TRANSPORTATION

PORT OF VANCOUVER'S CARGO VOLUMES DROP 5.9 PER CENT

Cargo traffic at the Port of Vancouver fell 5.9 per cent in the first half of the year as a result of the weaker loonie, a tepid global economy and the shift of some cargo back to U.S. ports following a lengthy labour disruption last year. "The slight decrease in cargo volumes in the first half of 2016 is expected, given the record year we experienced in 2015 and the softening global economy," Robin Silvester, chief



executive of the Vancouver Fraser Port Authority, said Friday. Some of the most dramatic volume declines were in fertilizers, down 15.8 per cent year over year, and coal, down 14.5 per cent. Both commodities have been hit by a drop-off in demand from key Asian markets. Crude petroleum exports, meanwhile, plunged 53.3 per cent as a result of the fall in global oil prices. Kristine Owram, Financial Post

LEGAL

Catalyst to appeal lawsuit dismissal

Lengthy legal battle continues over share of Wind Mobile

EMILY JACKSON

TORONTO • Private equity firm Catalyst Capital Group Inc. will appeal an Ontario court ruling that tossed out its claim for a chunk of Wind Mobile, continuing its extensive legal battle for a share of the wireless startup now owned by **Shaw Communications Inc.**

The Ontario Superior Court of Justice dismissed in its entirety Catalyst's lawsuit that alleged rival Bay Street firm West Face Capital Inc. used confidential information from a former Catalyst employee to buy a stake in Wind Mobile, a deal both firms were chasing in 2014.

West Face and a consortium of buyers ultimately bought Wind from Amsterdam-based telecom VimpelCom that fall, less than a month after Catalyst's exclusive negotiations failed. Catalyst argued West Face couldn't have landed the deal without confidential information from analyst Brandon Moyse, who was working on Catalyst's telecom file before he quit in May 2014 and joined West Face in June. It asked the court to order West Face to hold its ownership of Wind in a trust for Catalyst.

But Justice Frank Newbould ruled this week that Moyse did not provide any information to West Face that enabled it to offer a better deal than Catalyst.

The judge believed Moyse's assertion that he never discussed Wind with his new employer, which assigned him to other files before he was placed on leave after three and a half weeks in light of Catalyst's non-compete clause.

Moyse did email West Face confidential memos unrelated to Wind during the hiring process, but the judge ruled it was an error and did not indicate he revealed details about Wind. The junior analyst also wiped his BlackBerry before returning it to Catalyst and deleted his browser history before turning his computer over to lawyers, but the judge said his intent was simply to get rid of personal information.

The judge went on to chastise Catalyst owner Newton Glassman, stating he had "considerable difficulty" accepting his evidence as reliable.

"He was aggressive, argumentative, refused to make concessions that should have been made and contradicted his own statements made contemporaneously in emails," Newbould wrote.

On the other hand, he praised the West Face witnesses as



TYLER BROWNBRIDGE / THE WINDSOR STAR

Wind Mobile, now owned by Shaw Communications, is at the centre of a lawsuit between Catalyst Capital and West Face Capital.

"straightforward" and "impressive." He stated they "did not engage in overstatement."

After Catalyst filed its initial lawsuit against West Face, Shaw bought Wind Mobile for \$1.6 billion in late 2015. In June 2016, Catalyst sued West Face and the consortium of buyers including Globalive for \$750 million, the amount it estimates it would have made if it had owned Wind at the time of the sale.

Catalyst will continue to pursue the second lawsuit as it appeals this decision, a spokesperson said Friday. Additional evidence has come out since the Moyse litigation that supports the new case that alleges conspiracy and breach of contract, the spokesperson said.

"We are deeply disappointed by the decision and the severe indications of possible bias displayed by Judge Newbould. We believe that he did not give fair consideration to all of the evidence presented,

ignored contradictory statements made by the defendants that are part of the court record and delivered a judgement containing clear misstatements of fact," Catalyst said in a written statement.

"Among other things, we are particularly concerned that the decision selectively ignores or discounts key testimony as it relates to the critical issue of possible destruction of evidence."

West Face is "grateful for the vindication" the judge provided, according to a news release that highlighted the judge's conclusions about the witnesses.

"The reasons for the complete dismissal of the case make clear that the lawsuit launched by Catalyst was without merit. We are confident that Catalyst's other lawsuits against West Face and various other parties face similar obstacles," chief executive Greg Boland said in a statement.

 $Financial\ Post$

Notice of Application and Directions on Procedure Application to Export Electricity to the United States **New Brunswick Energy Marketing Corporation**

By an application dated August 20, 2016, New Brunswick Energy Marketing Corporation (the Applicant), has applied to the National Energy Board (the Board) under Division II of Part VI of the National Energy Board Act (the Act) for authorization to export up to 9,846,000 MW.h of combined firm and interruptible energy annually for a period of 10 years. The Applicant, or its affiliates, has an interest in the following generation or transmission facilities in Canada:

- Belledune Generating Station, Belledune, NB
- Coleson Cove Generating Station, Saint John, NB Mactaguac Generating Station, Mactaguac, NB
- Beechwood Generating Station, Beechwood, NB
- Sisson Generating Station, Sisson, NB Grand Falls Generating Station, Grand Falls, NB
- Tobique Generating Station, Tobique, NB
- Nepisiguit Falls Generating Station, Bathurst, NB
- Millbank Generating Station, Miramichi, NB
- Grand Manan Generating Station, Grand Manan, NB
- Ste. Rose Generating Station, Ste. Rose, NB
- Point Lepreau Generating Station, Point Lepreau, NB
- NB Power Transmission Network within the Province of New Brunswick

The Board wishes to obtain the views of interested parties on this application before issuing a permit or recommending to the Governor in Council that the application be designated for a licensing procedure. The Directions on Procedure that follow explain in detail the procedure that will be used.

The Applicant shall deposit and keep on file, for public inspection during normal business hours, copies of the application at its offices located at:

New Brunswick Energy Marketing Corporation

515 King Street, 2nd Floor, P.O. Box 2040 Fredericton, NB E3B 5G4 Phone: (506) 458-4465

Fax: (506) 458-4000 Email: NBEnergyMarketing@nbem.ca

and provide a copy of the application to any person who requests a copy. A copy of the application is available for viewing during regular business hours, by appointment, in the Board's library (2nd Floor 517 Tenth Avenue SW, Calgary, Alberta). To make an appointment, please call 1-800-899-1265. The application is also available online at www.neb-one.gc.ca.

- Submissions that any party wishes to present shall be filed with the Secretary of the Board, 517 Tenth Avenue SW, Calgary, Alberta T2R 0A8, fax: (403) 292-5503, and served on the Applicant by September 20, 2016.
- Pursuant to Section 119.06(2) of the Act, the Board is interested in the views of submittors with respect to:
 - the effect of the exportation of the electricity on provinces other than that from
 - which the electricity is to be exported; and whether the Applicant has: (i) informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; and (ii) given an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions specified in the application to those who, within a reasonable time of being so informed, demonstrate an intention to buy electricity for consumption in Canada.
- Any answer to submissions that the Applicant wishes to present in response to items 2 and 3 of this Notice of Application and Directions on Procedure shall be filed with the Secretary of the Board and served on the party that filed the submission by October 5, 2016.
- For further information on the procedures governing the Board's examination, contact the Secretary of the Board, at (403) 292-4800, fax: (403) 292-5503.



Sheri Young Secretary of the National Energy Board

TELECOM

CRTC orders U.S. ads during Super Bowl

TORONTO • Canada's broadcast regulator has officially changed its rules to prevent broadcasters from swapping out U.S. commercials for local ads during the Super Bowl despite an ongoing legal dispute over its right to block Canadian adver-

(416) 386-2811 or 1-800-668-5617 x 2811

Fax (416) 386-2642

GRENVILLE STRATEGIC

ROYALTY CORP.

NOTICE OF DIVIDEND

Notice is hereby given that a dividend of

\$0.00416 per share is declared payable on

September 15, 2016 to the holders of the ommon shares of Grenville Strategic Royalty

Corp. The record date for the determination

of shareholders entitled to receive such

dividends is August 31, 2016. The dividends

are eligible dividends for the purposes of the

GRENVILLE STRATEGIC ROYALTY CORP.

come Tax Act (Canada).

Steven E. Parry Chief Executive Officer

P: 416-777-0383

F: 416-760-7172

tising during the country's mostwatched television event. The Canadian Radio-television

and Telecommunications Commission (CRTC) issued a distribution order Friday to stop simultaneous substitution during the National Football League championship event as of 2017. Simsub, as it's known, temporarily replaces the signal of an American channel rebroadcast in Canada with a local channel showing the same program and is used to show local commercials.

This could mean Canadians will be able to watch U.S. ads - the CRTC dubbed these an "integral element of the event" — during the Super Bowl for the first time next

But it's not clear whether the CRTC's new rule will last until the big game. Bell Media and the NFL challenged the simsub ban in Federal Court of Appeal, which is expected to rule on the matter in the next few months.

 $Financial\ Post$

For advertising information call: (416) 386-2811 or 1-800-668-5617 x 2811 | Fax(416) 386-2642

CONCENTRA FINANCIAL SERVICES ASSOCIATION

LETTERS PATENT OF CONTINUANCE

Notice is hereby given, pursuant to 34(1) of the Bank Act (Canada) (the "BA"), that subject to approval by special resolution of its members and shareholders, Concentra Financial Services Association (the "Association") an association governed by the Cooperative Credit Associations Act (Canada) (the "Act"), intends to file with the Superintendent of Financial Institutions, on or after September 28, 2016, an application for the Minister of Finance to issue letters patent continuing the Association as a bank pursuant to the BA, under the name Concentra Bank in the English form and Banque Concentra in the French form. Its head office will be located in Saskatoon, Saskatchewan. The board of directors of the Association may, however, without further approval of the members and shareholders, withdraw the application for continuance before it is acted on, in accordance with subsection 32(3) of the Act.

Any person who objects to the proposed continuance may submit an objection in writing to the Office of the Superintendent of Financial Institutions, 255 Albert Street, Ottawa, Ontario K1A 0H2, on or before September 27, 2016.

Note: The publication of this Notice should not be construed as evidence that letters patent will be issued to continue the Association as a bank. The granting of the letters patent will be dependent upon the normal BA application review process and the discretion of the Minister

Saskatoon, August 6, 2016

CONCENTRA FINANCIAL SERVICES ASSOCIATION

COMMENT

Sirius offer gets muted support

BARRY CRITCHLEY Off the Record

o figure.

Armed with the same information and presumably with similar access to the same group of participants, two proxy advisory firms have reached completely different conclusions.

This week, ISS advised its clients to vote against the privatization of Sirius XM Canada because "the consideration appears to undervalue the company given its historic revenue growth as well as management's own projection of likely continued revenue growth."

ISS also was critical of the process, specifically of the Canadian company not running a public auction or "market check process"; of the valuation methods used by the two firms hired to perform a fairness opinion; and, for those firms using an overly negative outlook for two elements of the local company's

Toss in the effects of a "high" weighted average cost of capital and the valuation/fairness opinion becomes even more controversial. ISS also noted the \$0.25 a share price hike wasn't real because shareholders won't receive two dividend payments.

Now another firm, Glass Lewis, after deciding the \$4.50 a share offer was a "fair and acceptable price," advised shareholders to "vote for this proposal." But their support was neither overwhelming nor effusive. Muted may be a better descrip-

Consider this, from the Glass Lewis report: "In conclusion, in light of the uncertainties and operational dependency impacting the Company's business and potentially limiting its growth prospects as a separate listed company, we believe the proposed transaction may reasonably represent the best opportunity to maximize shareholder value."

Now consider this: "The recapitalization and privatization transaction involving the U.S.-listed Sirius XM would seem to eliminate many of the long-term issues acting as an overhang on Sirius XM Canada's business viability and financial prospects while also positioning the Sirius XM business to better confront the challenges of increased competition and a dynamic and evolving industry."

Finally this: "We believe a reasonable basis exists to conclude that the proposed privatization involving Sirius XM and certain significant Canadian shareholders represents the most logical and attractive option for minority shareholders." But Glass Lewis has some criti-

cisms of the work done by National Bank Financial, which provided a second fairness opinion. For instance, NBF "didn't provide any details, such as a specific valuation range, as to how it concluded that the offer price was fair."

Shareholders now have to assess the different views of the two proxy advisory firms before making their decision prior to the Aug. 30 meet-

Shareholders may also have to consider what the OSC may decide. A group of dissident shareholders, all institutional investors, have filed a complaint with the OSC focused on a number of matters including the unfair price and the transaction not being in the best interests of independent minority shareholders.

On top of that, Sirius XM Canada's special situation - particularly its large dependence on the U.S. parent for programming and apparent desire for more fees against the backdrop of majority Canadian ownership — may attract the eye of another regulator, the CRTC. In other words, lots of potential developments.

> Financial Post bcritchley@national post.com