September 22, 2022

**REGISTERED MAIL**

Leslie Brandlmayr
Director
Howe Sound Samaritans' Foundation
Box 62
1250-1500 West Georgia St.
Vancouver BC V6G 2Z6

BN #: 89242 0746 RR0001
File #: 1084177

Dear Leslie Brandlmayr:

**Subject: Notice of intention to revoke**

We are writing with respect to our letter dated October 19, 2018 (copy enclosed), in which Howe Sound Samaritans' Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from February 1, 2013, to January 31, 2015, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated January 21, 2019. Your reply has not alleviated our concerns with respect to the Organization's continued non-compliance with the requirements of the Act for registration as a charity. Our analysis of your representations are detailed in Appendix A attached.

**Conclusion**

The Organization was previously audited and agreed to implement corrective measures to address the areas of non-compliance identified in its first audit. Specifically, in 2010, the Organization agreed to implement corrective measures related to its disbursement quota shortfall and to become compliant with filing requirements related to its Form T3010, Registered Charity Information Return. However, the follow-up audit found that the corrective measures were not implemented and the Organization has continued to be non-compliant in these areas. In addition, the follow-up audit showed that the Organization has also failed to comply with numerous other fundamental requirements set out in the Act.

In particular, it was found that: the Organization failed to devote its resources to charitable activities; its activities lacked a public benefit; the Organization provided undue benefits; it made its resources available to a non-qualified donee; it made gifts not at arm's length that resulted in the Organization failing to eliminate their disbursement quota shortfall; it issued a donation receipt with no details of the gift-in-kind and at an inflated value; it failed to maintain adequate books and records, including lack of

supporting documentation for material transactions; it failed to file Form T2081, Excess Corporate Holdings Worksheet for Private Foundations; and, it failed to file Form T3010, Registered Charity Information Return, on time and in prescribed form. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 19, 2018, and pursuant to subsections 168(1), 149.1(4) and 149.1(4.1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

> Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), and 168(1)(e), subsection 149.1(4) and paragraph 149.1(4)(d), of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

| **Business number** | **Name** |
|---|---|
| 892420746RR0001 | Howe Sound Samaritans' Foundation<br>Vancouver BC |

In addition, due to the serious nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

Should the Organization choose to object to this notice of intention to revoke its registration, in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within 90 days from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix B, attached.

**Consequences of revocation**

As of the effective date of revocation:

a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at **canada.ca/charities-giving**;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of

income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

[redacted]

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A – CRA comments on representations
- Appendix B – Relevant provisions of the Act
- CRA letter dated October 19, 2018

c.c.: Blake Bromley

**ITR Appendix "A"**

**Howe Sound Samaritans' Foundation**
**Comments on Representations of January 21, 2019**

In our administrative fairness letter (AFL), dated October 19, 2018, we explained that the latest audit conducted by the Canada Revenue Agency (CRA), for the period from February 1, 2013, to January 31, 2015, identified that Howe Sound Samaritans' Foundation (the Organization) has continued not to operate in compliance with the provisions of the Income Tax Act, despite having agreed to undertake corrective measures to resolve previously identified areas of non-compliance.

As indicated in our AFL, the present audit found non-compliance with the requirements of the Act in the following areas:

1. Failure to devote resources to charitable activities
    a) Purchase of Archon shares
    b) Due diligence of board of directors
    c) Resourcing non-qualified donee(s)/gifts made not at arm's length

2. Failure to issue an official donation receipt in accordance with the Act and/or its Regulations
    i) Receipt format
    ii) Receipt issued not at fair market value

3. Failure to maintain adequate books and records
    a) Lack of supporting documentation
    b) Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations

4. Failure to file Form T3010, Registered Charity Information Return, on time and in prescribed form

We reviewed and considered the Organization's representations dated January 21, 2019, and note that our valuation report related to the purchase of the Archon shares was provided to the Organization in June 2019 as requested. No further responses were submitted by the Organization. The Organization's representations have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity.

The basis for our position, including our responses to the Organization's representations, is described below.

## 1. Failure to devote resources to charitable activities

### a) Purchase of Archon shares

As stated in our AFL, the Organization purchased 3,288,400 Archon Minerals Ltd (Archon) shares at $1.65/share. This amount was substantially greater than the fair market value (FMV) that was determined by a valuation performed by the CRA's Business Equity Valuation (BEV) section.

The BEV valuation determined that the Archon shares should be valued between $0.94 and $1.07/share, with a median value of $1.01/share (median FMV). This value was determined by considering the low average daily trading volume (302,525 shares in the whole year prior to the Organization's purchase of 3,288,400 shares on one day). BEV calculated it would take 11 years to dispose of 3,288,400 shares at that annual rate of activity. As a result, the BEV valuator applied a block discount of 20% to 30%, due to the low trading volumes and the low liquidity of Archon Minerals Ltd.[1]

To pay for this purchase of the Archon shares from [redacted] Blusson, the Organization issued a promissory note for $5,425,860 payable to [redacted] Blusson. The following day, the Organization received a gift from a charity it did not deal with at arm's length, Global Charity Fund, in the form of a promissory note owing from [redacted] Blusson in the amount of $4,515,757. This gift was recorded as reducing the amount payable to [redacted] Blusson to $910,103. Two months later, the Organization issued an official donation receipt to [redacted] Blusson in the amount of $911,103 in recognition of his decision to forgive the remaining debt.

Had the Organization completed these transactions using the median FMV as calculated by BEV, the promissory note issued by the Organization to [redacted] Blusson would have been in the amount of $3,321,284. This would have put [redacted] Blusson in the position of still owing the Organization $1,194,473 towards the promissory note received from Global Charity Fund ($4,515,757 - $3,321,284). We view this amount and the debt forgiveness as an unacceptable private and/or undue benefit the Organization provided to [redacted] Blusson.

We found that overall, the transactions involving the purchase of the 3,288,400 Archon shares did not further a charitable purpose, provided no public benefit, and provided a non-incidental private and/or undue benefit to [redacted] Blusson.

[1] The Archon Minerals Ltd. audited financial statements, for at least the 2011/2012 to the 2017/2018 fiscal years, contain an auditor's note saying, "Without modifying our opinion, we draw attention to Note 1 in the financial statements which indicates that the Company has limited working capital, losses since inception and is dependent upon its ability to continue receiving financing from related parties or, alternatively, secure new sources of financing. These conditions, along with other matters as set forth in Note 1, indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern." www.sedar.com

Organization's Response (copied as written)

"It is clear upon reading the AFL that the auditor's determinations of the areas of non-compliance relate primarily to the Organization's decision to purchase Archon shares on November 29, 2013. Each of the issues set out on page 1 of the AFL flow from this decision to purchase Archon shares. We note that the auditor was provided with a copy of the Purchase and Sales Agreement and was fully aware of the complexity of the transaction with respect to the number of parties involved and the reasons why the directors decided to purchase the shares. It is also clear that the auditor's findings relied heavily upon the valuation of these shares provided by the Business Equity Valuation area of CRA ("the BEV").

The AFL's reliance on the BEV valuation is concerning to us. Accordingly, the first priority in our view is to address this matter.

The Canada Revenue Agency (CRA) states that fair market value ("FMV") "is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are knowledgeable, informed, and prudent, and who are acting independently of each other." [2] The BEV primarily relies on the assumption that this transaction equates to flooding the market which would result in a lower trading price, or alternatively, a high-volume transaction would result in a block discount. We disagree that the valuation of shares in this transaction should be entirely based on the assumption that this transaction should be viewed as if these shares flooded the market on a single day triggering a feeding frenzy that would result in a fire-sale price. We also disagree that based on a large volume sale, a block discount must necessarily apply.

First and foremost, it is difficult to argue (or defend for that matter) the BEV's analysis considering it is based on an event that didn't happen. According to the AFL, the findings of the BEV determined that 'even though the shares were traded on a listed stock exchange, the volume of shares purchased far exceeded the daily average volume of shares traded. Therefore, if a person was to sell 3,288,400 shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. As a result, the valuation by the BEV determined a fair market value in the range of $.94 to $1.07 per Archon share with a median fair market value of $1.01 as at November 29, 2013. This price range is a result of applying a block discount related to the high volume of shares purchased at once." With respect to the trading profile of Archon shares, it is just as reasonable to expect that a block sale could attract a premium as much as a discount as that a block of these shares may be more valuable than acquiring single shares.

Further, the AFL suggests that the trading price for the day of the gift was an anomaly 'because it was $.45 higher than the previous 17 trading days' closing price of $1.20. If one looks at the historical records of the trading price of Archon, it is apparent that it is more volatile than many

[2] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuingreceipts/determining-fair-market-value-gifts-kind-non-cash-gifts.html

publicly traded shares. To a knowledgeable buyer and seller, this would not be an anomaly but a reflection of the trading profile of those shares.

The AFL indicates that the auditor then used the BEV valuation to support a full cycle of concerns and issues set out in the AFL. Based on the BEV values, the AFL reports that the auditor determined that the Organization overcompensated the seller resulting in a private and/or under (sic) benefit, the Organization did not devote its resource exclusively to charitable purposes and activities, and the directors were not diligent in their duties to act in the best interests of the Organization. Further, the Organization issued a receipt for a subsequent donation relating to the shares which was issued not at FMV.

The AFL also states that the directors "knew or should have known that had the shares been purchased openly on the stock exchange that the market would not have endured a value of $1.65." The directors respectfully advise that they do not agree with this assertion, and do not appreciate being advised that they should have guessed at a potential BEV valuation and assumed that such a valuation would be correct. As set out earlier, the BEV valuation is based on a market scenario that didn't happen. Further, both CRA and the sector use the trading price of publicly traded shares as an acceptable valuation and the use of the trading price as a reasonable practice. It is in fact difficult to fathom how any well-informed buyer or seller could better determine a valuation than by using the trading price of the day and awareness of the historical trading profile or how any alternative valuation based on an event that didn't happen could be considered more valid or more reasonable. The BEV noted that these shares are thinly traded which necessarily would mean that if the market was flooded the shares would drop or that a high volume sale would necessarily result in a block discount. We do not agree that the FMV of those shares on that day must necessarily be less than the trading price. Thinly traded shares are often highly coveted and highly sought-after investments. Historical records indicate the share price varies considerably but certainly on average is well within the $1.65 per share range. The BEV valuation in our view has imposed external factors that did not apply.

We also note that in the AFL, you state that 'to merely accept the latest closing price of a share as fair market value, for a transaction involving millions of dollars, does not equate to due diligence and does not fulfill the obligations of the Board to act in the best interest of the Organization'. We respectfully respond that the Directors are not acting in the best interest of the Organization if they 'merely accept' the BEV valuation. Accordingly, we ask that before any further actions are taken on this matter, you please provide our office with all working papers and any other documentation in CRAs possession that explains and/or supports the BEV valuation.

The AFL also reports that "the Organization did not acquire the Archon shares for investment purposes since 2,000,000 of the shares were held for a brief period of time (approximately 47 days). Furthermore, the Organization did not receive any financial compensation related to the disposition of shares since they were gifted to another registered charity (Homestead) at $1.25 per share, resulting in an $800,000 loss to the Organization. In our view, these findings are ill-informed and short-sighted. The shares remained in the charitable sector so the sector as a whole

has benefitted regardless of which charity holds the shares as an investment. The shares remained within the charitable sector and there is no capacity for any registered charity to receive financial compensation for a gift to another registered charity. The Organization's accounting for the gift transaction necessarily requires a valuation. As such, the Organization used the valuation on the day of the gift which resulted in the financial records showing an $800,000 loss on disposition. However, disposition by way of gift to another registered charity, which results in a 'financial loss' for the donor charity is moot. Any gift to a qualified donee by another qualified donee is not going to result in financial compensation for the donor charity. Further, if the Organization opted to liquidate these shares, it would almost certainly not opt to sell them all on the same day or at the very least would not do so if it resulted in a significantly discounted value as the BEV has suggested. Finally, you will know that the T3010 differentiates disposition by way of gift and disposition of assets by way of sale as it requires the Organization to report gross proceeds and net proceeds upon the disposition of sale of assets which does not accommodate gifts to Qualified donees."

CRA's Response

We note that Blake Bromley, [redacted] a Director of the Organization, responded to our AFL. The Organization took issue with the use of the BEV valuation but provided no support for their position or new information to address the concerns raised by the CRA.

It is stated in De Santis v. The Queen, 2015 TCC 95

> "[26] In Hickman Motors Ltd. v. Canada, the Supreme Court of Canada established the principle that, in appealing the Minister's assessment, the taxpayer has the initial burden of making a prima facie case demolishing the Minister's assumptions in support of the assessment."

Our BEV valuation was performed by a professional valuator who followed specific and well established market trends. All of the assumptions and practices are shown in the valuation itself. The Organization has not provided any substantive documentation or analytical information to suggest that we should question the correctness of methods or assumptions used by the valuator. We believe this valuation provides the most reliable and objective method of determining the value of these shares. It is our position that the BEV valuation considers various other factors connected to the transaction that would not have been reflected in the open market price on the day of the transaction.

When defining fair market value, the CRA has identified several key elements to be considered. In particular "...open and unrestricted market..." and "....with a buyer and seller acting independently of each other". An analysis of the Archon share transactions, including

transactions in 11 other known charities[3] that were registered by or operated from [redacted] indicate that Mr. Bromley was the bargaining agent for [redacted] Blusson, and the controlling mind of the Organization; therefore, the transactions cannot be at arm's length. Based on the facts in this case, it is our position that the transaction did not take place in an open and unrestricted market, and the buyer and seller were not acting independently of one another.

We also note that Mr. Bromley referenced a CRA document entitled: Determining fair market value of non-cash gifts in support of his premise; however, this document is a reference for valuations of donations of gifts-in-kind, not the purchase of shares.

**b) Due Diligence of board of directors**

Our AFL detailed the duties of directors of a registered charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. Indeed, trust law imposes upon directors of a registered charity the obligation to properly manage the assets of a charity. An organization's board of directors is to act in the best interests of the organization ensuring the interests of the charity are put ahead of those of any individual or entity.

We also expressed the view that the Organization did not acquire the Archon shares for investment purposes as 2,000,000 of the shares were only held for approximately 47 days. They were then gifted to Homestead on the Hill Foundation (Homestead), recorded at $1.25/share, resulting in an $800,000 loss reported by the Organization.

The audit found that the Organization's board meetings minutes and other books and records did not contain a record of any discussions regarding the purchase of the Archon shares, let alone the purpose of the transaction, nor was the gift made to Homestead discussed.

Organization's response:
The Organization did not agree with the CRA finding that the Board of Directors did not act with due diligence and in the best interests of the charity, and reiterated that the BEV valuation is based on a market scenario that did not happen. As well, the trading price of publicly traded shares is an acceptable valuation and that the use of the trading price is a reasonable practice. We were also informed that the directors did not "appreciate being advised that they should have guessed at a potential BEV valuation and assumed that such a valuation would be correct."

With regard to the gift to Homestead, the Organization submitted that our "findings are ill-informed and short-sighted. The shares remained in the charitable sector so the sector as a whole

[3] Almoner Foundation; Mighty Oaks Foundation; CHIMP: Charitable Impact Foundation (Canada); Theanon Charitable Foundation; HSEF Renaissance Academy; Quest University Canada Foundation; Stewart & Marilyn Blusson Foundation; Association for Advancement of Scholarship; Global Charity Fund; Headwaters Foundation; and Prescient Foundation.

has benefited regardless of which charity holds the shares as an investment…" and "disposition by way of gift to another registered charity, which results in a 'financial loss' for the donor charity is moot."

CRA's response:
As discussed in our AFL, it is often difficult for directors of a registered charity to foresee whether an asset they propose to acquire on behalf of their charity will be a good investment; however, the rules of prudent administration require that they take responsible steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. Given that:

- the share purchase was for a large number of shares compared to historical trading volumes;
- Archon's financial situation at the time of the purchase was not positive and there was a going concern note in Archon's financial statements;
- the vendor of the shares controlled Archon and was the majority shareholder; and,
- the shares are thinly traded,

the Organization's directors should have recognized this combination of factors were such that merely taking the closing price on the day before was not a suitable method of valuation in these circumstances.

As discussed above, the Organization did not provide documentation to support that the board of directors discussed the purchase of the Archon shares or the gift to Homestead. These transactions were part of a series of transactions that are material by any measure. The audit did not find any discussion, email, notation, or comment from the board of directors, or the member (either incoming or outgoing) about the transactions themselves, the reasons, or the benefits. When asked why these transactions were undertaken, the response from the Organization was to simply note that the gifts came in and went out to qualified donees.

The CRA has been unable to identify any bona fide charitable reason for the Organization's involvement in these transactions. As of the fiscal year ended in 2018, it appears the charity has not distributed any portion of the remaining shares to qualified donees. Although there is no cash loss to the Organization, the CRA believes that the charitable sector lost resources at the time the shares were purchased from [redacted] Blusson at $1.65/share. If the charity had purchased the shares at a value reflective of the circumstances, the charity would still be owed money.

**c) Resourcing (a) non-qualified donee(s)**

We explained in our AFL that the Organization disbursed $85,588 to Enabling Environment Endeavours Inc., a non-arm's length corporation given that Mr. Bromley is its [redacted] and the Organization's [redacted] a director, was not for the benefit of the Organization

but was for the benefit of either Mr. Bromley's personal consulting business and/or the Government of China, both of whom are non-qualified donees.

We also explained that the $17,920 paid to Benefic Law Corporation, a non-arm's length corporation (Mr. Bromley is the [redacted] was not the Organization's charitable expense.

Overall these payments were to non-arm's length non-qualified donees and did not further a charitable purpose nor provide a public benefit.

Organization's Response (copied as written)

"The Organization has purposes which authorizes (sic) it to carry on charitable activities. One of the charitable activities it wanted to carry on was to help China as it sought to draft a law to enable charities to operate legally in China. Creating a legal environment in Communist or post-Communist societies is frequently referred to as creating an "enabling legal environment" for charities. The Organization retained Enabling Environment Endeavours Inc. to carry on this charitable activity to assist China.

There is no doubt that helping a country create a legal environment to authorize citizens and social organizations to lawfully operate charities is a legitimate charitable purpose. The primary foreign expert whom China has relied upon was Blake Bromley. However, at some of the meetings on this proposed law China also invited the Director General of Charities Directorate and lawyers employed by the Department of Justice who advise Charities Directorate. Similarly, from England they invited [redacted] of the Charities Act passed by the English Parliament in 2006 and other charity lawyers who were recognized as experts in England such as [redacted]. Blake worked very closely with the English experts throughout this process in London as well as in China.

China was particularly interested in the impact of the evolution and impact of charity law in the former Soviet Union. Blake Bromley and [redacted] were listed as two of the 3 foreign experts relied upon by the Russian Duma in passing Russia's first charity law in 2003. However, the political environment in Russia regressed significantly thereafter and the activities of charities were greatly curtailed. Consequently, China was interested in the evolution of the charitable sector in the Baltic states which had continued to progress towards democracy during the period Russia regressed. Given his experience, they wanted Mr. Bromley to provide an updated current valuation of the law and operating environment of charities in Estonia, Latvia and Lithuania. This expenditure was for a charitable purpose on behalf of the Organization and is a legitimate payment to a non-qualified donee.

As previously set out in this submission, the Organization has a significant investment in Archon shares. There were opportunities to enhance the value of those shares by having Archon make a large acquisition of a Participating Interest in the [redacted] which Mr. Bromley was uniquely placed to advance. Consequently, the Organization sought to increase the value of its investment

by retaining Mr. Bromley to work on facilitating this acquisition. This was not an expenditure on charitable activities but was an administrative expenditure to increase the value of its investment."

CRA's Response
The explanations provided above do not change our view that the expenditure of $85,588 to Enabling Environment Endeavours Inc. was for the benefit of either Mr. Bromley's personal consulting business and/or the Government of China, both of whom are non-qualified donees.

The Organization's assertion as to how the payment to Benefic Law Corporation for $17,920 was charitable also does not change our initial position that this payment is not charitable – as enhancing the value of the Archon shares is not a charitable cost of the Organization.

**c) Gifts made not at arm's length**

We explained in our AFL that the compliance agreement to eliminate the disbursement quota (DQ) shortfall of $263,554 signed by Mr. Bromley and Ms. Brandlmayr on March 10, 2010, was not fulfilled. This is because Mr. Bromley was a director of the charity that was the source of the funds for the DQ shortfall payments and was also a director of the recipient charity; therefore the Organization was not in compliance with 149.1(4.1)(d) and could attract a penalty under 188.1(12).

Organization's Response (copied as written)
"The AFL reports that the auditor has determined that the Organization did not eliminate the disbursement quota shortfall as referenced in the 2010 Compliance Agreement. The AFL indicates that the transactions that took place did not satisfy the DQ pursuant to 149.1(4.1)(d). This finding is based on a CRA determination of non-arm's length relationships that have not been fully addressed or documented. Please provide CRA's analysis of why the relationships are not arm's length within the criteria set out in the Income Tax Act.

This determination is not only subjective, it is also a determination of CRA subsequent to the audit years. At the very least, because the determination is based on a subjective determination of relationships between parties, the reasonable response is an education letter. Alternatively, in an effort to address this compliance issue to your satisfaction, the Organization has discussed this matter with Theanon Charitable Foundation and advises that Theanon Charitable Foundation has agreed to file a T1240 for the appropriate year to document its gift of $300,000 to the Organization as a designated gift. We understand that is not normal practice regarding designated gifts but offer this solution for your consideration. Please advise if the Organization should seek such action from Theanon Charitable Foundation."

CRA's Response
The determination of whether two parties are at arm's length can be found in subsection 251(1) of the Act. Paragraph 251(1)(a) states that related persons shall be deemed to not deal with each

other at arm's length; paragraph 251(1)(b) deals with a taxpayer and a personal trust; and paragraph 251(1)(c) states that in any other case, it is a question of fact whether two taxpayers are dealing with each other at arm's length.

The Register of Directors and Register of Members for the charities involved show that:

i) Mr. Bromley was a director [redacted] of the donor charity, Theanon, at the time of Theanon's $300,000 transfer to the Organization;
ii) Mr. Bromley was a director [redacted] of Philanthropy, the charity that received the $265,000 payment that was intended to eliminate the disbursement quota shortfall identified in the prior audit.
iii) Mr. Bromley was a director [redacted] of the Organization at the time of these transactions.

The fact that Mr. Bromley controlled these charities as a [redacted] director establishes that a non-arm's length relationship existed amongst these three charities.

Furthermore, changing a gift to a designated gift would normally have the effect of the Organization not needing to spend the designated gift amount in the year that it was received or the subsequent year. However, the Organization already had a DQ shortfall that was not met; therefore, changing the $300,000 to a designated gift would only mean that it would not have had to expend this amount in the year received and the DQ shortfall of $263,554 would continue to exist.

**2. Failure to issue official donation receipt in accordance with the Act and/or its Regulations**

**i) Receipt format**
**ii) Receipt issued not at fair market value**

It was explained in our AFL that the receipt issued to [redacted] Blusson was not issued at fair market value. The receipt was based on the difference between how much the Organization owed [redacted] Blusson for the Archon shares purchased at the greater than FMV price of $1.65/share and the value of the promissory note that Global gifted to the Organization payable to [redacted] Blusson. The receipt should not have been issued. However, since it was, the receipt should also have contained [redacted] Blusson's middle initial and details of the gift-in-kind.

Organization's Response (copied as written)
"The Organization acknowledges that the receipt issued to [redacted] S. Blusson should have included his middle initial and should have included the information regarding the non-cash gift of forgiveness of debt."

CRA's Response
The Organization agreed with the findings regarding the format and content of the receipt, but made no representations regarding the value of the receipt in this instance.

**3. Failure to maintain adequate books and records as required**

It was explained in our AFL that the Organization's books and records were lacking in that they did not contain supporting documentation, such as records of discussions, emails or other correspondence, that showed that the directors discussed the purchase of the 3,288,400 Archon shares; that the Organization validated the price of $1.65/share for the purchase of the Archon shares; and, documentation that showed that the directors discussed the decision to gift the 2,000,000 Archon shares to Homestead while incurring an $800,000 book loss.

In addition, the Organization did not file a Form T2081, Excess Corporate Holdings Worksheet for Private Foundations, to report its excess holdings of Archon shares.

Lastly, the T3010s were not filed on time or in prescribed form even though Mr. Bromley and Ms. Brandlmayr agreed and signed a compliance agreement in 2010 agreeing to file the T3010s on time and in prescribed form.

Organization's Response (copied as written)
"The AFL also reports that the CRA identified that the Organization failed to maintain adequate books and records. While we do not agree that the Organization failed to provide supporting documentation, we cannot argue that the Organization failed to file a T2081 Excess Corporation Holdings Worksheet for Private Foundations for each year, nor can we disagree that the Organization failed to file the T3010 Registered Charity Information Returns on time and in prescribed form.

To begin, the Organization agrees and acknowledges that it was in error when it did not file a T2081 for its 2014 and 2015 fiscal years. For a short time as set out in the AFL, the Organization held 6% and subsequently held 2.39% at the end of the fiscal years. The Organization will review its bookkeeping procedures and practices in this area and suggests that for this particular area on non-compliance, an education letter would be reasonable.

The AFL then reports that the Organization filed its 2014 and 2015 T3010s late. The Organization agrees these filings were not only late which is a compliance issue in itself, but it also resulted in the Organization failing to comply with its 2010 Compliance Agreement. The Organization acknowledges this. The concern for our client is the AFL findings that the "T1240 corrects most of the financial data but that the T3010 contained errors and omissions that were not corrected on the T1240 and these errors were set out in Appendix A of the AFL." Respectfully, as soon as the Organization discovered that the transactions relating to the Archon shares were missing from the 2014 T3010, it filed a T1240 Charity Information Return Adjustment with the information that was missing. The Organization believes it has provided the

required information in the T1240 necessary to fulfill its filing obligations. The auditor has been provided with a copy of the T1240 so will appreciate that there was a lot of information provided on that form. The T1240 information provided the corrections to the financial information amounts. As detailed in the AFL Appendix A, Line 130, 1800, 2000 and 4000 of the T3010 are all yes/no answers. While the T1240 did not detail these corrections, we submit that the corrections to the yes/no answers in the T3010, Schedule 5 and the Worksheet for Gifts to Qualified donees all necessarily flow from the corrections to the financial information provided in the T1240. The T1240 also provided corrected information on gifts to Qualified donees. We further note that the CRA website has not been fully updated with respect to the, financial information corrections submitted by the Organization. Consequently, it seems harsh to criticize the Organization on these points."

CRA's Response

The Organization agreed that it:

i) Failed to file a Form T2081 for each year;
ii) Failed to file the Form T3010 on time;
iii) Failed to file the Form T3010 in prescribed form; and,
iv) Did not comply with its 2010 compliance agreement.

With regard to the identified errors and omissions identified in our AFL at Appendix A, we accept these were addressed through the filing of the T1240.