws of Delaware, United States of America and Ellume NZ Pty Ltd, a company incorporated in New Zealand
Second Report to Creditors	The report of the Administrators pursuant to section 75-225 of the Insolvency Practice Rules (Corporations) 2016 dated 12 December 2022
Trading Security Holders	Creditors who have a security interest over assets of the Company, including creditors with Purchase Money Security Interests (PMSI)

Abbreviation	Definition
US	United States of America
USD	United States dollars
US Government	The Federal Government of the United States of America

USD has been converted to Australian dollars using an exchange rate of \$1 = USD 0.67.

1 Overview

1.1 Background

On 31 August 2022, John Park and Joanne Dunn were appointed Administrators of the Company pursuant to section 436A(1) of the Act.

On 13 September 2022, the Federal Court made orders extending the period in which the Administrators were required to convene the second meeting of the Company's creditors until 16 December 2022.

Following a sale and recapitalisation process, the Administrators received several offers to acquire the Company's business. Ultimately, the Administrators accepted a deed of company arrangement proposal from Hough. The terms of the DoCA facilitate a sale of the Company to Hough in return for a contribution to establish a Creditors' Trust, which will provide a return to creditors of the Company.

The Administrators issued their Second Report to Creditors on 12 December 2022 and the second meeting of creditors was held on 20 December 2022. At this meeting, creditors resolved that the Company execute the DoCA. The DoCA was executed on 22 December 2022 and the Administrators became the Deed Administrators.

1.1.1 Terms of the DoCA

The DoCA provides that Hough will contribute USD 38.0 million towards a Creditors' Trust which is to be established for the benefit of creditors of the Company, with funds to be distributed in accordance with the terms of the DoCA.

Hough will acquire the Company by way of a transfer of shares from existing shareholders, which will occur subject to the Administrators obtaining an order from the Court pursuant to section 444GA(1)(b) of the Act. The DoCA requires the Administrators to make an application to Court to allow the share transfer to occur as soon as practicable.

Section 444GA of the Act provides as follows:

- (1) *The administrator of a deed of company arrangement may transfer shares in the company if the administrator has obtained:*
 - a. *the written consent of the owner of the shares; or*
 - b. *the leave of the Court.*
- (2) *A person is not entitled to oppose an application for leave under subsection (1) unless the person is:*
 - a. *a member of the company; or*
 - b. *a creditor of the company; or*
 - c. *any other interested person; or*
 - d. *ASIC.*
- (3) *The Court may only give leave under subsection (1) if it is satisfied that the transfer would not unfairly prejudice the interests of members of the company."*

The transfer of the shares in the Company also requires ASIC to grant relief from the takeover provisions contained in section 606 of the Act. ASIC has set out in "Regulatory Guide 6 Takeovers: Exceptions to the general prohibition" that it will generally grant relief where:

1. explanatory materials have been provided to shareholders at least 14 days before the s444GA hearing including an independent expert report ('IER') prepared consistent with the guidance contained in Regulatory Guide 111
2. the IER is prepared by an expert other than the administrator or a member from the same firm as the administrator
3. the IER concludes that there is no residual equity value in the company for shareholders
4. the court grants leave under s444GA.

1.2 Scope of this report

I have been instructed by Mills Oakley, on behalf of the Administrators, to prepare an independent expert report for:

- a prospective application by the Administrators pursuant to section 444GA of the Act to implement the proposed DoCA in respect of the Company
- ASIC granting relief from section 606 of the Act, and
- inclusion in the explanatory statement to be made available to shareholders of the Company as part of the proposed sale and recapitalisation.

1.3 Requirements of Regulatory Guide 111

In accordance with ASIC Regulatory Guide 111, I am required to provide an independent opinion *"of the value, if any, of shareholders' residual equity."*¹ The residual value to shareholders is to be derived by *"assessing the value of the company's assets and/or business operations, less borrowings, other liabilities and creditor claims."*² In accordance with ASIC's guidance, experts should generally value *"shareholders' residual equity in a company under administration on a 'winding up' or 'liquidation' basis where that is the likely or necessary consequence of the transfer of shares not being approved."*³

1.4 Limitations, restrictions and reliance

This Report has been prepared, and may be relied on, solely for the purpose contemplated in section 1.2 of this Report. This Report, or any part of it, may only be published or distributed:

- as an annexure to the explanatory statement to be provided to the Company's shareholders and others (including ASIC as part of the evidence in support of the application under section 444GA of the Act)
- for use in the proceedings before the Court relating to the application under section 444GA of the Act
- in accordance with any law or by order of a court of competent jurisdiction.

My express written consent, and the express written consent of KordaMentha, must be obtained prior to relying upon, publishing, or distributing this Report, or part of it, for any purpose other than that detailed above. Neither I nor KordaMentha accept responsibility to anyone if this Report is used for any other purpose.

My opinion is based on economic, market and other external conditions prevailing at the date of this Report. Such conditions can change over relatively short periods of time and these changes can be material.

The information used in this Report has been evaluated through analysis, enquiry and review for the purposes of forming an opinion as to the value of the assets and liabilities of the Company. While I do not warrant that my enquiries have identified all of the matters that an audit, or due diligence and/or tax investigation might disclose, I consider that the information is reasonable for the scope of my work set out in section 1.2 and that there are reasonable grounds for determining the residual value of the equity in the Company as set out in section 5.

The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading.

This Report should be read in the context of the full qualifications, limitations and consents set out in this Report.

1.5 Curriculum vitae

I am a Partner with KordaMentha, a registered liquidator and have over 25 years' experience across all aspects of corporate turnaround and restructuring. I am a Chartered Accountant and member of the Australian Restructuring Insolvency and Turnaround Association.

My curriculum vitae is attached at Appendix A.

¹ ASIC Regulatory Guide 111 at RG 111.70

² ASIC Regulatory Guide 111 at RG 111.71

³ ASIC Regulatory Guide 111 at RG 111.73

1.6 Assistance by colleagues

I have selected colleagues to assist me to arrive at my opinions in this matter. My colleagues carried out the work that I decided they should perform. I have reviewed their work and original documents to the extent considered necessary to form my opinions. The opinions expressed in this Report are my own.

1.7 Information

In the preparation of this Report, I have utilised information in respect of the Company from a variety of sources, including Company's books and records made available by the Administrators, information prepared by the Administrators as well as public sources. Documents utilised to support my opinions in this Report are noted in text or by way of footnote.

I have not conducted an audit of any information supplied to me. My colleagues and I have reviewed and made sufficient enquiries of the information made available to us and based on that review, believe that the information is reasonable for the scope of my work set out in section 1.2 and that there are reasonable grounds for the values set out in the Report.

A glossary of terms is set out at the beginning of this Report.

1.8 Statement regarding expert witness code

In accordance with the *Expert Evidence Practice Note* (GPN-EXPT) ('Practice Note') and the *Harmonised Expert Witness Code of Conduct* ('Code') of the Federal Court of Australia, I state that:

1. I have read, understood, complied with and agree to be bound by the Practice Note and the Code
2. To the best of my knowledge, each of the opinions which I express in this report is wholly or substantially based upon my specialised knowledge arising from my training, study or experience
3. I have made all the inquiries which I believe are desirable and appropriate. No matters of significance that I regard as relevant to my opinion have, to my knowledge, been withheld from the Court.

As an expert witness, I have the following general duties to the Court:

1. I have a paramount duty to the Court which overrides any duty to any party to the proceedings including my client
2. I have an overriding duty to assist the Court on matters relevant to my area of expertise
3. I have a duty not to be an advocate to any party to the proceedings including my client, even when giving testimony that is necessarily evaluative rather than inferential, and
4. I have a duty to make it clear to the Court when a particular question or issue falls outside my area of expertise.

1.9 Independence of expert and compliance with professional standards

I have read ASIC Regulatory Guide 112 on Independence for experts and am of the opinion that:

- there is no actual, or perceived, conflict of interest
- there is no actual, or perceived, threat to Independence
- there is no other reason for which the engagement could not be accepted.

I have complied with the requirements of APES 225 – Valuation Services, the professional code of practice of CPA Australia and the Institute of Chartered Accountants Australia and New Zealand.

Convertible notes held by entity associated with KordaMentha personnel

Before accepting this engagement, I became aware that an entity associated with a senior consultant to KordaMentha held convertible notes in the Company. The holding by this entity is not material in terms of the total due to convertible note holders, and I formed the opinion that the interest was not one which would impact my independence and would not preclude me from accepting the engagement.

1.10 Cost of this Report

KordaMentha will be remunerated on an hourly rates basis for the time spent preparing this Report. The fees payable to KordaMentha are not contingent on the conclusions of this Report, the outcome of the DoCA, or obtaining approval from ASIC or the Court.

2 Summary of findings

2.1 Residual equity value

The table below sets out my findings in relation to the value of the Company's assets, claims against those assets and the resulting negative equity position of between \$186.5 million and \$229.5 million.

Company assets	Section reference	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-
Cash at bank	6.2	1,575	1,575
Accounts receivable	6.2	11	16
Prepayments	6.3	821	1,641
Other receivables	6.4	-	-
Related party receivable	6.5	-	-
Inventory	6.6	808	2,827
Plant and equipment	6.7	1,344	1,919
Shareholding in Ellume US	6.8	-	-
Shareholding in Ellume NZ	6.9	-	-
Intellectual property	6.10	-	-
Claims available to a liquidator	6.11	-	456
Total asset value		4,559	8,434
Claims against the assets			
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators' fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee provided for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963
Surplus/(shortfall) of assets available to meet claims		(229,542)	(186,529)
Net equity value		-	-

My analysis of the Company's assets and liabilities is included in sections 6 and 7 of this Report.

2.2 Opinion on the value of the shares in the Company

Based on my assessment that there is a material shortfall of assets available to meet the claims against the Company, it is my opinion that the shares in the Company have nil value as at the date of this Report.

3 Industry and Company overview

3.1 Company overview

The Company was incorporated in February 2010 by Dr Sean Parsons. The Company was established following the 2009 swine flu pandemic to develop rapid testing products. Until 2018, the Company was purely involved in the research and development of nanoparticle technology to be used in rapid diagnostic testing.

The Company's aims are to develop, manufacture and commercialise products available through three segments:

- Consumer products: consists of over-the-counter home test kits
- Professional point of care products: digital diagnostic platform for primary care practitioners, doctors, nurses and pharmacists
- Professional high throughput testing products: large scale testing at the point of care and outside of a central laboratory.

In February 2019, Ellume US was incorporated in the state of Delaware. Ellume US is a wholly owned subsidiary of the Company and operates solely in the US. The Company also holds 100% of the shares in Ellume NZ, a dormant company incorporated in New Zealand.

In response to the outbreak of COVID-19 in early 2020, the Company pivoted to the development and manufacturing of digitally enabled diagnostic products with a focus on COVID-19 related products. On 15 December 2020, the Company received emergency approval from the US Food and Drug Administration for its COVID-19 home test. The commercialisation of the COVID-19 home test was supported by grants from the US Government totalling \$346.0 million.

To date, the Company has developed its nanoparticle technology to develop rapid tests for tuberculosis and COVID-19. The Company has a number of other products under development or undergoing clinical trials as part of regulatory approval processes which would, in due course (assuming success), form part of a suite of rapid testing products that would utilise the Company's existing technologies.

3.2 US Government funding

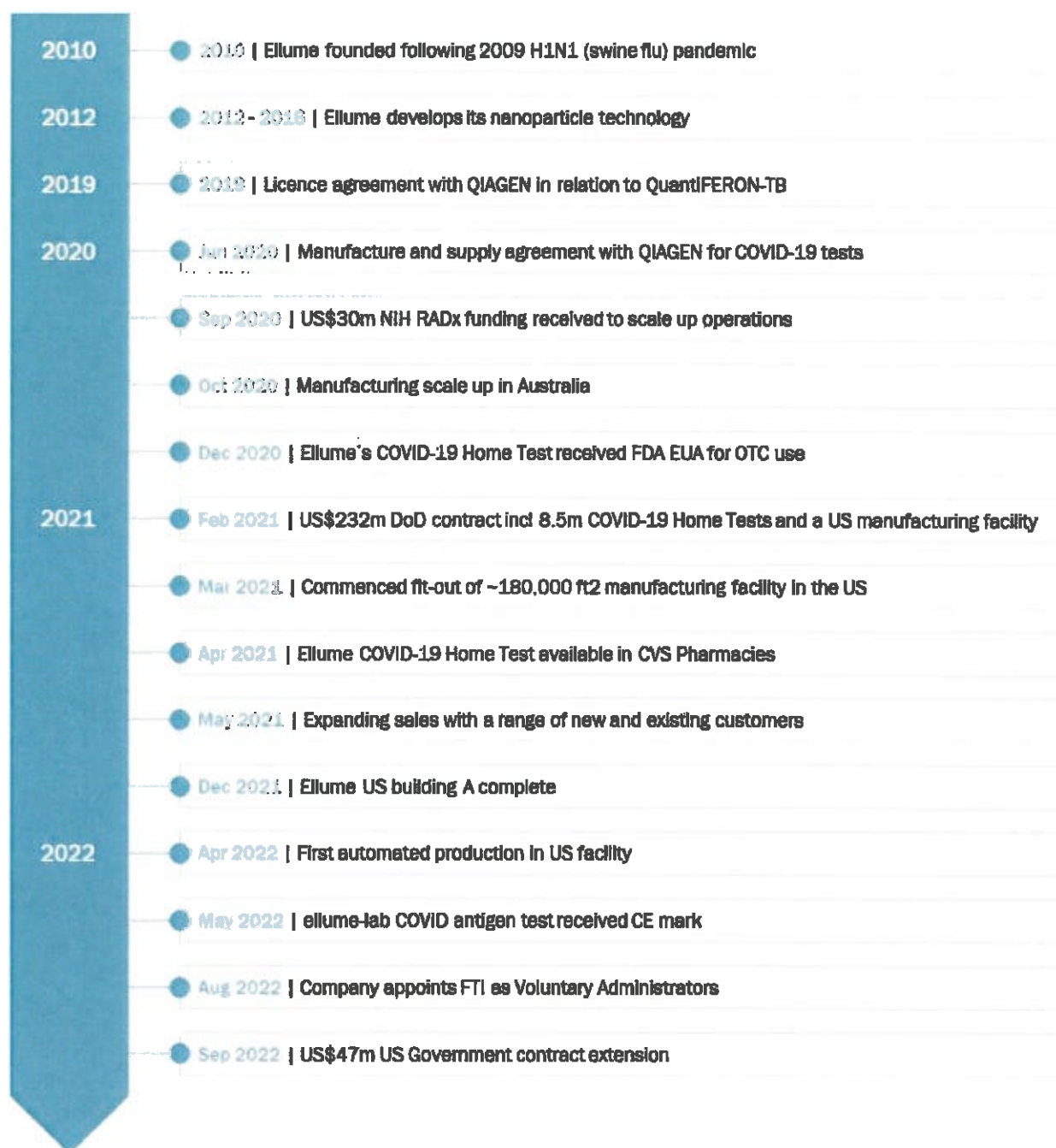
The US Government provided support to the Group to obtain emergency FDA approval as well as develop a manufacturing capability in the US. The funding from the US Government was as follows:

- \$41.0 million from the National Institute of Health for regulatory authorisation of the Company's COVID-19 home test kits and expansion of the Australian manufacturing facility
- \$118.0 million for the establishment of a US manufacturing facility
- \$187.0 million for 8.5 million COVID-19 tests.⁴

In May 2022 and September 2022, the US Government increased its support by a further USD 47.0 million to fund increased capital costs of the US manufacturing facility, by amending the terms of the supply agreement for the then remaining 3.1 million COVID-19 home tests. As at December 2022, the Group had supplied 7.0 million tests of the initial 8.5 million order to the US Government, and the remaining 1.5 million tests are forecast to be delivered by June 2023.

⁴ FY21 Annual Report at page 3

3.3 Corporate timeline⁵



⁵ IM at page 9

3.4 Corporate structure⁶

The Company has two wholly owned subsidiaries, Ellume US and Ellume NZ. The Administrators have advised that Ellume NZ has never traded, has no assets or liabilities and has no financial accounts.



3.4.1 Operations

The Company has operating facilities in Brisbane, Australia and Maryland, United States of America:

- **Brisbane:** three leasehold facilities, including a purpose-built manufacturing facility totalling 5,110 square metres.
- **US:** In 2021, the Company commenced construction of the fit out of its two leasehold premises in Maryland, supported by grant funding from the US Government. The US facility comprises two buildings totalling approximately 18,000 square metres. The smaller of the two buildings, Building A, was commissioned in December 2021 while the fit out of Building B remains under construction. Building B is unlikely to be required in the near term; however, the cost to operationalise Building B is estimated at between \$10.2 and \$16.0 million.⁷

While initially a highly manual operation, the Company has invested in automation technology to increase throughput capacity and reduce the unit cost of production. The automation of the Australian manufacturing in the first quarter of 2022 reduced staffing from its peak of approximately 1,000 to 793.⁸

The Group has continued to operate throughout the Administration period, with the US Government order being met from the Group's manufacturing facilities in Brisbane and the US (Building A).

⁶ Company searches and IM at page 22

⁷ IM at page 27

⁸ IM page 39

3.4.2 Product recall

In October 2021 the FDA issued a product recall of the Group's COVID-19 home test kits due to a high number of false positive results which had been experienced from late FY21, resulting in recall costs of \$43.0 million.⁹ The false positive tests were traced to an issue in the supply chain. The false positive tests sold to consumers have given rise to a number of claims for loss and damage. A class action against Ellume US was filed in March 2022 in the US District Court; however, I understand that the Court has not yet granted the claimants approval to proceed.¹⁰

3.5 Relationship with QIAGEN

QIAGEN is a Dutch company which specialises in molecular testing. QIAGEN is a supplier, customer, and funder to the Company.

In November 2018 the Company entered into licence agreements with QIAGEN in connection with tests for Influenza and tuberculosis, with the Company licensing its technology to help develop the next generation of QIAGEN's QuantiFERON-TB test. QIAGEN provides certain technology assets under the licence agreements, while the Company has exclusive agreements for the supply of test cartridges for QuantiFERON-TB, which provides both a small manufacturing margin and ongoing revenue from the sale of tests by QIAGEN.

The Company also entered into a convertible note subscription deed in November 2018 whereby QIAGEN subscribed for 15 million notes at a value of USD 1.00, raising USD 15.0 million to fund commercialisation of its products and ongoing operations. QIAGEN subscribed for further convertible notes worth USD 10.0 million in August 2020. In December 2021, QIAGEN converted its USD 15.0 million Convertible Notes into a fully paid licence for the future sales of QAI Reach QuantiFERON-TB.¹¹

3.6 Industry

In 2021, the global in vitro diagnostic (IVD) market was valued at USD 55.3 billion¹². The rising incidence of chronic and infectious disease is anticipated to further increase the adoption of IVD testing techniques. The outbreak of COVID-19 saw demand for IVD products increase exponentially, including for self-administered tests. Favourable regulatory frameworks for IVD manufacturers contributed to market growth, with a significant expansion of point-of-care (in-home) tests that enabled prompt diagnoses in an easy-to-use format. The Company was able to develop, obtain approval and manufacture its COVID-19 at home test to capture a share of the US market, as demand was rising both from consumers and the US Government looking to secure test supply.

In early 2022, the global approach to the management of the COVID-19 pandemic changed. The rush by governments to secure tests abated and the market was flooded with cheap analogue tests (as compared to the Company's digital test products). Although the US Government does not maintain data on at-home testing, the number of laboratory processed tests declined from 2.5 million per day in mid-January 2022 to around 670,000 per day by March 2022. Whilst the US Government made 500 million free at-home COVID-19 tests available, only 300 million had been ordered at March 2022¹³.

Since the end of lockdowns, testing and other mandates, there has been a considerable decline in the demand for COVID-19 diagnostic devices. This is evident in the fall in the Group's revenue in Q4 FY22 and Q1 FY23 as detailed in section 3.9.2. Although the Group was developing other tests compatible with its existing technology to drive sales as the demand for COVID-19 tests declined, these new testing products are yet to be commercialised or approved for therapeutic use.

3.7 Events leading up to administration

Despite considerable revenue growth following US approval of its COVID-19 home test in December 2020, the Group incurred losses in FY21 and FY22 totalling \$121.8 million. These losses, combined with a material build in inventory levels and the costs of developing its facilities in the US, resulted in the Group being cash constrained.

⁹ Shareholder Update dated 10 March 2022

¹⁰ <https://www.sauderschelkopf.com/wp-content/uploads/2021/10/2022-03-22-001-Class-Action-Complaint-Kerschen-v-Ellume-03928657x0413.pdf>

¹¹ Investor Update dated 2 August 2022 at page 12

¹² US In vitro Diagnostic Market Size, Share Report, 2030. (<https://www.grandviewresearch.com/industry-analysis/us-in-vitro-diagnostics-market#:~:text=The%20U.S.%20in%20vitro%20diagnostics%20market%20is%20expected%20to%20grow,USD%2036.56%20billion%20by%202030.>)

¹³ Demand for Covid-19 testing is falling, but experts caution it's as important as ever (CNN). (<https://edition.cnn.com/2022/03/01/health/covid-testing-demand-decline/index.html>)

The Company's board engaged Deloitte as safe harbour advisers in December 2021 following unsuccessful recapitalisation attempts (discussed below).

The decision by the US Government to issue free tests saw US retail sales for home tests collapse from March 2022, and the Group's expected pipeline of orders and revenue largely evaporated.

Joanne Mass and Caroline Popper resigned as directors in August 2022, and on 31 August 2022, the Administrators were appointed.

3.8 Sale and recapitalisation processes

3.8.1 Pre-administration processes

The Company's minutes of its board meetings record that, in the 18 months prior to the appointment of the Administrators, the Company had attempted to solve its liquidity challenges through a number of processes, including:

- Undertaking a campaign to sell the business
- An initial public offering
- Raising debt from existing and new Noteholders
- Attempting to raise debt capital via an Asset Backed Loan facility (ABL).

In early to mid-2021, the Company's board minutes record that the Board considered the Company's longer term funding requirements and capital structure. In May 2021, the Company appointed Houlihan Lokey, an investment bank, to undertake a trade sale process. The process did not result in a transaction, with minutes from September 2021 noting that parties in the process had referenced the uncertainty of the future of home testing and the challenges of scale up. Notwithstanding this, it is evident discussions with some parties continued into early-mid 2022.

The board minutes record that the Company's Board was also considering an IPO, with Houlihan Lokey appointed as advisors, and Ord Minnett and Morgans Financial appointed as joint lead managers in October 2021. The Company's aim was to undertake this process in early-mid 2022, with significant effort being expended on preparatory vendor due diligence. However, in March 2022 the board determined that delays in securing US Government confirmation of a second order necessitated the process being deferred. At a board meeting in March 2022, the Company's advisors noted market volatility had increased and market comparators were trading down, resulting in an IPO for the Company becoming more difficult. Minutes from a June 2022 meeting referred to a dual track process (trade sale and IPO) being pursued; however, the IPO was further delayed until after the reporting season, due to the timing of finalisation of the audit.

From mid to late 2021, the minutes record that the Company was seeking to raise additional debt through the issue of new convertible notes to new and existing noteholders. A cornerstone investor was identified; however, this party withdrew. In December 2021, the Company closed a further convertible note issue, with \$49.7 million being raised against a target of \$80.0 million. The Company's advisors noted deal fatigue and the product recall as significant impediments to the success of the capital raising process.

From late 2021 through to August 2022, the Company was also in discussions with financiers for the provision of an ABL facility, secured against the assets of Ellume US. However, the minutes record that the terms of the facility required the approval of noteholders, which was not obtained.

Minutes from an August 2022 meeting noted that approaches to major shareholders had indicated there was no appetite for further investment.

3.8.2 Process undertaken by the Voluntary Administrators

After funding for the Administration period was secured from the Lender Group, and Ellume US obtained certainty around the continuation of the US Government contract, the Administrators engaged Houlihan Lokey as sale adviser to undertake a sale of business and/or recapitalisation. The key events in the Administrators' process are as follows:

- Teaser and NDA was issued to 145 parties
- 18 parties executed the NDA, receiving the information memorandum on 17 October 2022
- Four non-binding Indicative offers were received and presented to the Administrators by 7 November 2022
- Three non-binding indicative offers were shortlisted, and further engagement occurred in preparation of the final binding offer due date (extended to 30 November 2022)
- One party submitted a final binding offer, with the remaining two parties jointly submitting a non-binding and non-conforming offer, which in the circumstances could not be considered further by the Administrators.

Having considered the two offers, the Administrators confirmed Hough as the preferred bidder on 6 December 2022 and entered into binding transaction documents, subject to creditor and other approvals. Details of the Hough DoCA are included in section 4.

3.9 Financial performance and position

3.9.1 Group consolidated profit and loss

The annual consolidated profit and loss statements for the Group for FY18 to FY22 are summarised in the table below. The results for FY18 to FY21 are based on audited annual accounts. The FY22 financial results are based on unaudited draft financial statements provided by the Administrators.

Annual Group consolidated statement of profit and loss

(\$'000)	FY18	FY19	FY20	FY21	FY22
Product sales	-	-	169	25,608	232,333
Product recall refund provision	-	-	-	(3,844)	(18,899)
Clinical trials and development services	-	7,192	4,956	121	(45)
Licence income	5,359	25	45	36	18,476
Grant Income (Note 1)	2,149	2,115	9,905	8,592	20,163
Other revenue	33	394	586	4,042	108
Total revenue	7,541	9,726	15,660	34,554	252,136
Raw materials consumed	-	-	(2,492)	(25,417)	(134,826)
Inventory recall expense	-	-	-	(14,675)	-
Research and development expenses	(2,155)	(9,206)	-	-	-
Employee benefits expense	(3,239)	(6,086)	(13,743)	(17,605)	(25,292)
Depreciation expense	(257)	(451)	(1,333)	(4,682)	(6,700)
Professional fees	(450)	(1,845)	-	-	-
Travel expenses	(165)	(296)	-	-	-
Other expenses	(228)	(1,077)	(10,290)	(32,900)	(101,883)
Net change in fair value of financial liabilities	-	(25)	(760)	(695)	1,107
Foreign exchange gain/(loss)	-	-	-	-	(7,404)
Gain/(loss) on extinguishment of debt	(1,493)	-	-	-	4,052
Finance expenses	(624)	(903)	(1,914)	(3,695)	(14,645)
Profit/(loss) before income tax	(1,070)	(10,163)	(14,872)	(65,115)	(33,454)
Tax expense	(671)	-	(2,176)	(22,725)	(504)
Profit/(loss) after tax	(1,741)	(10,163)	(17,048)	(87,840)	(33,959)

Note 1: The substantial grants provided by the US Government are not brought to account as revenue when received. Rather, funds received are capitalised as a liability and amortised (brought to account as revenue) over the time period to which the grant relates.

Commentary on the financial performance of the Group

Consolidated revenue increased materially in the five years to FY22:

- In FY20, grant income of \$9.9 million was the largest component of total income of \$15.7 million. In this period, the Group also derived income from its agreement with QIAGEN as well as clinical trials.
- Total income was \$252.1 million in FY22, following the awarding of contracts by the US Government and increasing retail sales of the Group's COVID-19 home test kits. In FY22, sales comprised 2.8 million retail units sold through pharmacies and online in the US and 4.9 million units sold to the US Government.

Whilst revenue increased 16-fold between FY19 and FY22, the Group remained unprofitable due to high production costs, inventory obsolescence and the costs associated with the recall of defective tests in FY21 and FY22. 'Other costs' also increased considerably in FY22, which included the following:

- Subcontracting costs of \$26.3 million
- Storage and shipping costs of \$23.4 million
- Consulting and professional fees of \$19.1 million
- Royalties and commissions of \$16.6 million
- Various other expenses totalling approximately \$16.5 million.

Cumulative losses after tax for the five years to 30 June 2022 totalled \$150.8 million, of which \$121.8 million related to FY21 and FY22.

Normalised FY22 results

The Group estimates it would have been profitable in FY22 but for extraordinary costs associated with the product recall and inventory write downs. Adjustments to the FY22 profit and loss were presented in the IM¹⁴, detailing extraordinary costs of \$97.9 million and underlying EBITDA of \$80.5 million. This analysis is included at Appendix B. I note the normalised results do not reconcile to the draft FY22 financial report and are indicative only.

While it may be the case that had the product recall not occurred, the Company would have been profitable, the normalised earnings did not continue into FY23. Revenue in the first quarter of FY23 declined considerably.

3.9.2 Recent financial performance

Quarterly Group consolidated profit and loss statements through to 30 September 2022 (based on the Group's management accounts) are summarised in the table below.

Quarterly Group consolidated profit and loss statement

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Net sales	54,227	18,069	91,871	49,941	214,107	15,545
Gross profit	29,340	(15,217)	57,920	(31,299)	40,744	5,358
Gross profit %	54.1%	(84.2%)	63.0%	(62.7%)	19.0%	34.5%
Total operating expenses	(26,474)	(28,332)	(20,614)	(23,658)	(99,078)	(15,217)
EBITDA	2,866	(43,548)	37,305	(54,957)	(58,335)	(9,858)
EBIT	2,340	(44,101)	36,753	(56,569)	(61,577)	(12,809)
Net profit/(loss) after tax, before foreign currency translation	2,636	(22,085)	32,211	(45,834)	(33,072)	(10,193)
Less: foreign currency translation	(1,075)	244	(1,490)	3,208	887	
Net profit/loss after foreign currency translation	3,712	(22,329)	33,701	(49,042)	(33,959)	Note 1

¹⁴ IM page 24

Note 1: We have not been able to reconcile the Q1 FY23 consolidated profit and loss to the movement in retained earnings in the balance sheet, or to the entity profit and loss statements in Appendix C. This has not impacted my analysis.

Commentary on the recent financial performance of the Group

Sales declined in the fourth quarter of FY22, with a material decline in May 2022 following the release of 500 million free tests by the US Government around March 2022. Consumers were entitled to free tests through their health insurers or through reimbursement from the US Government. The reimbursement was capped at USD 12.00 per test, which is below the retail price of the Group's tests of approximately USD 25.00¹⁵, which negatively impacted revenue. Revenue in the first quarter of FY23 is almost exclusively comprised of sales to the US Government for part of the remaining 3.1 million contracted tests. The supply agreement with the US Government has not been extended beyond June 2023 and there is no certainty that a further order will be placed. The remaining tests in the order are currently being manufactured through the Administration period trading, and the order will be completed by June 2023.

The gross profit percentage recorded in the Company's management accounts varies materially month to month and quarter to quarter, with some months recording a large negative gross margin percentage and other months recording a large positive gross margin percentage. These gross margin changes do not align to revenue levels. The movements in gross profit percentage between quarters is reflective of a cost accounting system which does not properly reflect underlying gross profit. From discussions with the Company's staff, I understand changes are being made to improve the cost accounting process.

Consideration of performance on an entity basis

The performance of the Company and Ellume US on an entity basis (based on the Group's management accounts) for FY22 and Q1 FY23 is summarised in the table below, and profit and loss statements for the Company and Ellume US for the same period are included at Appendix C.

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22
Sales - Ellume Limited	25,180	22,666	28,049	14,294	90,189
Sales - Ellume US	54,730	17,240	93,793	46,662	212,426
Less: Intercompany sales	(25,684)	(21,837)	(29,972)	(11,015)	(88,508)
Net consolidated Group sales	54,227	18,069	91,871	49,941	214,107
COGS - Ellume Limited	(18,720)	(26,852)	(33,136)	(55,792)	(134,499)
COGS - Ellume US	(31,851)	(28,270)	(30,787)	(36,464)	(127,372)
Add: Intercompany COGS	25,684	21,837	29,972	11,015	88,508
Net consolidated Group COGS	(24,887)	(33,286)	(33,951)	(81,240)	(173,364)
Gross profit - Ellume Limited	6,461	(4,186)	(5,086)	(41,498)	(44,310)
Gross profit - Ellume US	22,879	(11,030)	63,006	10,199	85,054
Group gross profit	29,340	(15,217)	57,920	(31,299)	40,744
EBITDA - Ellume Limited	(16,422)	(26,127)	(21,206)	(63,342)	(127,097)
EBITDA - Ellume USA	19,288	(17,421)	58,512	8,384	68,763
Group EBITDA	2,866	(43,548)	37,305	(54,957)	(58,335)
Net profit after tax - Ellume Limited	(18,721)	(3,428)	(24,491)	(67,455)	(114,096)
Net profit after tax - Ellume US	22,433	(18,901)	58,192	18,413	80,137
Group net profit/(loss) after tax	3,712	(22,329)	33,701	(49,042)	(33,959)

In FY22, the Company reported a net loss of \$114.1 million, and Ellume US recorded a net profit of \$80.1 million (before intercompany eliminations). In my opinion, the performance of Ellume US cannot be separated from the performance of the Company; that is, the consolidated performance of the Group most appropriately reflects the profitability of the business. The reasons for this are as follows (as also discussed in other sections of this Report):

- The intellectual property, management and corporate knowledge required to operate the Group's business is provided by the Company. The results of Ellume US do not include the value or costs of these services. There are no intercompany

¹⁵ Online prices on www.walmart.com and www.target.com as at 13 January 2023

recharges for shared costs incurred by the Company, and no royalty is charged for the use of the Company's intellectual property.

- The revenue recorded for Ellume US includes the sale of COVID-19 home test kits, components for which were, up until recently, manufactured by the Company. These components were transferred between the Company and Ellume US at standard cost. The Company records no profit on internal sales, reducing its profit while inflating the earnings of Ellume US.

For the reasons set out above, it is my opinion that the financial results of Ellume US are not reflective of how that entity would perform separate to its parent and should not be considered as such. Based on the information available to me, it is not possible to determine the relative financial performance of each entity.

3.9.3 Group consolidated balance sheet

The Group consolidated balance sheets from June 2018 to June 2022 are summarised in the table below. The balances for June 2018 to June 2021 are based on audited annual accounts, while the June 2022 balance sheet is based on unaudited draft financial statements provided by the Administrators.

Group consolidated balance sheet

(\$'000)	Jun-18	Jun-19	Jun-20	June-21	Jun-22
Current assets					
Cash and cash equivalents	70	21,048	9,874	16,614	27,650
Trade receivables	7,462	2,474	6,716	16,034	548
Inventories	-	-	659	65,818	72,781
Lease receivable	-	-	-	4,406	-
Other assets	71	1,070	1,643	17,735	23,937
Total current assets	7,602	24,591	18,892	120,607	124,915
Non-current assets					
Contract assets	-	-	-	-	18,980
Other assets	-	-	-	82,755	8,398
Property, plant and equipment	571	2,404	6,161	59,426	251,578
Total non-current assets	571	2,404	6,161	142,181	278,956
Total assets	8,174	26,995	25,053	262,789	403,871
Current liabilities					
Trade payables	790	1,241	4,179	151,862	97,388
Current tax payable	671	-	732	22,990	25,090
Interest bearing liabilities	-	-	-	42,627	107,630
Other financial liabilities at fair value	-	-	-	5,362	-
Provisions	159	250	452	12,664	15,865
Lease liabilities	-	-	276	-	1,230
Contract liabilities	-	730	-	-	-
Current unearned income	-	-	-	-	28,446
Total current liabilities	1,620	2,221	5,639	235,505	275,648
Non-current liabilities					
Interest bearing liabilities	-	21,915	24,038	-	-
Other financial liabilities at fair value	-	501	1,260	-	-
Unearned income	-	-	-	86,411	173,944
Provisions	64	160	274	1,191	1,388
Lease liabilities (Note 1)	-	-	3,058	33,680	34,464
Total non-current liabilities	64	22,575	28,631	121,282	209,796

Total liabilities	1,683	24,796	34,269	356,787	485,444
Net assets	6,490	2,199	(9,216)	(93,998)	(81,573)
<i>Equity</i>					
Share capital	21,722	25,467	25,467	25,467	69,540
Share based payment reserve	-	2,127	7,914	10,940	12,364
Translation reserve	-	-	-	33	919
Accumulated losses	(15,231)	(25,395)	(42,597)	(130,437)	(164,396)
Total equity	6,490	2,199	(9,216)	(93,998)	(81,573)

Note 1: The FY19 financial statements were restated in FY20 due to changes in accounting standards. As a result, the movement in accumulated losses between FY19 and FY20 exceeds net profit in FY20 by \$155,061.

Comments on Group consolidated balance sheet

The Group's consolidated net asset position deteriorated from \$6.5 million at June 2018 to a net liability position of \$81.6 million at June 2022. The consolidated asset position of the Group increased through the four years to 30 June 2022 to \$403.9 million, with significant increases in property, plant and equipment (balance of \$251.6 million as at June 2022) corresponding with the construction of manufacturing facilities in Australia and the US and the growth in inventory (balance of \$72.8 million as at June 2022). The Group's liabilities increased to \$485.4 million by June 2022 as it sought debt funding to meet capital and operational requirements. The Group's share capital increased to \$69.5 million as at 30 June 2022 substantially due to convertible note conversions of \$43.5 million.

Assets

As at 30 June 2022, consolidated assets of \$403.9 million were primarily comprised of:

- Property plant and equipment of \$251.6 million, including substantial capitalised fit out and development costs for the manufacturing facilities in Australia and the US.
- \$27.7 million in cash and cash equivalents.
- \$72.8 million in inventories, with \$41.8 million in raw materials, \$5.7 million in work in progress, \$14.4 million in finished goods and \$10.9 million of goods in transit (all net of provisions for obsolescence of \$37.3 million).
- \$23.9 million of current other assets and \$8.4 million of non-current other assets (which comprises deposits and prepayments relating to grants and property, plant and equipment).
- \$19.0 million of contract assets, being receivables outstanding on goods already provided to customers.

Liabilities

As at 30 June 2022, the consolidated liabilities of the Group totalled \$485.4 million, substantially comprised of:

- Trade payables of \$97.4 million, comprised of trade payables, accrued expenses, contract liabilities and other payables.
- Current tax payable of \$25.1 million, which has been raised as a provision in the accounts of Ellume US.
- Interest bearing liabilities of \$107.6 million, being the liability pursuant to the convertible notes.
- Non-current unearned income of \$173.9 million, being deferred government grant income. As detailed above, grant receipts are initially recorded as unearned revenue, and amortised through the revenue account over time. I am informed that the unearned income, representing the unamortised portion of grants received from the US Government, is not repayable and does not represent a future cash liability.¹⁶
- Lease liabilities of \$34.5 million relate to property leases.

Convertible notes

Between November 2018 and December 2021, the Company issued Convertible Notes to QIAGEN and high net worth individuals in various tranches. Notes have been redeemed for new convertible notes, and in the case of QIAGEN, USD 15.0 million of notes have converted into a fully paid licence for the future sale of the Company's QAIreach Quantiferon Tuberculosis test product. The balance of the Convertible Notes as at 30 June 2022 was \$107.6 million and comprised:

- Face value of notes issued of \$74.1 million.

¹⁶ IM at page 25

- Accrued interest of \$5.6 million.
- Financial liability at fair value through profit and loss of \$27.9 million.

3.9.4 Recent financial position

Quarterly Group consolidated balance sheets for the five quarters through to 30 September 2022 (based on the Group's management accounts) are summarised in the table below.

Group consolidated balance sheet for the quarters ended 30 September 2021 to 30 September 2022

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
Current assets	165,686	177,865	183,236	142,883	132,359
Non-current assets	163,007	202,189	225,723	260,668	285,821
Total assets	328,694	380,055	408,959	403,551	418,180
Current liabilities	175,581	220,848	181,096	169,086	178,315
Non-current liabilities	244,909	226,351	265,056	316,037	327,656
Total liabilities	420,490	447,198	446,152	485,124	505,971
Net assets/(liabilities)	(91,796)	(67,144)	(37,193)	(81,573)	(87,791)
<i>Equity</i>					
Contributed equity	25,467	69,956	70,037	69,540	69,540
Revaluation reserve	(1,043)	(799)	(2,289)	919	7,029
Share based payment reserve	10,940	13,427	14,488	12,364	12,769
Retained earnings/(accumulated losses) (Note 1)	(127,160)	(149,728)	(119,429)	(164,396)	(177,129)
Total equity	(91,796)	(67,144)	(37,193)	(81,573)	(87,791)

Note 1: I have been unable to reconcile the movement in retained earnings/(accumulated losses) to the net profit/(loss) for the corresponding periods in the quarterly Group consolidated profit and loss statement. The differences are not material to my analysis.

Entity balance sheets for the Company and Ellume US for the same period are included at Appendix D.

3.9.5 Group consolidated statements of cash flows

The annual consolidated cash flow statements for the Group for FY18 to FY22 are summarised in the table below. The results for FY18 to FY21 are based on audited annual accounts. The FY22 financial results are based on unaudited draft financial statements provided by the Administrators.

Group consolidated statement of cash flows for FY18 to FY22

(\$'000)	FY18	FY19	FY20	FY21	FY22
Net cash flows from operating activities	(3,526)	(1,291)	(9,263)	(25,077)	(67,137)
Net cash flows from Investing activities, including grants	(158)	(2,234)	(1,676)	13,358	(43,730)
Net cash flows from financing activities	3,634	24,503	(237)	19,409	120,563
Net increase/(decrease) in cash and cash equivalents	(50)	20,978	(11,176)	7,690	9,696
Cash and cash equivalents at beginning of year	119	70	21,048	9,874	16,614
Effects of exchange rate changes	-	-	2	(950)	1,340
Cash and cash equivalents at end of year (Note 1)	70	21,048	9,874	16,614	27,650

Note 1: The FY19 financial statements were restated in FY20 due to changes in accounting standards. This resulted in classification of cash flows being changed. There was no impact on the closing cash balance. I have not included the restated FY19 classifications.

Comments on statement of cash flows

I make the following comments in relation to the statement of cash flows:

- The Company reported net operating cash outflows each year between FY18 and FY22, reflective of the build-up in inventory (a large amount of which was subsequently written off as obsolete) and substantial operating losses
- The investing inflows in FY21 relate to grants received in relation to the construction of the US manufacturing facility
- Net cash inflows from financing activities in FY21 relate to the second tranche of convertible notes issued to QIAGEN and the June 2021 convertible notes issued to high net worth investors
- The investing outflows in FY22 occur as the payments for property plant and equipment of \$128.5 million exceeded receipts from grants of \$84.7 million
- The FY22 financing inflows relate to proceeds of the convertible note raises (\$80.6 million), the conversion of QIAGEN's convertible notes into a fully paid licence agreement and amended notes (\$32.8 million), other fair value changes in the value of liabilities (\$6.8 million) and a gain on the extinguishment of debt (\$1.3 million).

3.9.6 Financial outlook

Management forecasts for FY23 and FY24 were included in the IM. The forecasts indicate the Group will continue to incur losses for the next two years and require substantial ongoing funding. I have not included the forecasts in this Report due to confidentiality. However, I note that the forecasts rely upon the continued sale of COVID-19 home tests to the US Government at current pricing, absent which its revenue would be minimal. There is currently no contract to support these sales post June 2023.

4 DoCA proposal

The outcome of the sale and recapitalisation process undertaken by the Administrators was that a DoCA proposal from Hough was recommended to creditors. The DoCA proposal was approved by creditors on 20 December 2022 and the DoCA was signed by the Company on 22 December 2022. In summary, the DoCA provides for the following:

- The transfer of all shares in the Company to Hough or its nominee pursuant to section 444GA of the Act
- The release of all claims against the Company (other than claims of continuing employees not settled through the DoCA)
- The payment of USD 38.0 million to constitute a trust in favour of the Company's creditors, with the payments in accordance with waterfall outlined below. Working capital amounts (including cash on hand and receivables as at the date of appointment) and trading liabilities incurred by the Administrators will also form part of the Creditors' Trust
- Interim funding of USD 5.0 million to be provided to the Administrators by Hough, repayable via the DoCA payment waterfall. This funding has/will allow for the continued trading of the Company for the period between acceptance of Hough's offer and effectuation of the DoCA, at which point control and risk passes to Hough
- Certain Noteholders, at their election (the Electing Noteholders) may continue to hold their Convertible Notes; however, the terms of the notes will be amended such that they mature five years after the date of the DoCA and are only redeemable for shares in the Company in the event of an initial public offering, with the Electing Noteholders' shareholding to collectively not exceed 5.0% of the shares issued in the IPO. Other noteholders (with the exception of QIAGEN) will be entitled to share in USD 12.5 million from the Creditor's Trust Fund, being the Noteholder Pool, and QIAGEN will receive a fixed return.

The DoCA will only involve the compromise of certain creditor claims against the Company and will not impact the creditors of Ellume US.

4.1 Conditions precedent to completion of the DoCA

Completion of the DoCA (and transfer of shares in the Company to Hough) will occur once the following conditions have been met:

1. The Lender Group releases all security granted to them by the Company and its subsidiaries
2. Release by the Trading Security Holders of their security unless otherwise agreed by Hough. The Trading Security Holders are suppliers who had registered securities against the Company on the PPSR
3. ASIC grants relief from section 606 of the Act
4. The court makes orders pursuant to section 444GA(1)(b) of the Act
5. Hough being satisfied that the Company is not contractually restricted from commercialising certain diagnostic products
6. Hough pays its contribution of USD 38.0 million to the Administrators
7. Execution of the Creditors' Trust Deed
8. The Interim Funding has been repaid to Hough (by way of a reduction to the Hough Contribution)
9. Termination by the Administrators of leases over two properties at East Brisbane, Queensland
10. The resignation, removal or appointment of certain directors at the direction of Hough
11. Retention of certain staff on terms acceptable to those staff and Hough, being no less favourable than existing terms
12. Binding commitments from certain landlords in relation to the ongoing use of certain premises.

4.2 Waterfall of payments under the DoCA and Creditors' Trust

The terms of the DoCA provide that the funds available (the Hough contribution of USD 38.0 million (\$56.7 million) plus working capital recoveries) will be applied in the following order:

Pool	Amount and creditor claims Included
Pool A	Repayment of the interim funding provided by Hough to enable the continued trading of the Company in Administration
Pool B	Repayment of any amounts owing to the Lender Group and the Trading Security Holders up to a limit of USD 8.0 million
Pool C	Payments in accordance with the priorities set out in sections 556, 560 and 561 of the Act, as though those priorities were applied in the Creditors' Trust
Pool D	The lesser of \$285,000 or the amount require to fund a return of 50 cents in the dollar to all creditors whose admitted claim is less than \$20,000 (Small Claim Creditors)
Pool E	USD 7.0 million to fund a return to QIAGEN
Pool F	The balance of the Creditors' Trust fund (after funding all other pools) will then be utilised to pay a dividend to all admitted claims not included in the other pools.
Pool G	An equal and rateable distribution to Noteholders up to the amount of USD 12.5 million.

The estimated returns from the DoCA¹⁷ are set out below.

Distribution waterfall under DoCA proposal

Creditor pool	Low case		High case	
	(\$'000)	(cents/\$)	(\$'000)	(cents/\$)
Pool A – Repayment of interim funding from Hough	7,463	100 c/\$	3,516	100 c/\$
Pool B – Trading Security Holder and Lender Group claims	11,940	94 c/\$	5,522	100 c/\$
Pool C – Costs and priority creditors	14,613	100 c/\$	8,837	100 c/\$
Pool D – Small claim creditors	184	50 c/\$	184	50 c/\$
Pool E – QIAGEN	10,448	47 c/\$	10,448	47 c/\$
Pool F – Other unsecured creditors	-	Nil	11,144	20 c/\$
Pool G – Convertible Noteholder claims	13,655	15 c/\$	18,657	35 c/\$
Total	58,302		58,307	

4.2.1 Excluded creditors

- Hough will not receive any distributions under the DoCA or Creditors' Trust other than in respect of the repayment of the Interim Funding.
- Ellume US is an Excluded Creditor and will not receive a distribution from the Creditors' Trust.

4.3 Likely outcome in the event that the DoCA does not complete

In the event that the DoCA does not complete, either because Hough defaults, or the Administrators are unable to complete, it is likely that the following would occur:

- Owing to substantial ongoing trading losses, without additional funding being secured, the Administrators would need to cease trading the business of the Company
- Absent an alternate proposal, creditors would likely vote to place the Company into liquidation and the appointed liquidators would commence a process to realise the Company's assets

¹⁷ Second Report to Creditors at page 41

- It is likely that without any certainty as to its own outlook, including a further material order from the US Government or external investor funds, Ellume US would be placed into some form of bankruptcy process under US law
- The outcome for creditors and shareholders would, in my opinion, be in line with that set out in section 5.

5 Valuation of residual equity

I am required to assess the residual equity value in the Company on a liquidation basis in accordance with Regulatory Guide 111. Where there is a residual business that could be sold, I am to consider the value of that business and not just the assets and other undertakings that comprise that business interest.

In addition, liquidators have the ability to challenge transactions that were entered into prior to the commencement of an administration that were detrimental to the financial position of the Company and the outcome for creditors. Such claims, if successful, can void transactions and result in returns to the Company in liquidation. Any returns from claims that could be brought by a liquidator are also to be considered in the assessment of the residual equity value in the Company in accordance with Regulatory Guide 111.

Regulatory Guide 111 requires that I "consider valuation evidence provided by the sales process conducted by the administrator (if any)". In forming my opinion, I have had consideration to the results of the Administrators sale process, which is discussed in section 3.8. Where the sale process provides guidance on the realisable value of assets of the Company, I have included commentary in my analysis.

5.1 Value of residual equity

In liquidation, I have assessed that there would be a deficiency of assets available to meet the claims against the Company of between \$186.5 million and \$229.5 million and nil residual equity, as outlined in the table below.

I have used the ROCAP provided by the Company's directors to the Administrators, which records the position of the Company as at 31 August 2022, as the basis of my assessment and have cross checked this against the Company's management accounts as at 31 August 2022. I have also incorporated information provided by the Administrators and third parties as required.

Assessment of residual equity in the Company

Company assets	Section reference	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-
Cash at bank	6.2	1,575	1,575
Accounts receivable	6.2	11	16
Prepayments	6.3	821	1,641
Other receivables	6.4	-	-
Related party receivable	6.5	-	-
Inventory	6.6	808	2,827
Plant and equipment	6.7	1,344	1,919
Shareholding in Ellume US	6.8	-	-
Shareholding in Ellume NZ	6.9	-	-
Intellectual property	6.10	-	-
Claims available to a liquidator	6.11	-	456
Total asset value		4,559	8,434
Claims against the assets			
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators' fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee provided for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963
Surplus/(shortfall) of assets available to meet claims		(229,542)	(186,529)
Net equity value		-	-

6 Value of the Company's assets

I have assessed the value of the Company's assets in liquidation at between \$4.6 million and \$8.4 million, as set out in the table below and detailed further in this section.

Value of the Company's assets in liquidation

Company assets	Section reference	Book value as at 31 August 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-	-
Cash at bank	6.2	1,573	1,575	1,575
Accounts receivable	6.2	-	11	16
Prepayments	6.3	31,416	821	1,641
Other receivables	6.4	1,179	-	-
Related party receivable	6.5	45,403	-	-
Inventory	6.6	40,384	808	2,827
Plant and equipment	6.7	37,139	1,344	1,919
Shareholding in Ellume US	6.8	-	-	-
Shareholding in Ellume NZ	6.9	-	-	-
Intellectual property	6.10	-	-	-
Claims available to a liquidator	6.11	-	-	456
Total asset value		155,916	4,559	8,434

Book values are based on the ROCAP submitted by the Company's directors to the Administrators. I have checked these balances against the management accounts as at 31 August 2022.

I have not attributed any value to:

- Carry-forward tax losses in liquidation, which may have been reflected in the Hough offer
- Right of use assets in relation to the Company's property leases. In liquidation, these assets would be surrendered.

6.1 Business of the Company

In the event that the DoCA is not completed, and the Company is placed into liquidation, it is unlikely that any value could be realised for the Company's business over and above the value of its assets.

As detailed in section 3.8.1, prior to the appointment of the Administrators, the Company engaged Houlihan Lokey to explore a trade sale. The process undertaken by Houlihan Lokey failed to find a buyer for the Company's business. As detailed in section 3.8.2, the subsequent sale process undertaken by Houlihan Lokey under instruction from the Administrators also resulted in limited offers, the best offer being the DoCA proposed by Hough.

In my opinion, the Hough offer would unlikely to be bettered if a liquidator was to undertake a further sale process for the Company's business and assets for the following reasons:

- A liquidator would likely be without funding to continue operating the business and retain key personnel, and on this basis, a liquidator would not trade the Company's business. It is relevant to note that the Administrators have secured funding from existing Noteholders and Hough to enable the business to continue operating through the administration period (at a substantial loss).
- If the Company was placed into liquidation, it is likely that Ellume US would be placed into a bankruptcy process in the US, crystallising substantial claims against it, and resulting in the potential termination of contracts with the US Government.
- It would be difficult to find a suitably qualified advisor to undertake another sale process without a substantial upfront retainer. Considering the Hough offer followed two sale processes run by Houlihan Lokey, a reputable mergers and acquisition advisor, it is unlikely that another firm would seek a success fee only mandate from a liquidator for another sale process.

The sale processes undertaken pre and post-administration have tested the market's appetite for the Company and its assets and the DoCA is the outcome of that process. It is logical to assume that any further process, for a company without ongoing operations, would be challenging and unlikely to succeed.

6.2 Cash and trade receivables

Cash at bank

As at 31 August 2022, the Company had \$1.6 million in cash. I have adopted this value in my assessment.

Trade receivables

The management accounts as at 31 August 2022 showed a nil balance for trade receivables. However, I have adopted the minor value deemed as recoverable by the Administrators in their estimated outcome statement detailed in the Second Report to Creditors, of which the low case represents actual amounts actually recovered.

6.3 Prepayments

The Administrators have not included any value for recovery of the prepayment balance of \$31.4 million as at 31 August 2022, which included the following amounts:

Supplier/group	Balance as at 31 August 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Hong Kong Supplier	18,980	821	1,641
US party	9,781	-	-
Other prepayments	2,656	-	-
Total	31,417	821	1,641

Hong Kong supplier

I am informed by the Administrators that the prepayment made to the supplier based in Hong Kong relates to a purchase of inventory. The prepayment is offset by a larger creditor claim. The Administrators have advised that settlement has been reached in respect to the claims and inventory which the supplier holds on behalf of the Company. The terms of the settlement are summarised below:

- The supplier's net creditor claim has been agreed at USD 2.7 million
- The supplier has been appointed as agent to realise inventory purchased by the Company for USD 4.4 million. The supplier is entitled to retain 50% of any proceeds, which will also reduce the quantum of its net creditor claim
- The supplier is to use its best endeavours to procure the sale of the Company's inventory by 31 January 2023.

I understand that no realisable value has been ascertained for the inventory held by the supplier. Considering that the Company is only entitled to 50% of the net proceeds, recoveries are unlikely to exceed USD 2.2 million (being 50% of the purchase price). I have assumed that the Company will receive 25% of its maximum entitlement in the low case and 50% in the high case, being USD 0.6 million and USD 1.1 million respectively (\$0.8 million and \$1.6 million when converted to Australian dollars).

US party

The Administrators have advised that the \$9.8 million prepayment represents a fee paid to a third party advisor, and that it is being amortised in line with the amortisation of grant funding received from the US Government. I am advised that the prepayment would not be recoverable, owing to offsetting creditor claims. Accordingly, I have attributed nil value to this asset.

Other prepayments

Other prepayments include amounts prepaid for software, insurance, rent and other expenses. In my experience, recoveries from prepayments are minimal in a liquidation where the business does not trade. Accordingly, I have not included any value for this component of the prepayment balance.

6.4 Other receivables

As at 31 August 2022, other receivables had a balance of \$1.2 million in the Company's management accounts. This compares to the balance contained in the ROCAP of \$91,219 for other receivables and \$1.1 million for other assets (\$1.2 million total).

Other receivables include security deposits paid in respect to the lease of the Brisbane manufacturing facility of \$0.2 million, prepaid inventory of \$0.7 million and other deposits and receivables totalling \$0.2 million.

I have not included any recoveries against other receivables owing to the fact that:

- The property security bond would be retained by the landlord in the event of liquidation and termination of the lease
- Prepayments for inventory and other items are likely to be of nil value in liquidation.

I note that \$121,000 of insurance refunds have been recovered by the Administrators, which the Administrators have included in the administration period trading income.¹⁸

6.5 Related party receivable

The ROCAP records a related party receivable owed by Ellume US of \$45.4 million. I understand that the balance is offset by a payable balance owing to Ellume US of \$80.3 million. I also understand from the Second Report to Creditors, that in the event of liquidation, further investigation would be required to reconcile the intercompany position. Given the Company is a net debtor to Ellume US, I have not assumed that an amount could be claimed against Ellume US.

6.6 Inventory

The Company held significant inventory as at the commencement of the administration. The Directors' ROCAP recorded inventory of \$40.4 million, net of \$37.3 million of inventory marked as obsolete as at 30 June 2022.

The inventory position as at 30 June 2022, which had a slightly lower balance of \$39.5 million, is summarised below.

Material	Book value as at 30 June 2022 (\$'000)
Raw materials	69,067
Components	2,036
Finished goods	2,833
WIP/ goods in transit	2,342
Quality assurance/ returns	993
Total	77,271
Less: provision for obsolete stock	(37,742)
Net inventory balance	39,528

The Administrators have assessed the recoverable value of the inventory at between two and seven cents in the dollar. The Administrators arrived at this assessment having regard to the fact that the inventory balance includes substantial raw materials and obsolete inventory. The Administrators have been unsuccessful in their attempts to sell down surplus inventory during the Administration which has provided an indication of the likely low resale value of the Company's inventory.

Furthermore, given the only market for the Group's finished goods is the US, if Ellume US is placed into bankruptcy as considered in section 6.8, the saleability of finished goods by the Company through its US subsidiary would be highly uncertain.

Without the benefit of an independent valuation of the inventory, it is difficult to determine if the Administrators' estimate is reasonable. However, in my experience, the sale of raw materials, particularly specialised raw materials, is difficult in a liquidation. Considering that the inventory largely comprises raw materials (approximately 90% before obsolescence), the Administrators' assumption appears reasonable, and I have adopted their high and low recovery rates. Even if the inventory could be sold at its book value, there would still be a material deficiency of assets to meet creditor claims.

¹⁸ As advised by the Administrators

6.7 Plant and equipment

The book value of the Company's plant and equipment was \$37.1 million as at 31 August 2022.¹⁹

The Administrators instructed Gordon Brothers, an independent valuation firm, to assess the value of the Company's plant and equipment in a forced sale scenario. I have adopted the Gordon Brothers valuation as the basis of my assessment.

The high case below reflects the forced liquidation value as determined by Gordon Brothers, net of the Administrators' estimated realisation costs of 20% for such expenses as rent, storage, transport, marketing, and sales commission. The estimated realisation costs are not unreasonable when considering that Gordon Brothers estimated that the main testing and manufacturing equipment would take between four to six weeks to decommission and package for transport. Accordingly, I have adopted the Administrators' estimated realisation cost percentage of 20%.

The Administrators' low case assumes a further 20% discount to the forced liquidation values. In my experience, it is reasonable to assume a discount to the valuation to account for uncertainty, particularly for specialised equipment which may prove challenging to sell. Accordingly, I have adopted the Administrators' 20% discount in my assessment of the low case.

Equipment sold during the administration for \$0.2 million²⁰ (which was not included in the valuation) is included below.

Value of plant and equipment²¹

Asset type	Forced Liquidation Value Low Case (\$'000)	Forced Liquidation Value High Case (\$'000)
Production equipment	879	1,098
Laboratory equipment	446	558
Automated assembly lines subject to Trading Security Holder claim	-	350
Office furniture and equipment	34	43
Other	109	137
Total asset value	1,468	2,186
Less: assumed realisation costs	(294)	(437)
Net estimated realisable value	1,174	1,749
Add: net proceeds from equipment sold in administration	170	170
Total value of plant and equipment	1,344	1,919

The disparity between the book value and forced liquidation values is explained by Gordon Brothers in its report as follows:

- Over the course of the COVID-19 pandemic, manufacturers developed off the shelf manufacturing systems for high-volume production of at-home lateral flow tests
- The Company's equipment is bespoke and while capable of manufacturing the Ellume home test kits, off the shelf manufacturing solutions are likely more attractive to competitors
- The demand for the Company's high cost test kit (which retail for USD 25.00 each) is low and the market is now flooded with Chinese manufactured tests selling at far lower prices
- Having regard to the above, the plant and equipment would likely be sold for research and development activities or decommissioned to salvage components.

For the reasons further explained in section 7.4, in the low case, I have assumed that certain assets with a forced liquidation value of \$0.4 million are retained by a Trading Security Holder, whereas in the high case, this creditor's claim is assumed to be invalid and the assets are available to the liquidator.

¹⁹ Second Report to Creditors at page 63

²⁰ Second Report to Creditors at page 47

²¹ Gordon Brothers valuation report and workings provided by the Administrators.

6.8 Shareholding In Ellume US

In the event that the DoCA does not complete, and the Company is placed into liquidation, a liquidator will need to take steps to determine if the shareholding in Ellume US has any value. At the same time, in my opinion, the directors of Ellume US would consider the financial position of that company, and the high degree of interdependence with the Company, and take steps to place Ellume US into a bankruptcy process in the US. The reasons for this assessment include:

- The Company owns the intellectual property needed by Ellume US to operate.
- The Company is recorded as owing Ellume US approximately \$35.0 million as at 31 August 2022, and this amount would likely be irrecoverable.
- There is unlikely to be any funding to support Ellume US. Further financial support from the US Government would be less likely if its shareholder was in a liquidation process.
- There is no certainty that Ellume US will be able to secure additional supply contracts beyond its current US Government contract. As its primary source of revenue, absent continued procurement by the US Government, Ellume US would have insufficient revenues to remain operational, as retail sales have collapsed following the introduction of free COVID-19 tests in the US, and there are currently no further supply contracts in place.

In a bankruptcy process for Ellume US, I estimate that there would be a deficiency of assets to meet creditor claims. Accordingly, there would be no value in the shares of Ellume US. My analysis is summarised in the table below and detailed in Appendix E.

In forming my opinion, I have relied on management accounts prepared by the Company for Ellume US as at 30 September 2022 as well as an independent valuation of Ellume US's plant and equipment. I also note that a bankruptcy process for Ellume US which resulted in the closure of its business would result in a default by Ellume US on its property lease, which would in turn result in an unsecured claim against the Company pursuant to the terms of a guarantee provided by the Company for the lease.

Estimate of residual value of equity in Ellume US in the event of liquidation

Ellume US assets	Section reference	Balance Sheet as at 30 September 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of Ellume US	E.1.1	-	-	-
Cash at bank	E.1.2	4,172	4,172	4,172
Accounts receivable	E.1.3	13,460	9,422	10,768
Inventory	E.1.4	36,878	5,052	7,578
Plant and equipment	E.1.5	249,055	13,430	10,366
Prepayments	E.1.6	32	-	-
Other receivables	E.1.6	89,306	-	-
Intellectual property	E.1.8	-	-	-
Total asset value		392,903	32,076	32,884
Claims against the assets of Ellume US				
Costs of bankruptcy administration	E.2.1	-	1,466	1,818
Trade payables	E.2.2	34,065	34,065	34,065
Accruals	E.2.2	15,431	15,431	15,431
Other payables and provisions	E.2.3	42,673	6,410	6,410
Payroll liabilities	E.2.4	653	653	653
Lease liability	E.2.5	31,110	9,333	6,222
Unearned Income	E.2.6	176,722	-	-
Provision for income tax	E.2.7	26,583	26,583	26,583
Borrowings	E.2.8	2,677	-	-
Contingent claims (class action)	E.2.9	-	-	-
Total claims against the assets of the Company		329,914	93,941	91,182
Net equity		62,989	(61,865)	(58,298)

6.9 Shareholding in Ellume NZ

Ellume NZ is a dormant entity that does not trade, nor have any assets or liabilities. It was established in 2018 for clinical trials; however, the company has never operated for this or any other purpose.

Given Ellume NZ has no assets, I have attributed nil value to the Company's shareholding.

6.10 Intellectual property

The Group's intellectual property assets are held by the Company (and not by Ellume US). Intellectual property values are difficult to determine outside of a sale process. It is reasonable to assume that the value placed on the Company's business by Hough (and other interested parties) properly considered the value of the intellectual property assets and that in the event of liquidation, no higher price would be obtainable. The shortfall to creditors is so significant (between \$186.5 million and \$229.5 million) that even if the intellectual property could be sold for value, it would be highly unlikely to result in the claims of all creditors being met and there being residual equity value in the Company.

6.11 Claims available to a liquidator

If the Company is placed into liquidation, a liquidator is required to undertake further investigations into the circumstances surrounding the insolvency of the Company. In certain circumstances, those investigations might give rise to claims available to the liquidator. The Administrators have formed a view, based on their investigations, that there may be voidable unfair preference recoveries relating to creditor payments totalling \$2.3 million. The Administrators have estimated a potential

recovery of these claims of between nil and \$456,443²², being 20% of total claims. A liquidator would need to weigh up the costs of pursuing any preference claims against risk of dissipating the Company's assets through legal fees.

In my opinion, the Administrators' estimated recovery of between nil and 20% of the face value of the claims is a reasonable estimate having regard to the costs and risks of litigating such claims, and I have adopted these values.

Claim	Low Case (\$'000)	High Case (\$'000)
Unfair preference recoveries	-	456

The Administrators did not identify any other potential claims that may be available to a liquidator, such as insolvent trading claims against the directors of the Company. I note that the Second Report to Creditors confirmed that the Company engaged safe harbour advisors on or about 28 September 2021. If the Company complied with and was in fact utilising the safe harbour provisions under 588GA of the Act, then the directors would potentially have a statutory defence against any insolvent trading claims. On this basis, it was reasonable for the Administrators to assume that it would be unlikely an insolvent trading claim would be successful.

²² Second Report to Creditors at page 26

7 Claims by creditors

In circumstances where the Company is placed into liquidation, the value of claims against its assets is estimated at between \$195.0 million and \$234.1 million as outlined below. I have used the Company's balance sheet, the ROCAP submitted by the directors and information provided by the Administrators in the Second Report to Creditors to estimate the claims against the Company.

Summary of claims in the event of liquidation

Claim	Section reference	Low Case (\$'000)	High Case (\$'000)
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators' fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee liability for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963

7.1 Costs and expenses of the administration and liquidation

As detailed in the Second Report to Creditors, the Administrators have estimated that the total cost of the Administration and liquidation to be between \$12.9 million in the low case \$12.5 million in the high case.²³ This estimate includes the following costs and expenses:

Expense	Low Case (\$'000)	High Case (\$'000)
Trading loss (trading position and funding from the Lender Group)	8,858	8,821
Advisor fees (legal fees and retainer paid to Houlihan Lokey)	800	700
Administrators' remuneration	2,662	2,600
Liquidators' remuneration	550	345
Total	12,870	12,466

Having regard to the operations of the Company spanning two countries, the continued trading and complexity of the business, the above costs appear reasonable in the circumstances. Having regard to the time costs involved in realising the Company's assets in liquidation, completing the required statutory investigations and managing substantial creditor claims the estimated liquidation costs appear low and could result in a higher claim against the Company's assets.

7.2 DoCA fees

In the event that the DoCA does not complete, and the Company is placed into liquidation, the Administrators' will have a claim for their fees incurred during the DoCA period. Accordingly, I have included the estimated Deed Administrators' fees of between \$0.9 million in the low case and \$0.8 million in the high case.

7.3 Employee entitlement claims in liquidation

The Administrators' estimate of employee entitlements owing is between \$3.0 million (low case) and \$3.1 million (high case) and comprises:

- Wages and superannuation of \$0.3 million

²³ Second Report to Creditors at page 43

- Leave entitlements of \$1.2 million (low case) and \$1.1 million (high case)
- Redundancy and payment in lieu of notice of \$1.6 million.²⁴

As detailed in the Second Report to Creditors, the Administrators have estimated a nil return for employee entitlements, should the Company be placed into liquidation. In a liquidation scenario, employees will be eligible to claim for entitlements under the Federal Government's Fair Entitlements Guarantee (FEG) scheme. However, this does not extend to outstanding superannuation. The ATO will make a claim for any outstanding superannuation on behalf of employees in a liquidation scenario, and also make a subrogated claim for any amounts funded by the FEG scheme.

I have adopted the Administrators' estimates of employee claims.

7.4 Secured creditor claims

The Administrators have included secured claims of \$7.5 million in their analysis, relating to claims of six Trading Security Holders, being creditors who have a claim to certain property pursuant to registrations on the PPSR.

The claim of one Trading Security Holder is material at approximately \$7.2 million. If the claim is found to be valid, the creditor will have the right to take possession of and realise certain equipment (in its possession) which was valued by Gordon Brothers at \$0.4 million. I have assumed in the low case that the creditor's claim is valid, and its secured claim will only reflect the value of the security held, being the liquidation value of the assets.

If the claim is found to be invalid, the supplier will have an unsecured claim for the full \$7.2 million as shown below. I note that for the purpose of my assessment, the validity of the claim does not impact the net shortfall position as the claim is either secured or unsecured.

Disputed Trading Security Holder claim

Claim	Low Case (\$'000)	High Case (\$'000)
Trading Security Holder Claims		
Disputed claim	7,237	7,237
Value of security (secured claim)	(350)	-
Unsecured claim	6,887	7,237

Total secured creditor claims

Claim	Low Case (\$'000)	High Case (\$'000)
Disputed claim	350	-
Other claims	284	284
Total of secured claims	634	284

The Administrators have determined that the other five Trading Security Holders with claims of \$0.3 million have valid claims, which will be settled from the property to which they have title. The secured claims are therefore between \$0.3 million and \$0.6 million.

²⁴ Second Report to Creditors at page 43

7.5 Unsecured claims

Based on the Administrators' assessment of claims, and taking into account the shortfall claims of the secured creditors set out above, the unsecured claims are as follows:

Unsecured claim	Low Case (\$'000)	High Case (\$'000)
Shortfall of Trading Security Holders	6,887	7,237
Unsecured creditors, including convertible noteholder claims	179,874	164,307
Less: adjustment for settlement of Hong Kong supplier claim	(16,537)	(970)
Other related party claims	398	398
Total	170,622	170,972

The difference between the unsecured creditor balances under the high and low cases reflects assumptions made by the Administrators as to the value of supplier claims subject to negotiation, and in particular the claim of the Hong Kong based supplier which is detailed in section 6.3. I note that the unsecured creditor balance detailed in the Second Report to creditors included amounts owing to the Hong Kong supplier of between \$20.6 million (low case) and \$5.0 million (high case). I have adjusted the unsecured claims to reduce these debts to the settlement amount of USD 2.7 million.

7.6 Intercompany claims

In relation to the related party claims, the Administrators have outlined in the Second Report to Creditors that the claim against the Company by Ellume US would require further investigation in the event of liquidation owing to various head company charges not having been recorded against the intercompany loan account. For the purpose of my assessment, I have included the recorded value of the claim, offset by the intercompany receivable due from Ellume US.

Intercompany claim	Low Case (\$'000)	High Case (\$'000)
Intercompany loan due to Ellume US (per ROCAP)	80,267	80,267
Intercompany loan due from Ellume US (per ROCAP)	(37,832)	(37,832)
Intercompany accounts receivable due from Ellume US (per ROCAP)	(7,572)	(7,572)
Net liability to Ellume US	34,863	34,863

7.7 Lease liability

I note that the Administrators' estimates of creditor claims in a liquidation does not include any amounts that may be owed to the Company's landlords if the Company's three property leases are terminated in the event of the liquidation of the Company.

The landlords would likely claim for make-good costs as well as unpaid and future rent, less amounts recovered (or reasonably estimated) from the re-letting of the premises. I have estimated that 20% to 30% of the residual lease value recorded in the Company's management accounts as at 31 August 2022 would be lease claims. Depending on demand for the properties, the claims could be materially higher or lower.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability as at 31 August 2022	6,104	6,104
Assumed claim	30%	20%
Adopted claim value	1,831	1,221

In addition, the Company has guaranteed the lease entered into by Ellume US for the Maryland property. I have included the lease liability amount calculated for Ellume US in section E.2.5 as a claim against the Company, as set out below.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability	31,110	31,110
Assumed claim	30%	20%
Adopted claim value	9,333	6,222

Dated: 25 January 2023



Jennifer Nettleton
Partner

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Appendix A Curriculum vitae of Jennifer Nettleton



Jenny Nettleton

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Jenny is motivated to help clients solve problems. She thrives on taking a hands-on approach, working as a team with the client and other stakeholders to achieve the best possible outcome.

Jenny has over 25 years' experience in the restructuring sector, working with Australia's major financiers and other stakeholders in formal insolvencies, financial review engagements and preparing expert's reports.

Jenny's strong attention to detail, project management skills and her passion for the technical aspects of restructuring mean that success can be achieved in the most complex of situations.

Expertise

- Financial reviews
- Business restructuring
- Formal insolvencies.

Education and accreditation

- Bachelor of Accounting (UNSW)
- Masters in Management (MGSM)
- Registered liquidator.

Significant engagements

- Ten Network
- Boart Longyear – Scheme expert report
- Quintis Limited
- Arrium
- K Care group
- Springsure Creek Coal
- Chassis Brakes
- Confidential consulting engagements.

Memberships

- Chartered Accountants Australia and New Zealand
- Australian Restructuring Insolvency and Turnaround Association.

Appendix B FY22 normalisation adjustments

The table below summarises managements' view of the FY22 profit and loss result, after adjusting for the impact of extraordinary events in FY22, as presented in the IM²⁵.

Normalised FY22 profit and loss

(\$'000)	FY22
Sales	234,306
Sales returns and allowances	(2,584)
Net sales	231,722
Non-operating income	38,995
Cost of goods sold	(119,947)
Gross profit	150,770
Gross profit % of sales	65.1%
Operating expenses	
Research and development	(6,499)
Sales and marketing	(26,322)
General & administrative	(31,271)
Other expenses	(6,162)
Total operating expenses	(70,254)
Underlying EBITDA	80,516
EBITDA adjustments (Note 1)	(97,876)
Depreciation and amortisation	(3,242)
EBIT	(20,602)
Interest and borrowing expenses	(9,037)
Net profit/(loss) before tax (Note 2)	(29,639)

Note 1:

Adjustments	\$'000
Sales return provision	(17,948)
Inventory impairment	(66,037)
Provision for product replacement costs	(4,897)
Fair value change in liabilities and unrealised foreign exchange losses	(1,066)
Share based payments	(1,511)
Transaction advisory services	(6,417)
Total	(97,876)

Note 2: The net loss before tax of \$29.6 million recorded in the table above is \$3.8 million lower than the loss before tax recorded in the FY22 unaudited draft financial statements.

²⁵ IM page 24

Appendix C Entity profit and loss statements

The entity level results are based on the Group's unaudited management accounts. All figures are presented in AUD and include intercompany transactions.

Ellume Limited profit and loss

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Sales	25,811	22,566	30,649	11,057	90,083	2,769
Sales returns and allowances	(631)	100	(2,600)	3,237	107	-
Net sales	25,180	22,666	28,049	14,294	90,189	2,769
Cost of goods sold	(18,720)	(26,852)	(33,136)	(55,792)	(134,499)	(2,934)
Gross profit	6,461	(4,186)	(5,086)	(41,498)	(44,310)	(165)
Gross profit % of sales	25.7%	(18.5%)	(18.1%)	(290.3%)	(49.1%)	(6.0%)
General & administrative	(18,144)	(20,684)	(17,519)	(13,189)	(69,535)	(7,825)
Other expenses	(4,739)	(1,257)	1,399	(8,655)	(13,252)	(7,100)
Total operating expenses	(22,883)	(21,941)	(16,120)	(21,844)	(82,787)	(14,924)
EBITDA	(16,422)	(26,127)	(21,206)	(63,342)	(127,097)	(15,090)
Depreciation and amortisation	(523)	(550)	(550)	797	(825)	(861)
EBIT	(16,945)	(26,676)	(21,756)	(62,545)	(127,923)	(15,950)
Non-operating income	50	22,800	(41)	129	22,939	382
Non-operating expenses	(1,826)	448	(2,634)	(4,701)	(8,713)	(1,828)
Net profit/(loss) before tax	(18,721)	(3,428)	(24,431)	(67,117)	(113,697)	(17,397)
Tax benefit/(expense)	-	-	(61)	(338)	(398)	(39)
Net profit/(loss) after tax	(18,721)	(3,428)	(24,491)	(67,455)	(114,096)	(17,436)

Comments:

- The decline in net sales through Q1 FY23 is consistent with the decrease in operations at Ellume US, as the US Government contract concludes in June 2023 and retail sales channels have declined.
- Gross profit percentage fluctuates considerably quarter to quarter, with no alignment to changes in sales volume.
- The net loss is likely overstated as overhead costs incurred by the Company, where Ellume US has benefited directly from the provision of services or supplies attributed to those costs, have not been charged to Ellume US.²⁶

²⁶ Second Report to Creditors at page 20.

Eliume US profit and loss

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Sales	65,668	54,387	89,114	25,221	234,389	13,880
Sales returns and allowances	(10,937)	(37,147)	4,679	21,442	(21,963)	1,454
Net sales	54,730	17,240	93,793	46,662	212,426	15,333
Cost of goods sold	(31,851)	(28,270)	(30,787)	(36,464)	(127,372)	(9,659)
Gross profit	22,879	(11,030)	63,006	10,199	85,054	5,674
Gross profit % of sales	41.8%	(64.0%)	67.2%	21.9%	40.0%	37.0%
General & administrative	(3,641)	(5,120)	(4,538)	(7,408)	(20,707)	(3,817)
Other expenses	51	(1,271)	43	5,594	4,416	3,525
Total operating expenses	(3,591)	(6,391)	(4,495)	(1,815)	(16,291)	(292)
EBITDA	19,288	(17,421)	58,512	8,384	68,763	5,382
Depreciation and amortisation	(3)	(3)	(3)	(2,408)	(2,417)	(2,091)
EBIT	19,285	(17,424)	58,509	5,976	66,346	3,291
Non-operating income	3,495	(950)	-	13,005	15,550	4,525
Non-operating expenses	(347)	(416)	(323)	(567)	(1,653)	(465)
Net profit/(loss) before tax	22,433	(18,790)	58,186	18,414	80,243	7,351
Tax benefit/(expense)	-	(111)	6	(1)	(106)	42
Net profit/(loss) after tax	22,433	(18,901)	58,192	18,413	80,137	7,393

Comments:

- Net sales declined to \$15.3 million in Q1 FY23 from \$46.7million in Q4 FY22 due to the decline in the volume delivered under the US Government contract and a continued suppression of retail market due to the US Government's free testing program (It is unclear why the sales returns are positive in Q3 FY22, Q4 FY22 and Q1 FY23, however I have assumed that this is sales revenue).
- Gross profit percentage fluctuates considerably quarter to quarter, with no alignment to changes in sales volume.
- Net profit is likely overstated as overhead costs incurred by the Company, where Eliume US has benefited directly from the provision of services or supplies attributed to those costs, have not been charged to Eliume US.

Appendix D Entity balance sheets

The entity level balance sheets are based on the Group's unaudited management accounts. All figures are presented in AUD and include intercompany balances.

Ellume Limited balance sheet

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
Current assets					
Cash and cash equivalents	14,214	20,032	5,183	5,613	944
Inventory	89,178	88,713	81,986	39,528	40,098
Trade receivables	5,902	4,602	30,114	4,831	8,038
Prepayment	3,478	985	620	30,220	31,486
Other receivables	21,203	32,396	40,005	40,668	39,526
Total current assets	133,976	146,728	157,909	120,860	120,091
Non-current assets					
Property, plant and equipment	35,356	37,322	35,224	38,073	36,767
Total non-current assets	35,356	37,322	35,224	38,073	36,767
Total assets	169,331	184,051	193,132	158,934	156,858
Current liabilities					
Trade payables	51,569	45,809	19,866	19,549	20,354
Current borrowings	-	-	-	-	-
Lease liability	714	734	754	801	822
Other payables and provisions	27,807	27,374	74,206	75,550	85,935
Payroll liabilities	1,852	1,944	1,988	1,980	3,553
Accrued charges	3,323	8,406	12,906	41,269	42,623
Unearned income	16,664	15,012	13,100	8,404	10,199
Provision for income tax	-	-	-	-	-
Total current liabilities	101,929	99,279	122,820	147,553	163,486
Non-current liabilities					
Non-current borrowing	121,123	93,883	102,968	107,630	109,326
Lease liability	6,496	6,304	6,109	5,432	5,217
Unearned income	21,551	22,805	22,805	29,965	27,505
Total non-current liabilities	149,170	122,992	131,881	143,026	142,048
Total liabilities	251,099	222,271	254,701	290,580	305,534
Net assets	(81,768)	(38,220)	(61,569)	(131,646)	(148,676)
Equity					
Contributed equity	25,467	69,956	70,037	69,540	69,540
Revaluation reserve	-	-	-	-	-
Share based payment reserve	10,940	13,427	14,488	12,364	12,769
Retained earnings/(accumulated losses)	(118,175)	(121,603)	(146,094)	(213,549)	(230,985)
Total equity (Note 1)	(81,768)	(38,220)	(61,569)	(131,646)	(148,676)

Note 1: The sum of the Ellume Limited total equity at each balance date and the Ellume US total equity at each balance date does not equate to the consolidated equity position disclosed in section 3.9.4 due to consolidation entries.

Comments:

- The net liability position of the Company increased from \$82.8 million to \$148.7 million over the 12 months to 30 September 2022, as a result of increasing net losses, and despite a \$44.5 million increase in equity (substantially through a conversion of convertible notes of \$43.5 million) in the quarter ended 31 December 2021.
- The material decline in the inventory balance at 30 June 2022 from \$82.0 million to \$39.5 million reflects inventory adjustments made at year end, to recognise inventory obsolescence.
- Prepayments relates to deposits on inventory and plant and equipment
- Unearned income is the unamortised value of grants received from both the US Government and the Queensland Government
- The paid up value of the Company's shareholding in Ellume US does not appear in the management accounts.

Eilume US balance sheet

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
Current assets					
Cash and cash equivalents	16,042	7,300	32,442	22,037	4,172
Inventory	5,532	22,523	39,503	35,279	36,878
Trade receivables	16,176	21,654	11,521	310	13,460
Prepayment	8,020	7,106	6,792	323	32
Other receivables	32,492	33,029	78,370	83,329	89,306
Total current assets	78,261	91,612	168,628	141,277	143,850
Non-current assets					
Property, plant and equipment	127,652	164,867	190,499	222,595	249,055
Total non-current assets	127,652	164,867	190,499	222,595	249,055
Total assets	205,913	256,480	359,127	363,872	392,904
Current liabilities					
Trade payables	22,783	35,213	63,438	31,842	34,065
Current borrowings	-	-	-	-	-
Lease liability	(4,870)	374	379	429	474
Other payables and provisions	24,125	76,156	75,729	51,955	42,673
Payroll liabilities	121	230	324	823	653
Accrued charges	274	1,764	985	2,021	15,431
Unearned income	52,435	41,881	31,005	26,659	24,427
Provision for income tax	23,986	23,821	23,101	25,090	26,583
Total current liabilities	118,854	179,440	194,961	138,818	144,306
Non-current liabilities					
Non-current borrowing	-	-	-	-	2,677
Lease liability	28,071	27,779	26,836	29,032	30,637
Unearned income	67,668	75,580	106,338	143,979	152,295
Total non-current liabilities	95,738	103,359	133,174	173,011	185,608
Total liabilities	214,592	282,799	328,135	311,829	329,914
Net assets	(8,679)	(26,319)	30,992	52,043	62,990
Equity					
Contributed equity	-	-	-	-	-
Revaluation reserve	(1,043)	(799)	(2,289)	919	7,029
Share based payment reserve	618	1,630	2,221	1,702	1,987
Retained earnings/(accumulated losses)	(8,255)	(27,151)	31,060	49,421	53,974
Total equity (Note 2)	(8,679)	(26,319)	30,992	52,043	62,990

Note 1: The change in retained earnings between quarters does not equate to the quarterly net profit shown in the table in Appendix C. The variance between quarters in FY22 are small (\$28,434 cumulatively). However, there is a \$2.8 million difference in Q1 FY23. The Company has not been able to reconcile the variance as at the time this Report was issued.

Note 2: The sum of the Ellume Limited total equity at each balance date and the Ellume US total equity at each balance date does not equate to the consolidated equity position disclosed in section 3.9.4 due to consolidation entries.

Comments:

- The net asset position improved to \$63.0 million at 30 September 2022 from a net liability position of \$8.7 million at 30 September 2021.
- Unearned Income represents unamortised grants received, which increased over the four quarters as the US Government continued to fund construction of the US facility.
- At September 2022, Ellume US had only \$4.2 million of cash on hand. Its current ratio, net of intercompany balances and unearned income, was approximately 0.7, indicating it lacked liquid assets to meet its near-term liabilities.
- Other receivables comprise a security bond paid to the Ellume US's landlord and other deposits to suppliers.

Appendix E Residual equity value in Ellume US in the event of liquidation

Set out below is my assessment of the net equity value in Ellume US in the event that it was placed into a bankruptcy process under the US Bankruptcy Code. While I have not practiced in the US, the process of realising and assessing creditor claims across jurisdictions is generally similar. My assessment below is based on my experience as a registered liquidator in Australia.

For the purposes of my assessment, I have assumed that Ellume US is liquidated pursuant to Chapter 7 of the US Bankruptcy Code.²⁷

As set out below, I estimate that there would be a deficiency of assets to meet claims of between \$61.9 million (low case) and \$58.3 million (high case). There would be no equity value in Ellume US recoverable to the Company.

Ellume US assets	Section reference	Balance Sheet as at 30 September 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of Ellume US	E.1.1	-	-	-
Cash at bank	E.1.2	4,172	4,172	4,172
Accounts receivable	E.1.3	13,460	9,422	10,768
Inventory	E.1.4	36,878	5,052	7,578
Plant and equipment	E.1.5	249,055	13,430	10,366
Prepayments	E.1.6	32	-	-
Other receivables	E.1.6	89,306	-	-
Intellectual property	E.1.8	-	-	-
Total asset value		392,903	32,076	32,884
Claims against the assets of Ellume US				
Costs of bankruptcy administration	E.2.1	-	1,466	1,818
Trade payables	E.2.2	34,065	34,065	34,065
Accruals	E.2.2	15,431	15,431	15,431
Other payables and provisions	E.2.3	42,673	6,410	6,410
Payroll liabilities	E.2.4	653	653	653
Lease liability	E.2.5	31,110	9,333	6,222
Unearned income	E.2.6	176,722	-	-
Provision for income tax	E.2.7	26,583	26,583	26,583
Borrowings	E.2.8	2,677	-	-
Contingent claims (class action)	E.2.9	-	-	-
Total claims against the assets of the Company		329,914	93,941	91,182
Net equity		62,989	(61,865)	(58,298)

E.1 Assets available to creditors of Ellume US

E.1.1 Business of Ellume US

In the event that Ellume US was placed into a bankruptcy process in the US, it is unlikely that there would be a going-concern business to realise for the following reasons:

- The intellectual property assets utilised by Ellume US are held by the Company and not Ellume US.
- The corporate and management services required to operate Ellume US are provided by the Company.

²⁷ Chapter 7 Liquidation, United States Code, 2018 Edition, Supplement 3, Title 11 - BANKRUPTCY

- Ellume US has a contract with the US Government to deliver a further 3.1 million COVID-19 tests by 30 June 2023. Absent a further contract from the US Government, at this stage it is highly uncertain there will be other ongoing revenue streams to support continued trading.

In such circumstances, it is difficult to see how Ellume US has any value other than that attributable to its assets on a breakup basis. I am advised by the Administrators that no offer for the shares in Ellume US was received during the sale and recapitalisation process.

FY22 financial performance and maintainable earnings

As detailed in Appendix C, Ellume US recorded a net profit of \$80.1 million in FY22. While material, for the reasons outlined in section 3.9.4, the result cannot be considered in isolation from the Company's result, a loss of \$114.1 million. On a consolidated basis, the Group recorded a loss after tax of \$34.0 million.

Critical to my assessment of the value of Ellume US is its financial outlook. Absent further material orders from the US Government, Ellume US does not currently have a source of revenue beyond FY23 and therefore, has no future maintainable earnings on which to determine value. Other products in development are not yet commercially viable and the Company's consolidated forecast for FY23 and FY24 did not assume any new products would be brought to market.

E.1.2 Cash at bank

Cash at bank as at 30 September 2022 was USD 2.7 million or approximately \$4.2 million. I have assumed that the balance is fully recoverable.

E.1.3 Accounts receivable

The Accounts receivable balance as at 30 September 2022 was \$13.5 million.

Approximately 91% of the accounts receivable balance is owing by the US Government.²⁸ In the event that Ellume US is placed into bankruptcy, I have assumed that the US Government would have potentially offsetting claims related to the recall. The low case assumes a 70% recovery of the book value of debtors as at 30 September 2022, and 80% recovery in the high case.

	Low Case (\$'000)	High Case (\$'000)
Accounts receivable balance as at 30 September 2022	13,460	13,460
Assumed recovery %	70%	80%
Estimated recoverable value	9,422	10,768

E.1.4 Inventory

The book value of inventory at 30 September 2022 was \$36.9 million, however no breakdown of inventory at this date is available.

I have been provided a breakdown of inventory as at 30 June 2022, being the most recent date that a stock reconciliation was completed. As at June 2022, the inventory held by Ellume US was as follows:

Material	Value as at 30 June 2022 (\$'000)
Raw materials	11,618
Components	3,063
Finished goods	31,902
Total value of inventory before obsolescence	46,583
Less: provision for obsolete stock	(21,509)
Net value of inventory	25,074
WIP/ goods in transit	10,205

²⁸ Based on information provided by the Company

Material	Value as at 30 June 2022 (\$'000)
Total	35,278

As at 30 June 2022, finished goods represented 68.5% of total inventory (before the obsolescence provision). For the purpose of my assessment, I have assumed that the same share of finished goods was in stock as at 30 September 2022. I have then assumed a recovery of between 20% and 30% of value as set out below. I have not assumed any recoverable value for raw materials, components, or goods in transit. In my experience, the realisation of raw materials, particularly specialised raw materials, is difficult and often unsuccessful in a liquidation.

	Low Case (\$'000)	High Case (\$'000)
Inventory as at 30 September 2022	36,878	36,878
Assumed finished goods (68.5%)	25,261	25,261
Assumed recovery %	20%	30%
Estimated recoverable value	5,052	7,578

I have assumed that there would be a substantial discount applied to the finished goods to realise them in a timely manner. The bankruptcy of Ellume US would likely impact the US Government's willingness to continue purchasing tests. Sales through retail channels would require heavy discounting given the price point of competitor products.

E.1.5 Plant and equipment

Ellume US instructed Tiger Valuation Services (Tiger) to undertake a valuation of its plant and equipment in October 2022. The instructions were to assess the value of the plant and equipment at Ellume US's premises. I have adopted Tiger's appraisal for the plant and equipment in my assessment as set out below.

Asset classification	Orderly Liquidation Value (USD '000)	Forced Liquidation Value (USD '000)
Custom production equipment	4,986	3,177
Production equipment	3,840	2,880
Laboratory test equipment	453	390
Support equipment	988	798
Gross value	10,266	7,246
Liquidation expenses	(1,268)	(301)
Net liquidation value	8,998	6,945
Net liquidation value (\$)	13,430	10,366

Similar to comments made by Gordon Brothers in respect to the assets located in Australia, Tiger has commented that the custom production equipment would likely transact at a significant discount as it cannot be readily redeployed for other purposes. Tiger notes that as at the date of its report, no such equipment has been sold to its knowledge. Other assets which have wider market appeal would require considerable labour costs to remove and transport, resulting in a low value against original cost.

Tiger has included realisation costs in both scenarios to account for ongoing rent, security, labour and realisation costs. These costs are assumed to be higher in the orderly sale scenario to facilitate a more extensive sale process.

E.1.6 Prepayments

Prepayments have a book value of \$32,000 at 30 September 2022.

Prepayments are typically unrecoverable in a winding up and I assume the recoverability of such amounts would be unlikely in a US bankruptcy process.

E.1.7 Other receivables

Other receivables have a book value of \$89.3 million at 30 September 2022. This balance includes an intercompany receivable from the Company of \$85.2 million (was \$80.3 million at 31 August 2022). The balance of the 'other receivables' of \$4.1 million includes the security bond paid to its landlord and other deposits to suppliers. Such amounts are unlikely to be recovered.

E.1.8 Intellectual property

The intellectual property used in the manufacture and distribution of products by Ellume US is held by the Company. Ellume US has no intellectual property assets of its own material to its business.

E.2 Claims against the assets of Ellume US

E.2.1 Costs of bankruptcy

I have estimated that the cost of winding up Ellume US under Chapter 7 of the Bankruptcy Code would be 5% of asset value, including trustee fees and other costs. From my own research, I understand that Bankruptcy Trustees in the US are entitled to charge the following percentages of funds disbursed:

- 25% of the first USD 5,000
- 10% of amounts exceeding USD 5,000 but not exceeding USD 50,000
- 5% of amounts exceeding USD 50,000 but not exceeding USD 1.0 million
- 3% of amounts exceeding USD 1.0 million.²⁹

Based on my assessment of recoverable assets, the costs are estimated at between \$1.5 million in the low case and \$1.8 million in the high case.

E.2.2 Trade payables and accruals

The trade payable balance of \$34.1 million as at 30 September 2022 includes \$8.0 million due to the Company (was \$7.6 million at 31 August 2022). As detailed earlier, the intercompany loan and payable position between Ellume US and the Company would need to be reconciled to determine the net position between the entities. For the purposes of my analysis I have assumed the payable would be offset against the receivable, leaving an adjusted payable balance of \$26.1 million.

The accruals balance of \$15.4 million includes \$10.9 million owing to the builder of Ellume US's Maryland facility.

I have assumed that the trade payable balance (net of the intercompany balance) and accruals would be genuine claims against Ellume US in the event of its bankruptcy.

E.2.3 Other payables and provisions

The other payables and provisions balance of \$42.7 million includes an intercompany payable to the Company, which as at 30 September 2022 was \$36.3 million (\$37.8 million at 31 August 2022). This liability balance, together with the trade payable owing to the Company would offset the receivable balance, resulting in there being no claim against the Company.

As noted previously, the Administrators' detailed in the Second Report to Creditors that the intercompany position between the Company and Ellume US would need to be reconciled to confirm the true position between the entities.

The remaining 'other payables and provisions' balance of \$6.4 million includes an allowance of \$6.2 million for the replacement of defective tests issued to the US Government, a make good provision for the US facility of \$0.7 million, net of an accrual adjustment of \$0.5 million. I have assumed these claims will constitute a claim against Ellume US in the event of its bankruptcy.

²⁹ section 326, United States Code, 2018 Edition, Supplement 3, Title 11 - BANKRUPTCY

E.2.4 Payroll liabilities

Payroll liabilities represent accrued but unpaid wages as at 30 September 2022, including 401K contributions and unpaid leave balances. I have not been provided with further information to determine if severance amounts would be payable to employees, which may increase the total quantum of claims.

E.2.5 Lease liability

Under the terms of the lease of the two properties occupied by Ellume US, in the event of default, the landlord is entitled to claim for lost rent, less any amounts recovered from a new tenant it is able to procure. Ellume US entered into a lease in May 2021 for both its premises for a term of 10 years (ending May 2031). Given the lease term has eight more years, the Landlord is likely to lodge a substantial claim in the event of bankruptcy.

I have assumed that between 20% (in the high case) and 30% (in the low case) of the total lease liability will be claimed by the landlord in the event of the bankruptcy of Ellume US.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability	31,110	31,110
Assumed claim	30%	20%
Adopted claim value	9,333	6,222

E.2.6 Unearned income

As noted in section 3.9 of this Report, Ellume US obtained grant funding from the US Government for the development of its US facilities. This funding is not recorded as income in the year received, but rather is being amortised over a period determined by management. The Administrators have advised that the funding is not repayable to the US Government. I have not sought to confirm this position. However, if the US Government does have a claim, it would only increase the claims against Ellume US and increase the shortfall position.

E.2.7 Provision for income tax

A provision for income tax of USD 17.3 million was recorded as at 30 September 2022. However, the actual tax payable has not yet been finalised and may be lower.³⁰ However, absent of a finalised tax return, I have adopted the book value of the provision.

E.2.8 Borrowings

I am advised by the Administrators that the borrowings of USD 1.7 million as at 30 September 2022 related to a sale and purchase agreement which has since been settled.

E.2.9 Contingent claims (class action)

A class action against Ellume US was filed in March 2022 in the US District Court in relation to tests sold to consumers which reported false positive results³¹. I understand that the prospects of a class action proceeding remain uncertain. As such, in the absence of an actual claim, I have not included a value for this claim. Given my estimated outcome statement shows a deficiency of assets to meet creditor claims, any actual or contingent liability arising from a class action would only worsen the position for creditors as a whole.

³⁰ IM at page 25

³¹ <https://www.sauderscheikopf.com/wp-content/uploads/2021/10/2022-03-22-001-Class-Action-Complaint-Kerschen-v-Ellume-03928657x0413.pdf>

Explanatory Statement

Ellume Limited (Subject to Deed of Company
Arrangement) ACN 141 767 660
(Ellume)

[Date TBC]

Explanatory Statement to shareholders and Independent Expert's Report

This Explanatory Statement provides information to the shareholders (**Shareholders**) of Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660 (**Ellume**) in respect of the deed of company arrangement entered into by Ellume, Hough Consolidated Pty Ltd ACN 657 651 280 (**Hough**) and the Deed Administrators on 22 December 2022 (**DOCA**).

It is a condition to completion and effectuation of the DOCA that the Deed Administrators obtain a Court order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Act**) granting leave to the Deed Administrators to transfer all of the Ellume Shares to Hough for nil consideration. The Deed Administrators have made an application for this order in the Federal Court of Australia (**Section 444GA Application**).

On [Date TBC], the Federal Court of Australia made procedural orders in relation to the Section 444GA Application, which included timetabling directions for the filing of notices of appearance by any interested parties and confirmation of the final hearing date (**Procedural Orders**).

The Section 444GA Application has been listed for a final hearing on [Date TBC] at [Time TBC] [AEDT] in the Federal Court of Australia.

If you wish to appear at the Court hearing and/or oppose the Section 444GA Application, you may do so by filing with the Court, and serving on the Deed Administrators and ASIC, a notice of appearance in the prescribed Court form indicating the grounds of opposition by no later than [Time TBC] [AEDT] on [Date TBC].

Shareholders should consider the Independent Expert's Report in full before deciding whether to take any action in relation to the Section 444GA Application. If you are in any doubt as to the action you should take, you are recommended to obtain your own personal legal or financial advice from your legal or other professional adviser(s).

A copy of the Explanatory Statement (including the Independent Expert's Report) has been provided to ASIC prior to the issuance of this Explanatory Statement. Neither ASIC nor any of its officers take any responsibility for its contents.

Key Information for Shareholders

Capitalised terms used in this Explanatory Statement have the meanings defined in the Glossary in Schedule 1, unless the context requires otherwise or unless a term has been defined in the text of the Explanatory Statement, and a word importing the singular includes the plural (and vice versa).

1 Purpose of the Explanatory Statement

This document is an Explanatory Statement issued by Ellume in connection with the DOCA. If the Section 444GA Order is made and the DOCA is completed, all of your shares in Ellume will be transferred to Hough for no consideration and you will cease to own those shares.

Section 4 of this report contains further information regarding the DOCA.

This Explanatory Statement contains information about:

- (a) the Section 444GA Application to the Court for approval to transfer all of the Ellume Shares to Hough as part of the DOCA;
- (b) the steps that you need to take if you wish to appear at the Court hearing in respect of the Section 444GA Application, which has been listed for hearing on [Date TBC] at [Time TBC] [AEDT]; and
- (c) the effect of the DOCA on you as a Shareholder, in order to assist you in deciding whether to take action in respect of the Section 444GA Application.

An Independent Expert's Report prepared by the Expert, which contains an objective valuation of the Ellume Shares, is attached to this document as Attachment 1.

2 Administration of Ellume

On 31 August 2022, John Park and Joanne Dunn were appointed as joint and several administrators (**Administrators**) of Ellume. None of Ellume's subsidiaries have been placed into any kind of external administration.

The Ellume group of companies is comprised of a parent company, Ellume, which is an unlisted public company (and which is the only entity in the Ellume Group that is subject to external administration) and two subsidiaries (**Ellume Subsidiaries**):

- (a) Ellume USA LLC, a limited liability company incorporated in the State of Delaware, USA (**Ellume USA**); and
- (b) Ellume NZ Pty Limited (NZBN 9429046688392),

(Ellume and the Ellume Subsidiaries are together the **Ellume Group**).

In the Administrators' Section 75-225 Report, the Administrators stated that, in their opinion, the earliest date on which Ellume was insolvent was from at least May 2022 and remained so until their appointment on 31 August 2022, and that the insolvency of Ellume was due to a recall of Ellume USA's Home Test products in September 2021, a material change in demand for those products in December 2021, and capital market conditions unfavourable to an initial public offering or recapitalisation. Further reasons as to Ellume's insolvency is summarised at sections 2.2, 4.9 and 14 of the Administrators' Section 75-225 Report.

When Ellume entered into voluntary administration, the amount owed to creditors exceeded AUD\$224.33 million to more than 971 creditors, including but not limited to secured creditors, priority employee creditors, and unsecured creditors.

Please refer to the Administrators' Section 75-225 Report Appendix 4 for the Administrators' Estimated Realisable Values as at 31 August 2022, and see items 11 – 13 for an overview of Ellume's creditors.

3 Sale process and formulation of the DOCA

Immediately after their appointment, the Administrators commenced a competitive and comprehensive sale process (**Sale Process**). In September 2022, the Administrators engaged Houlihan Lokey to assist in evaluating interest in, and proposals received in respect of, a potential recapitalisation and/or sale of Ellume for the purpose of the Sale Process. Houlihan Lokey maintained a comprehensive data room for the Sale Process and co-ordinated contacting, and responding to the enquiries and requests of, all interested parties.

The Sale Process occurred over a two month period and in the following four phases:

- (a) **Phase One (7 October 2022 – 17 October 2022)** - In Phase One, the Administrators provided the potential purchasers (which were identified by Houlihan Lokey) with an investment flyer, a non-disclosure agreement and sale process letter and invited expressions of interest for the sale and/or recapitalisation of Ellume;
- (b) **Phase Two (17 October 2022 – 7 November 2022)** - In Phase Two, 18 parties who had entered into non-disclosure agreements with the Administrators were given access to a virtual data room maintained by Houlihan Lokey and containing documents about the business and financial position of Ellume, and the Administrators conducted management presentations with certain interested parties. The Administrators subsequently received four non-binding indicative offers (NBIO) and, based on those offers, formed a shortlist of three preferred parties (**Shortlisted Bidders**);
- (c) **Phase Three (7 November 2022 – 30 November 2022)** - In Phase Three, the Shortlisted Bidders were invited to make best and final offers on 30 November 2022. The Administrators received 2 final NBIOs on that date. Following the Administrators' consideration and assessment of the 2 competing proposals, they selected one bidder on 6 December 2022, being Hough, to proceed to 'Phase Four' of the Sale Process. As part of reviewing each proposal, the Administrators assessed and considered the following:
 - (i) potential return to creditors, including priority employee claims, secured lenders' claims and unsecured creditor claims;
 - (ii) the time to complete each proposed transaction and the operational funding available as part of the offers;
 - (iii) the conditions attached to the offers and the ability to satisfy the conditions;
 - (iv) the ability of each party to complete the proposed transactions; and
 - (v) other commercial considerations relevant for the ongoing viability of the business.

- (d) **Phase Four (6 December 2022)** - In Phase Four, the Administrators and Hough negotiated the terms of and entered into a binding agreement with Hough for the transfer of all of the Ellume Shares through a deed of company arrangement and subsequent Creditors' Trust (subject to various conditions, including an order from the Court under section 444GA of the Act).

An overview of the Sale Process is provided in section 5.2 of the Administrators' Section 75-225 Report.

As set out in the Administrators' Section 75-225 Report, the Administrators recommended that creditors vote in favour of the DOCA proposed by Hough.

4 Key Information in relation to the DOCA

4.1 Overview

At the Second Meeting, the creditors of Ellume resolved that Ellume enter into the DOCA and that the Administrators be appointed as joint and several deed administrators (**Deed Administrators**).¹

The DOCA was executed by all parties on 22 December 2022 and it is intended to compromise certain claims of creditors of Ellume that arose on or prior to 31 August 2022.

The DOCA contemplates that the Deed Administrators will transfer all of the Ellume Shares to Hough, free and clear of any encumbrances, on the condition that the orders sought by the Deed Administrators pursuant to the Section 444GA Application are made by the Court.

4.2 Conditions

Completion of the DOCA is conditional upon the satisfaction of certain Conditions, including:

- (a) the Deed Administrators obtaining ASIC Relief;
- (b) the Deed Administrators obtaining a Section 444GA Order;
- (c) transfer of the Ellume Shares to Hough; and
- (d) the Deed Administrators, the Trustees and Ellume executing the Trust Deed.

4.3 Key terms

The key terms of the DOCA include:

- (a) the establishment of the Ellume Creditors' Trust, whereby upon completion of the DOCA, all eligible creditors' claims against Ellume will transfer to the Ellume Creditors' Trust and a dividend will be paid in respect of those eligible creditor claims to satisfy those claims;
- (b) any Shareholder claims which are subordinated to the claims of other unsecured creditors under the Act will be extinguished, and Shareholders are not eligible to receive a dividend from the Creditors' Trust in respect of those claims;

¹ For completeness, we also note that a meeting of eligible employee creditors was held on 20 December 2022 whereby eligible employee creditors of Ellume passed a resolution agreeing to the non-inclusion of a provision in the DOCA proposed by Hough which, absent that resolution, would be required by section 444DA.

- (c) Hough would assume control and continue to trade the business as a going concern; and
- (d) Ellume will cease to comply with, and will not perform certain of its contracts which were entered into by Ellume before the appointment of the Administrators and completion of the DOCA will therefore treat these contracts as coming to an end.

If the conditions precedent under the DOCA are satisfied and completion occurs under the DOCA, Hough will continue to operate the Ellume business as a going concern.

5 Independent Expert's Report

As noted above, the Section 444GA Application has been commenced by the Deed Administrators in the Federal Court of Australia seeking leave of the Court pursuant to section 444GA(1)(b) of the Act for the transfer of the Ellume Shares to Hough.

Under subsection 444GA(3) of the Act, the Court may only grant leave to transfer the Ellume Shares to Hough if it is satisfied that the transfer would not unfairly prejudice the interests of the Shareholders. The Deed Administrators intend to rely on the Independent Expert's Report when addressing the issue of unfair prejudice before the Court.

The Expert was engaged to provide an independent opinion on whether the Share Transfer would unfairly prejudice the Shareholders. This involved the Expert valuing the Ellume Shares on the liquidation value of the business of Ellume as a whole (see ASIC regulatory guide 111.77). Where there is a residual business that could be sold, the Expert is to consider the value of that business and not just the assets and other undertakings that comprise that business interest. The valuation by the Expert was assessed as at the date of the Report dated 25 January 2023 (Report Date).

The Independent Expert's Report will be relied upon by the Deed Administrators for the purpose of the Section 444GA Application and also for the purpose of applying for ASIC Relief. See Attachment 1 for a full copy of the Independent Expert's Report. Shareholders (and their advisers and any other interested parties) should read the Independent Expert's Report carefully and in its entirety. By way of summary, the key findings of the Expert, as set out in Independent Expert's Report, are as follows:

- (a) There is a material shortfall of assets available to meet the claims against Ellume, with Ellume having a negative equity position of between \$184.9 million and \$228.7 million. Ellume Shares are therefore assessed as having nil value as at the Report Date;² and
- (b) The sale processes undertaken pre and post-administration have tested the market's appetite for Ellume and its assets and the DOCA is the outcome of that process. It is logical to assume that any further process, for a company without ongoing operations, would be challenging and unlikely to succeed.³

6 Section 444GA Application

6.1 Overview

The Section 444GA Application has been filed in the Federal Court of Australia. A copy of the Originating Process filed by the Deed Administrators is provided as Attachment 4

² see draft Independent Expert's report at sections 2.1, 2.2, 5.1.

³ see draft Independent Expert's report at section 6.1, with the sales processes considered at sections 3.8.1 and 3.8.2.

of this Explanatory Statement. On [Date TBC], the Court made the Procedural Orders pursuant to which:

- (a) a timetable was set for the preparation of the matter for final hearing, which includes the dates by which any interested person (including any Shareholder who wishes to oppose the Section 444GA Application) must file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed form and indicating the ground of opposition, being no later than [Time TBC] [AEDT] on [Date TBC]; and
- (b) the final hearing date and time was set for [Time TBC] [AEDT] on [Date TBC].

A copy of the Procedural Orders is provided as **Attachment 5** of this Explanatory Statement. If you wish to appear at and/or oppose the Section 444GA Application at the final hearing, you will need to file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed Court form and indicate your grounds of opposition. Pursuant to paragraph [# TBC] of the Procedural Orders, any appearance and grounds of opposition must be filed and served by an interested party who wishes to oppose the Section 444GA Application at the final hearing by no later than [Time TBC] [AEDT] on [Date TBC].

The Deed Administrators will accept service of any appearance at Mills Oakley, Level 6, 530 Collins Street Melbourne, VIC 3000 (Attention: Ariel Borland and Dean Brayley) or aborland@millsoakley.com.au and dbrayley@millsoakley.com.au).

6.2 Important Dates

We draw your attention to the following key dates in relation to the Section 444GA Application

Event	Date
Notice of appearance and grounds of opposition to be served by any Shareholder (or other interested person) seeking to appear at the hearing of the Section 444GA Application	[Time TBC] [AEDT] on [Date TBC]
Hearing date for the Section 444GA Application	[Time TBC] [AEDT] on [Date TBC]
Proposed date for the Share Transfer	[Date TBC]

The dates, including the proposed hearing date, may be subject to any further directions made by the Court.

6.3 What will happen If the Section 444GA Order is not made?

As the Section 444GA Order is one of the Conditions (see section 4.2 above) to completion of the DOCA, the DOCA will not be effectuated if the Section 444GA Order is not made. In those circumstances, should the Deed Administrators elect not to appeal, or should any such appeal fail, the Deed Administrators will convene a meeting of the creditors of Ellume to determine the future of Ellume. If this occurs the Deed Administrators' will require further funding in order to continue to operate the business of Ellume. In the absence of further funding, or an alternate transaction capable of completing, Ellume will be placed into liquidation.

6.4 Effect of the Section 444GA Order on Shareholders

If the Section 444GA Order is made and the DOCA is fully implemented, all of your shares in Ellume will be transferred by the Deed Administrators to Hough and you will not receive any money or form of consideration.

6.5 Australian Income tax consequences

This section of the Explanatory Statement is provided as general information for Shareholders who are Australian resident taxpayers holding their Ellume Shares on capital account, not as trading stock, and who are not subject to the Taxation of Financial Arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) for the purposes of calculating any gains or losses arising from financial arrangements. It does not take account of the circumstances of any individual Shareholder. Each Shareholder should seek its own tax advice on the consequences for it of the DOCA being effectuated.

Upon the effectuation of the DOCA, the Share Transfer will trigger a capital gains event (CGT Event) for Shareholders and may crystallise a capital loss. Depending upon each individual taxpayer's financial position and tax profile, this capital loss may be available to offset against the taxpayer's capital gains (if any) derived in the same tax year, potentially reducing any net capital gain for the tax year or resulting in a net capital loss which may be available for carry forward and use in offsetting future capital gains.

The Australian resident Shareholders who hold their Ellume Shares on capital account will incur a capital loss to the extent the reduced cost base of the Ellume Shares transferred exceeds the capital proceeds received for the Ellume Shares.

The reduced cost base in the Ellume Shares includes:

- (a) the acquisition cost of the Ellume Shares;
- (b) incidental acquisition costs incurred to acquire and hold the Ellume Shares;
- (c) expenditure incurred to increase or preserve the value of the Ellume Shares; and
- (d) capital expenditure incurred to establish, preserve or defend their title to the Ellume Shares.

Given the transfer will occur by way of Court order, the time of the CGT Event for Shareholders will be when the Share Transfer takes effect in accordance with the DOCA.

7 ASIC Relief

As Ellume is a public company with more than 50 Shareholders, ASIC Relief will be required to enable completion of the Share Transfer.

The Deed Administrators have engaged with ASIC by providing a copy of this Explanatory Statement (in draft) along with additional information relevant to the relief being sought.

8 What do you need to do now?

Shareholders (and their advisers and any other interested parties) should read this Explanatory Statement (including the documents referred to in this Explanatory Statement) in its entirety before making a decision regarding whether or not to take any action in relation to the Section 444GA Application.

Please note that this Explanatory Statement does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any and every Shareholder. Whether or not to take any action in relation to the DOCA or in respect of the Section 444GA Application is a decision for each individual Shareholder and may depend, amongst other things, on an assessment of the relevant Shareholder's individual financial circumstances. Accordingly, as the professional, financial, legal and taxation consequences of such a decision may be different for each particular Shareholder, each Shareholder should seek professional financial, legal and taxation advice before making a decision.

9 What information is available to assist you?

To assist you in deciding whether to take any action in relation to the Section 444GA Application, this Explanatory Statement attaches copies of the following documents:

- (a) Independent Expert's Report as **Attachment 1**;
- (b) DOCA and Trust Deed as **Attachment 2**;
- (c) Administrators' Section 75-225 Report to Creditors as **Attachment 3**;
- (d) Originating Process filed by the Deed Administrators in relation to the Section 444GA Application as **Attachment 4**; and
- (e) Procedural Orders as **Attachment 5**.

Should you have any queries regarding this Explanatory Statement, the Independent Expert's Report, the Section 444GA Application or the Procedural Orders, please email Ellume@fticonsulting.com.

Schedule 1 Glossary of terms

In this Explanatory Statement, capitalised terms have the meanings set out in the following table:

Act	<i>Corporations Act 2001</i> (Cth)
ASIC Relief	ASIC granting an exemption pursuant to section 655A(1)(a) of the Act from the application of section 606 of the Act to permit the transfer of all of the Ellume Shares to Hough
Administrators	John Park and Joanne Dunn of FTI Consulting
ASIC	Australian Securities and Investments Commission
Conditions	The conditions set out in clause 5 of the DOCA
Court	Federal Court of Australia
Deed Administrators	John Park and Joanne Dunn of FTI Consulting
DOCA	The deed of company arrangement entered into between Ellume, Hough and the Deed Administrators on 22 December 2022 annexed to this Explanatory Statement as Attachment 2
DOCA Completion	Completion of the DOCA in accordance with its terms
Ellume	Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660
Ellume Creditors' Trust	Has the meaning as defined in the DOCA
Ellume Group	Ellume and the Ellume Subsidiaries
Ellume Shares	All the issued share capital of Ellume
Ellume Subsidiaries	Has the meaning given to the term in section 2
Expert	Jennifer Nettleton of KordaMentha Pty Ltd as trustee for the KM Unit Trust (ABN 36 220 576 038)
Explanatory Statement	This document as described in section 1
Hough	Hough Consolidated Pty Ltd ACN 657 651 280
Independent Expert's Report	The report by the Expert as described in section 5 and as annexed to this Explanatory Statement as Attachment 1
NBIO	Non-binding indicative offer
Sale Process	The competitive and comprehensive sale process of Ellume undertaken by the Administrators from October to December 2022
Second Meeting	The second meeting of creditors of Ellume held on 20 December 2022 in accordance with section 439A of the Corporations Act
Section 75-225 Report	The report prepared by the Administrators in accordance with section 75-225 of the <i>Insolvency Practice Rules (Corporations) 2016</i> dated 12 December 2022 as annexed to this Explanatory Statement as Attachment 3
Section 444GA Application	The application by the Deed Administrators pursuant to section 444GA of the Corporations Act as described in section 6

Section 444GA Order	The orders sought by the Deed Administrators pursuant to the Section 444GA Application
Shareholders	Means the shareholders of Ellume as at the date of the Explanatory Statement
Share Transfer	The transfer of the Ellume Shares to Hough pursuant to the DOCA
Shortlisted Bidders	The parties selected by the Administrators to participate in Phase 2 of the Sale Process
Trustees	John Park and Joanne Dunn of FTI Consulting in their capacity as trustees of the Ellume Creditors' Trust
Trust Deed	The document entitled 'Ellume Creditors' Trust Deed' between Ellume, the Deed Administrators, the Trustees and Hough, substantially in form of that contained in Annexure A to the DOCA

Attachment 1 Independent Expert's Report

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Attachment 2 DOCA

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Attachment 3 Administrators' Section 75-225 Report

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Attachment 4 Originating Process

DRAFT

Attachment 5 Procedural Orders

DRAFT

27 January 2023

Mills Oakley
ABN: 51 493 069 734

Your ref:
Our ref: LYRS/3633854

All correspondence to:
PO Box H318
AUSTRALIA SQUARE NSW 1215
DX 13025 Sydney Market Street

Applications
Australian Securities & Investments Commission
GPO Box 4000
Gippsland Mail Centre Victoria 3841

Partner
Lynda Reid +61 2 9121 9028
Email: lynda.reid@millsOakley.com.au

Electronic submission through the ASIC Regulatory Portal

Dear Sir/Madam

Submission to ASIC for an exemption to the application of section 606 of the *Corporations Act 2001* (Cth) pursuant to section 655A(1)(a) to permit the transfer of all of the issued shares in Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660 pursuant to orders of the Court under section 444GA

A. Overview of this application

1. This is an application (**Application**) made to the Australian Securities and Investments Commission (**ASIC**), pursuant to section 655A(1)(a) of the *Corporations Act 2001* (Cth) (**Corporations Act**), seeking the granting of an exemption from the application of section 606 of the *Corporations Act* to permit the transfer of all of the issued shares in the capital of Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660 (**Ellume**) to Hough Consolidated Pty Ltd ACN 657 651 280 and any entity Hough may nominate (**Hough**). A draft instrument pursuant to section 655A(1)(a) at **Schedule 1**. Unless otherwise stated, Chapter, Part and section references in this Application are to those of the *Corporations Act*.
2. On 31 August 2022, John Park and Joanne Dunn of FTI Consulting were appointed as joint and several voluntary administrators of Ellume (**Administrators**) in accordance with a resolution of the directors of Ellume under section 436A. Ellume's two subsidiaries (see paragraph 9 below) have not been placed into any kind of external administration.
3. At the second meeting of creditors of Ellume held on 20 December 2022 and convened pursuant to section 439A, the creditors of Ellume resolved that Ellume enter into a deed of company arrangement substantially in the form proposed by Hough under section 444B(2) (**Second Meeting**).

NOTICE

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4. On 22 December 2022, a deed of company arrangement substantially in the form proposed by Hough and approved at the Second Meeting (**DOCA**) was entered into by Ellume, the Administrators (in their capacity as administrators of the deed of company arrangement) (**Deed Administrators**) and Hough (as deed proponent). A copy of the DOCA is attached as **Annexure A**.
5. The proposed transfer of the shares in Ellume, to Hough, is proposed by and will give effect to the terms of the DOCA. Such a transfer will recognise that there is no value attributable to those shares, as discussed further below.

B. Enclosed documents

6. Enclosed with this Application:
 - (a) as **Annexure A**, is a copy of the signed DOCA (as described in paragraph 4 above);
 - (b) as **Annexure B**, is a copy of the Section 75-225 Report (as described in paragraph 14 below);
 - (c) as **Annexure C**, is a draft independent expert's report prepared by Jennifer Nettleton of KordaMentha Pty Ltd as trustee for the KM Unit Trust in which the independent expert confirms that in her opinion there is no residual equity value left in Ellume such that the Ellume shares are worthless (**Independent Expert's Report**); and
 - (d) as **Annexure D**, is a draft explanatory statement to be provided to shareholders of Ellume (**Explanatory Statement**) that is intended to attach the final form of the Independent Expert's Report and the signed DOCA.

C. Relief sought

7. The Deed Administrators respectfully request that ASIC:
 - (a) provide any feedback on the draft Explanatory Statement and Independent Expert's Report enclosed with this Application at its earliest convenience so that these materials can be finalised and made available to Ellume's shareholders; and
 - (b) indicate in writing whether it will, in principle, grant the relief sought by the Deed Administrators to permit a transfer of the Ellume shares to Hough if the Court grants leave for that transfer under section 444GA.
8. This Application endeavours to provide all relevant supporting materials and information ASIC requires as contemplated by ASIC Regulatory Guide 111 *Content of expert reports* and Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (**ASIC Guidance**). Please do not hesitate to contact us if any additional material might assist.

D. Background

9. Ellume is an unlisted public company that develops, manufactures and commercialises digitally enabled diagnostic products for healthcare professionals and consumers. Together with its subsidiary, Ellume USA LLC, a Delaware limited liability company, it has operations in Australia and the United States. Ellume also has a dormant New Zealand wholly owned subsidiary, Ellume NZ Pty Limited (NZBN 9429046688392).
10. Immediately after their appointment, the Administrators commenced a competitive sale process for Ellume. Following the Administrators' consideration and assessment of two competing proposals, they identified Hough as preferred bidder on 2 December 2022, to negotiate the terms of and enter into a binding agreement with the Administrators and Ellume.

11. On 6 December 2022, the Administrators entered into binding agreements with Hough for the transfer of all shares in Ellume to Hough to be given effect by way of the DOCA and a subsequent Creditors' Trust (**Proposed Transaction**). The Proposed Transaction is subject to, among other things:
 - (a) ASIC granting an exemption from the application of section 606; and
 - (b) the Court granting leave for the transfer to Hough of the shares in Ellume under section 444GA.
12. Further details of the Proposed Transaction are provided in the Administrators' Section 75-225 Report to creditors (attached at **Annexure B** and described at paragraph 13 below).
13. On 12 December 2022, the Administrators provided their report to creditors prepared in accordance with section 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**Section 75-225 Report**) which includes information about Ellume's business, property and financial affairs, the DOCA and the Proposed Transaction, and the Administrators' opinion on which of the alternative options for creditors as to the future of Ellume would be in creditors' best interests.
14. In the Section 75-225 Report, the Administrators recommended that, at the Second Meeting, Ellume's creditors approve the DOCA proposed by Hough. The Section 75-225 Report states that under the proposed DOCA: (i) all of the shares in Ellume would be transferred to Hough, which would become the 100% owner of Ellume; and (ii) shareholders will receive no consideration for the transfer of shares in Ellume.

E. Reasons supporting grant of relief

15. The granting of the exemption from the requirements of section 606 now sought by this Application and the making of Court orders under section 444GA are matters in respect of which there is a well-established process and applicable precedents.
16. ASIC is well placed to grant the exemption sought in this Application by executing the draft instrument at **Schedule 1** (or any instrument in terms acceptable to ASIC to achieve that effect), for the following reasons:
 - (a) The draft Independent Expert's Report accompanying this Application clarifies that there is no residual equity value in Ellume, and therefore no value attributable to Ellume shares.
 - (b) The exemption is sought to permit the transfer of Ellume shares to Hough in accordance with the terms of the DOCA (which Ellume's creditors have considered and approved). That share transfer is a necessary component of the DOCA and the Proposed Transaction, which is the only extant restructure. Moreover, the DOCA and the Proposed Transaction provide for a greater return to creditors of Ellume than a winding up.
 - (c) The transfer of Ellume shares will be subject to the Court granting leave under section 444GA. The share transfer will therefore be subject to the shareholder protections provided under that section and the practice adopted in relation to applications for those orders, including the preparation of the Independent Expert's Report and Explanatory Statement, which will be made available to shareholders together with appropriate notice to them of the Deed Administrators' intention to transfer the shares under orders of the Court. Shareholders are entitled to oppose the application for leave by application to the Court.
 - (i) The draft Explanatory Statement attached to this Application as **Annexure D** and to be provided to shareholders once finalised:
 - (A) explains the nature of the application to the Court under section 444GA - see Explanatory Statement 6.1 –6.4;

- (B) refers to members' rights to object to the orders sought from the Court on the proposed application - see Explanatory Statement 6.1;
 - (C) explains the requirements for ASIC relief from section 606 - see Explanatory Statement 4.2 and 7;
 - (D) includes a copy of the Independent Expert's Report - see Explanatory Statement 5 and 9 and Attachment 1; and
 - (E) includes a copy of the Court documents — see Explanatory Statement 6.1, Attachment 4 and Attachment 5.
- (ii) It is submitted that in Ellume's current circumstances the purposes of Chapter 6, including in particular section 606, are not relevant to Ellume and its shareholders for the following reasons:
- (A) where Ellume's shares have no value, the purpose of Chapter 6 (to ensure that the acquisition of control over shares in Ellume takes place in an efficient, competitive and informed market) has no relevance because there cannot be a market for control over those shares. For similar reasons, the purpose specified in paragraphs (b) and (c) of section 602 has no application here; and
 - (B) the protection designed to be provided to Ellume shareholders under section 602 is effectively superseded by the processes to be undertaken under section 444GA and the protections which that section and those processes provide to shareholders.
- (d) The Court may only make an order granting leave for the transfer of shares under section 444GA if the Court is satisfied that the transfer would not "unfairly prejudice" the interests of the members of the company. The Court must be satisfied of this statutory pre-condition before making any such order. As is made clear by the Explanatory Memorandum to the *Corporations Amendment (Insolvency) Bill 2007* (Cth) at [7.58], this requirement is intended to direct the Court to consider the impact of a compulsory sale on shareholders where there may be some residual value in the equity of the company. This was also highlighted by the Supreme Court of Western Australia in *Weaver v Noble Resources Ltd* [2010] WASC 182 (*Noble Resources*) in which the Court stated (at [79]):
- ... [t]he notion of unfairness only arises if prejudice is established. If the shares have no value, if the company has no residual value to the members and if the members would be unlikely to receive any distribution in the event of a liquidation, and if liquidation is the only alternative to the transfer proposed, then it is difficult to see how members could in those circumstances suffer any prejudice, let alone prejudice that could be described as unfair.*
- (e) The granting of the relief sought is supported by well-established case law. While the Deed Administrators appreciate that ASIC's decision to grant relief from section 606 involves different considerations to those of the Court for the purposes of making an order under section 444GA, there is some overlap in the matters to be respectively considered by the regulator and the Court. Section F below summarises relevant cases involving companies in circumstances analogous to those of Ellume, where an order has been sought by deed administrators under section 444GA to enable them to transfer shares in a company, and the Court has made such an order and ASIC has in turn been willing to grant an exemption to the application of section 606.

- (f) The ASIC Guidance states that ASIC will generally grant relief from section 606 where the independent expert's report concludes that shareholders' equity has no residual value, consistent with the approach taken by the Courts as described above and detailed in Section F below. The ASIC Guidance further states that an expert "*should generally value shareholders' residual equity in a company under administration on a 'winding up' or 'liquidation' basis where that is the likely or necessary consequence of the transfer of shares not being approved*" citing the decisions in *Mirabela* and *Nexus Energy* (each of which is described in Section F below).
- (g) The draft Independent Expert's Report provided with this submission has valued the shares of Ellume on a liquidation basis, having regard to ASIC's requirements set out in RG 111.77 and the approach taken by the Court in analogous cases (discussed in Section F below). We note for completeness that a number of the cases discussed in Section F below had regard to prior ASIC guidance, which required valuation of the relevant company's shares on both a going concern and a liquidation basis (and not just on a liquidation basis as is now required by the updated ASIC Guidance).
- (h) In accordance with the ASIC Guidance, the Administrators intend to provide the Explanatory Statement and the Independent Expert's Report to shareholders at least 14 days before the hearing of the application in respect of the section 444GA order.

F. Relevant historical examples in case law

Mirabela Nickel Ltd

- 17. In *Re Mirabela Nickel Ltd (Subject to Deed of Company Arrangement)* [2014] NSWSC 836 (*Mirabela*), the deed administrators of Mirabela Nickel Ltd sought orders under section 444GA granting them leave to transfer 98.2% of all existing shares in Mirabela Nickel Ltd to Mirabela Investments Pty Ltd (Subject to Deed of Company Arrangement) as part of a broader recapitalisation plan. Mirabela was an ASX listed company, which went into administration after failing to make interest repayments in respect of senior unsecured notes.
- 18. One shareholder objected to the transfer of shares on the basis that Mirabela was possibly solvent and might avoid insolvency as there was a possibility of a public capital raising. However, the Court accepted the evidence of the deed administrators that the directors of Mirabela had passed a resolution appointing administrators on the basis that the company was likely to become insolvent.
- 19. The Court relied on the statements made by Martin CJ in *Noble Resources* in relation to the test for "unfair prejudice". With respect to valuation of the shares, Black J stated (at [42]) that:

...the question whether shareholders have any residual equity in the company has to be determined by comparison with their position on a winding-up, at least where that is the likely or necessary consequence of the transfer of shares not being approved, the Proposed Recapitalisation Plan not proceeding and the deeds of company arrangement being terminated.
- 20. The Court also relied on the provision of an independent expert's report in determining whether there was any "residual equity". This approach has been consistently adopted in later decisions.
- 21. Black J further stated (at [43]) that:

... the question whether any prejudice to shareholders arising from the transfer of shares is unfair must also be determined with regard to the object of Pt 5.3A as set out in s 435A of the Corporations Act, namely, for the business property and affairs of an insolvent company to be administered in a

way that, inter alia, results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

22. In that regard, Black J considered the following consequences of the share transfer to be "important matters" for consideration:
 - (a) that the share transfer would preserve Mirabela's business, which would otherwise inevitably fail or be lost to the company following liquidation;
 - (b) that employees would be retained and their entitlements preserved; and
 - (c) that trade creditors' debts would be paid in full in the ordinary course of business.

23. Based on these considerations, the Court determined there was no unfair prejudice arising to shareholders, and made the orders sought.

Nexus Energy Ltd

24. In *Re Nexus Energy Ltd (Subject to Deed of Company Arrangement)* (2014) 105 ACSR 246; [2014] NSWSC 1910 (**Nexus**), the deed administrators of Nexus Energy Ltd (**Nexus Energy**) sought an order under section 444GA to transfer all of the shares in Nexus Energy in accordance with the terms of the deed of company arrangement entered into by it (**Nexus DOCA**).
25. A number of the shareholders raised a number of objections, including that the deed administrators had failed to establish that if the Nexus DOCA was terminated, Nexus Energy would be put into liquidation. They further argued that there was the possibility of a number of alternative scenarios in the event of a termination of the Nexus DOCA.
26. Black J did not accept the submissions of the particular shareholders. His Honour accepted the evidence put by the deed administrators that the likely outcome of the termination of the Nexus DOCA would be liquidation and did not give weight to the alternative scenarios proposed by the shareholders on the basis that they were merely "speculative". His Honour concluded that he was satisfied that there was no prospect of the shares of Nexus Energy obtaining any value within a "reasonable time" and no suggestion that shareholders could or would fund Nexus Energy so as to assist that to occur.
27. Black J followed the decisions in *Mirabela* and *Noble Resources* (described above) and made orders permitting the deed administrators to transfer the shares to the deed proponent on the basis that the shares had no residual value and that there would be no prejudice to shareholders.
28. While the Court was presented with a number of valuations, which had been prepared on both a liquidation and going concern basis, it favoured a valuation undertaken on a liquidation scenario on the basis that liquidation was the probable result of the termination of the relevant Nexus DOCA.

Ten Network Holdings Ltd

29. In *Re Ten Network Holdings Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed)* (2017) 123 ACSR 253; [2017] NSWSC 1529, the deed administrators of Ten Network Holdings Limited (TNHL) sought leave under section 444GA to transfer all of the existing shares of TNHL to CBS International Television Australia Pty Ltd (**CBS**) or its nominee.

30. Black J made a number of statements in relation to the valuations contained in the independent expert's report that was relied on in support of the deed administrators' application and, consistent with earlier authorities, favoured a valuation on a liquidation scenario:
- (a) (at [52]):
First, and most fundamentally, it seems to me that the Ten Group's business is properly treated as presently distressed, and unable to survive without CBS's financial support, such that the only alternatives to the implementation of the CBS DOCA and the share transfer to CBS Australia or its nominee is either the implementation of the Alternative Asset Sale Transaction or the liquidation of TNHL by a sale of its business on a "distressed basis". There is no basis, in my view, for undertaking a valuation of TNHL on a going concern basis.
 - (b) (at [72]):
The position here seems to me to be analogous to that which I considered in Re Nexus Energy Ltd (subject to deed of company arrangement) ... where a going concern valuation of an entity was irrelevant for the purposes of an application under s 444GA where that entity and its operating subsidiaries were not going concerns. On that basis, the equity in TNHL has no value and, on the approach that has consistently been adopted in the authorities to which I have referred above, there is neither prejudice nor unfair prejudice in a transfer of the shares in TNHL to CBS Australia or its nominee.
31. Three shareholders of TNHL opposed the application and raised objections to the proposed share transfer, but those shareholders were ultimately unsuccessful in persuading the Court of the existence of unfair prejudice, including:
- (a) that there was residual value in the equity of TNHL on the basis that there existed an alternative DOCA proposal, being the Birketu and Illyria DOCA. While the Court considered the evidence put forward by certain shareholders and the deed administrators on this issue, it ultimately concluded that the proposal was not capable of implementation at that time in circumstances where the creditors of TNHL had resolved to enter into the CBS DOCA;
 - (b) that unfair prejudice to shareholders arose from matters other than the value of their shares, including having regard to the proprietary nature of a share. Black J acknowledged the proprietary nature of the shares but ultimately relied on the previous authorities in analogous cases relating to the application of section 444GA, concluding that those cases could not be distinguished on the facts and accordingly, no prejudice arose. His Honour also noted that shareholders are largely excluded from decision-making in an administration and their economic interests are, at least to some extent, deferred in favour of the interests of creditors;
 - (c) that the deed administrators had disregarded the interests of TNHL's shareholders. In this regard, Black J noted that it was in fact the creditors of TNHL (not its administrators) who resolved to enter into the CBS DOCA in exercising their rights under Part 5.3A; and
 - (d) that insufficient time had been provided to shareholders to consider the application and raise objections. Black J concluded that procedural fairness had been afforded to the shareholders, pointing to the "substantial evidence" provided by the deed administrators, which indicated the relevant information had been made available on the deed administrators and TNHL's websites, the fact that the application had received media coverage and the nature of this type of application, which involves a level of commercial urgency requiring it to be expedited.

Virgin Australia Holdings Ltd

32. In *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed)* (No 9) (2020) 148 ACSR 648; [2020] FCA 1652, the deed administrators of Virgin Australia Holdings Ltd (VAH) sought orders pursuant to section 444GA granting them leave to transfer all of the shares in VAH to BC Hart Aggregator, L.P or its nominee (Bain Capital) in accordance with the deed of company arrangement entered into by VAH (Primary DOCA). The Primary DOCA was entered into as part of the broader restructure of VAH and certain of its subsidiaries (together, the **Virgin Companies**), which also entered into several interrelated deeds of company arrangement. Notably, if the transfer of shares could not take place pursuant to the Primary DOCA, the sale of the Virgin Companies would instead be completed through an asset sale agreement (ASA).
33. The Court noted the well-established principles applicable to 444GA applications, as set out by Black J in *Paladin Energy (subject to deed of company arrangement)* [2018] NSWSC 11 at [28]-[35] and later summarised by Banks-Smith J in *Re Tucker (as deed administrator of Black Oak Minerals Ltd (subject to deed of company arrangement) (in liq)* (2019) 134 ACSR 472.
34. The Court ultimately went on to conclude (at [34]):
- Thus, as White J observed in Orotongroup at [37], if liquidation is the only realistic alternative to a proposed transfer of the shares, and the shares would have no value in a liquidation, then there is no prejudice, or no unfair prejudice, to the interests of members if leave is given pursuant to s 444GA(1)(b) of the Corporations Act*
35. The Court then noted the opinions expressed in the administrators' report to creditors of the Virgin Companies and the conclusions in the independent expert's report, which both recognised the substantial deficiencies in assets available to meet the debts and claims owing to the creditors of the Virgin Companies. As such, the members of VAH would be in the same financial position regardless of the mechanism by which the transaction was completed. Further, the evidence indicated that if the transaction were to be completed under the ASA:
- (a) asset realisations would be substantially lower;
 - (b) realisation costs would be substantially greater; and
 - (c) the time taken to complete the restructure would be substantially longer, which would be to the detriment of the creditors of the Virgin Companies (including VAH).
36. Following this, the Court determined that there was no unfair prejudice to members upon the transfer of shares to Bain Capital, stating at [55]:
- Although the method of completion of the Bain Transaction makes no financial difference to VAH's shareholders (because their shares are worthless), the proposed Share Transfer and the subsequent effectuation of the Bain DOCAs will provide a materially better outcome for creditors. That strongly favours the making of orders to permit the Share Transfer to proceed.*

Other cases

37. There are other cases where ASIC has granted relevant exemptions from the requirements of section 606 in the context of a proposed share transfer of the shares in a public company to give effect to the terms of a deed of company arrangement. These cases include:
- (a) *Re Orotongroup Limited (Subject to Deed of Company Arrangement)* [2018] NSWSC 1213;

- (b) *Re BCD Resources NL (Subject to Deed of Company Arrangement)* [2018] NSWSC 1605;
- (c) *Re Centennial Mining Ltd (Subject to Deed of Company Arrangement)* [2019] WASC 441;
- (d) *Re Gulf Energy Limited (Subject to Deed of Company Arrangement)* [2020] NSWSC 1323;
- (e) *Park, in the matter of Collection House Limited (Subject to a Deed of Company Arrangement)* [2022] FCA 1244.

G. Application

- 38. The present Application crosses a number of the issues raised in the relevant historical examples set out above, which are aligned with the reasons supporting the grant of exemption as detailed Section E.
- 39. At the time of lodging this Application the Administrators are not on notice of any objection to a transfer of the Ellume shares in accordance with section 444GA.
- 40. In accordance with RG 6.203, this Application (including the draft Explanatory Statement and Independent Expert's Report) has been provided to ASIC at least 14 days before the proposed date of dispatch to Ellume's shareholders, being 10 February 2023.
- 41. Due to the tight timetable for the Proposed Transaction, we would be grateful if ASIC would consider this application and issue its determination prior to 9 February 2023 if at all possible.

H. Additional Information

We are available at any time to discuss any questions you may have and would be happy to provide any additional information required.

Yours sincerely



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Enc

Schedule 1 Draft Instrument

[22-XXXX]

Australian Securities and Investments Commission Corporations Act 2001- Paragraph 655A(1)(a) – Exemption

Enabling legislation

1. The Australian Securities and Investments Commission (ASIC) makes this instrument under paragraph 655A(1)(a) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Title

2. This instrument is ASIC Instrument [23-XXXX].

Commencement

3. This instrument commences on the date that it is signed.

Exemption

4. Hough and its Controllers do not have to comply with section 606 of the Corporations Act.

Where this Instrument applies

5. This instrument applies where:
 - (a) Hough and its Controllers acquire a relevant interest in the Shares as a result of the transfer of the Shares to Hough on implementation of the Court Order and pursuant to the DOCA;
 - (b) the Deed Administrators made available to Shareholders the following documents at the Website:
 - (i) Independent Expert's Report dated [#]; and
 - (ii) Explanatory Statement dated [#];
 - (iii) Report to Creditors dated [#]; and
 - (c) a notice informing all Shareholders of the Proceedings was served by post or by electronic mail to all Shareholders by the Deed Administrators, with such notice advising Shareholders that documents in paragraph 5(b)(i) and 5(b)(ii) above would be available for download from the Website.

Interpretation

6. In this instrument:

Controllers means entities or persons who by operation of section 608 of the Corporations Act acquire a relevant interest in the Shares when Hough acquires a relevant interest in such Shares.

Court Order means the order of the Federal Court of Australia dated [#] 2023 under section 444GA of the Corporations Act permitting the Deed Administrators to transfer the Shares.

Deed Administrators means John Park and Joanne Dunn in their capacity as joint and several Deed Administrators pursuant to the DOCA.

DOCA means the Deed of Company Arrangement between Ellume, Hough and the Deed Administrators dated [#] December 2022.

Ellume means Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660.

Explanatory Statement means the explanatory statement dated [#] 2023 prepared by the Deed Administrators.

Hough means Hough Consolidated Pty Ltd ACN 657 651 280.

Independent Expert's Report means the Independent Expert's Report dated [#] 2023 prepared by KordaMentha Pty Ltd as trustee for the KM Unit Trust (ABN 36 220 576 038).

Proceedings means the application in the Federal Court of Australia with proceedings no. [#].

Report to Creditors means the Report to Creditors dated [#] December 2022 and pursuant to section 75-224 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) prepared by the Deed Administrators in respect of Ellume.

Shareholders means all of the shareholders of Ellume registered in Ellume's share register as at [#].

Shares means all of the issued shares in Ellume.

Website means <https://www.fticonsulting.com/creditors/ellume-limited>.

Dated this [#] day of [#] 2023

Signed by *[insert name]*

as a delegate of the Australian Securities and Investments Commission

Annexure A DOCA

Annexure B Section 75-225 Report

Annexure C Independent Expert's Report

Annexure D Explanatory Statement