



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TRANSATLANTIC HOLDINGS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.
	)	
VALIDUS HOLDINGS, LTD., and	)	
TV MERGER SUB, LLC,	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT**

Plaintiff Transatlantic Holdings, Inc. (“Transatlantic” or the “Company”), by its undersigned attorneys, for its complaint for declaratory and injunctive relief against Defendants Validus Holdings, Ltd. (“Validus”) and TV Merger Sub, LLC (“TV Merger Sub”) (together, “Defendants”), alleges upon personal knowledge as to itself, and upon information and belief as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action implicates a core issue of Delaware corporate law—whether a hostile bidder for a Delaware corporation can proceed with a consent solicitation containing proposals that are facially invalid under the corporation’s charter. Specifically, in its ongoing effort to acquire control of Transatlantic, Defendants have launched a hostile consent solicitation, which seeks to replace Transatlantic’s directors with Validus’s nominees. Validus also sent a letter to Transatlantic, purporting to serve as the notice containing the information required by Section 6.4(b) of the Transatlantic Bylaws, demanding that the Transatlantic Board set a record date in connection with Defendants’ hostile consent solicitation. As set forth below, Transatlantic,

through this action, seeks a declaration that the proposals included in Defendants' consent solicitation—which, if approved, would amend Transatlantic's Bylaws to allow Transatlantic's stockholders to set the number of directors to serve on Transatlantic's Board of Directors—are void because they violate both Transatlantic's Charter and Delaware law. Transatlantic therefore seeks a declaration that the consent solicitation proposals in question are invalid, a declaration that any amendments to Defendants' proposals will require the submission to Transatlantic of a new notice and record date demand in compliance with Section 6.4(b) of the Transatlantic Bylaws, as well as an injunction compelling Defendants to withdraw their improper consent solicitation.

2. Through their consent solicitation, Defendants ask Transatlantic stockholders to approve, in relevant part, the following:

- a. amending the Transatlantic Bylaws to allow the Transatlantic stockholders to set the size of the Transatlantic Board;
- b. removing each of Transatlantic's seven incumbent directors;
- c. electing the three director nominees put forth by Validus; and
- d. setting the size of the Transatlantic Board at the number of Validus and Transatlantic nominees who are elected or not removed upon the completion of the consent solicitation process.

3. The problem with the proposed Bylaw amendments and proposed implementation of such amendments in Defendants' consent solicitation is that Transatlantic's Charter provides that *only Transatlantic's Board of Directors—not the Company's stockholders*—may set the number of directors to serve on the Company's Board. Thus, Defendants' proposals, which purport to allow Transatlantic's stockholders to determine the size of the Company's Board,

stand in direct violation of the Transatlantic Charter. In addition, these proposals violate Delaware law, which prohibits bylaws that are “inconsistent with law or with the certificate of incorporation . . . .” 8 *Del. C.* § 109(b).

4. Transatlantic and its stockholders have suffered, and, if not granted the relief sought in this action, will continue to suffer harm as a result of Defendants’ improper consent solicitation proposals. In particular, Defendants’ actions, if not enjoined, will cause severe disruptions to Transatlantic’s business by creating great uncertainty over the size and composition of Transatlantic’s Board, leaving Transatlantic with a board of directors incapable of taking action due to an inability to reach a quorum at precisely the time when a properly-constituted board is most needed: as Transatlantic considers potential acquisition or merger proposals, including a proposal from Validus itself. In addition, Transatlantic stockholders are now considering the invalid consent solicitation proposals, and therefore are at risk of great confusion as they vote on proposals that, if approved, will result in the election of directors incapable of taking action and in an uncertain result for the Company at a critical point in the Company’s history. Transatlantic therefore seeks a declaration that Defendants’ proposals are inconsistent with Transatlantic’s Charter and void under Delaware law, a declaration that if Defendants elect to move forward with their consent solicitation, they must request a new record date and otherwise comply with the notice provisions of Section 6.4(b) of Transatlantic’s Bylaws, and an injunction compelling Defendants to remove the improper proposals from their consent solicitation and deliver a revised consent solicitation with a new record date, which also meets all of the relevant notice requirements in the Transatlantic Bylaws.

## **JURISDICTION**

5. This Court has jurisdiction to hear and determine this action pursuant to the Delaware Declaratory Judgment Act. 10 *Del. C.* § 6501. This Court also has subject matter jurisdiction pursuant to general equitable powers and 8 *Del. C.* § 111.

6. Defendant Validus does business and maintains offices in Delaware. In particular, Validus has four subsidiaries that are incorporated in the State of Delaware: Validus America, Inc.; Validus Specialty, Inc.; Validus Services, Inc.; and Underwriting Risk Services, Inc. In addition, in connection with its proposed acquisition of Transatlantic, Validus has sought to acquire Transatlantic through Validus's wholly owned subsidiary, Defendant TV Merger Sub, a Delaware limited liability company. By transacting business in this State, Defendants have given their consent to being sued in the courts of this State. In addition, on August 10, 2011, Validus brought suit in this Court, *Validus Holdings, Ltd. v. Transatlantic Holdings, Inc.*, C.A. No. 6776-CS (Del. Ch. Aug. 10, 2011), alleging that the Transatlantic Board of Directors breached a fiduciary duty by insisting that a confidentiality agreement between the two companies contain a standstill provision.

## **PARTIES**

7. Plaintiff Transatlantic is a corporation incorporated under the laws of Delaware with its principal place of business at 80 Pine Street, New York, New York 10005. Transatlantic is a leading international reinsurance organization with operations on six continents. Its subsidiaries, Transatlantic Reinsurance Company, Trans Re Zurich Reinsurance Company Ltd. and Putnam Reinsurance Company, offer reinsurance capacity on both a treaty and facultative basis—structuring programs for a full range of property and casualty products, with an emphasis on specialty risks.

8. Defendant Validus is a corporation incorporated under the laws of Bermuda with its principal place of business at 29 Richmond Road, Pembroke, Bermuda HM 08. Validus is a provider of reinsurance and insurance, conducting its operations worldwide through two wholly-owned subsidiaries, Validus Reinsurance, Ltd. and Talbot Holdings Ltd.

9. Defendant TV Merger Sub is a limited liability company organized under the laws of Delaware with its principal place of business at 29 Richmond Road, Pembroke, Bermuda HM 08. TV Merger Sub is a wholly-owned subsidiary of Validus through which Validus seeks to acquire Transatlantic. TV Merger Sub is also named in Defendants' consent solicitation statements as an entity making the solicitation.

### **FACTUAL ALLEGATIONS**

#### **A. Validus Submits An Unsolicited Proposal To Acquire Transatlantic After Transatlantic Entered Into A Merger Agreement With Allied**

10. Since July 2011, Validus has been actively engaged in an effort to acquire or otherwise take control of Transatlantic. On July 12, 2011, Transatlantic received an unsolicited merger proposal from Validus. At the time of Validus's proposal, Transatlantic was a party to a merger agreement with Allied World Assurance Company Holdings, A.G. ("Allied"). The Transatlantic Board, after careful consideration of the Validus proposal, concluded that it did not constitute a "superior proposal," under the terms of the Transatlantic-Allied merger agreement, but that the Validus proposal was "reasonably likely to lead to a superior proposal." Thus, as required under the Transatlantic-Allied merger agreement, Transatlantic sought to enter into a confidentiality agreement with Validus on terms that were substantially similar to a confidentiality agreement between Transatlantic and Allied, which contained a customary standstill. Validus, however, refused to enter into a confidentiality agreement containing a

standstill provision, thereby preventing any merger discussions between Validus and Transatlantic.

**B. Validus Refuses To Engage In Discussions With The Transatlantic Board And Launches A Hostile Exchange Offer And Consent Solicitation**

11. On July 25, 2011, Validus commenced an exchange offer for Transatlantic stock under which Transatlantic stockholders would receive 1.5564 Validus voting common shares and \$8.00 in cash for each share of Transatlantic common stock they own.

12. On August 10, 2011, Validus sued Transatlantic and Transatlantic's Board in the Delaware Court of Chancery, asserting that the Transatlantic Board breached a fiduciary duty by insisting that a confidentiality agreement between the two companies contain a standstill provision. At a conference on Validus's motion for expedited discovery held on August 22, 2011, Chancellor Strine concluded that Validus's claim with respect to the standstill did not rise to the "colorable" level, finding that the standstill requirement was "fully consistent with just about every accepted norm of deal negotiation." On August 24, 2011, Validus withdrew its motion for expedited proceedings.

13. On September 14, 2011, Defendants filed a Preliminary Consent Solicitation Statement, seeking, among other things, the consent of the Transatlantic stockholders to remove each of Transatlantic's seven incumbent directors and to elect three director nominees proposed by Validus. The size of the Transatlantic Board of Directors is currently set at eight directors, and has one vacancy. Thus, if Defendants' consent solicitation were successful in removing the existing Transatlantic directors and electing the three Validus nominees, Transatlantic would have only three of eight directors, and thus, lack a quorum required for action by the Transatlantic Board.

**C. Validus Enters Into Discussions With Transatlantic And Makes A Revised Proposal To The Transatlantic Board**

14. On September 16, 2011, Transatlantic and Allied announced the mutual termination of their merger agreement. One week later, Transatlantic announced that it had entered into a confidentiality agreement with Validus (which contained a standstill) that would expire October 31, 2011, and that the parties had entered into discussions concerning a potential transaction. Transatlantic also announced on September 26 and October 11, 2011 that it had entered into discussions with additional third parties about potential strategic alternatives.

15. On September 26, 2011, Defendants filed an amended Preliminary Consent Solicitation Statement. The amendment added two proposals to Defendants' consent solicitation: one to amend the Transatlantic Bylaws to permit Transatlantic stockholders to determine the size of the Transatlantic Board, and another to fix the size of the Board at whatever number of directors (either from Validus's nominees or Transatlantic's incumbent directors) were elected at the end of the consent solicitation process.

16. On October 3, 2011, Defendants filed a second amended Preliminary Consent Solicitation Statement, which did not alter the proposals to be voted on by Transatlantic stockholders.

17. On October 26, 2011, Validus's representatives orally communicated to Transatlantic's representatives a possible revised offer to acquire Transatlantic—which was little changed from Validus's initial proposal, the only change of substance being a \$2.50 increase in the cash portion of the offer. Specifically, Validus now proposed to acquire all of Transatlantic's outstanding shares of common stock for 1.5564 Validus voting common shares—the same exchange ratio as before—and \$10.50 per share in cash pursuant to a one-time special dividend from Transatlantic for each share of Transatlantic common stock.

18. On the evening of October 31, 2011, Validus updated its proposed offer to add (i) another \$0.50 to the cash portion of its offer, resulting in \$11.00 per share in cash, to be paid by Transatlantic but funded by new indebtedness incurred by Validus, and (ii) a \$2.00 per share “Special Excess Dividend” to be paid out of Transatlantic’s cash on hand—meaning that Transatlantic, not Validus, would pay this portion of the consideration.

19. On November 1, 2011, after the expiration of the standstill period, the Transatlantic Board, along with members of Transatlantic’s management and the Company’s independent legal and financial advisors, met telephonically. Following a discussion, the Board authorized its financial advisors to inform Validus’s financial advisor that the Board was not in a position to accept the possible revised offer at that time.

**D. Validus Goes Hostile Again And Launches A Revised Exchange Offer Directly To Transatlantic Stockholders**

20. On November 2, 2011, Validus delivered to the Transatlantic Board a letter indicating that Validus had resumed its exchange offer for all of the outstanding Transatlantic Common Shares and would be offering Transatlantic stockholders the right to receive (i) 1.5564 Validus Common Shares, (ii) \$11.00 in cash through a pre-closing dividend funded by new indebtedness of Validus, and (iii) up to \$2.00 in cash through the “Special Excess Dividend,” subject to a dollar-for-dollar reduction to account for any additional stock repurchases made by Transatlantic pursuant to its stock repurchase program.

**E. Validus Sends A Letter To Transatlantic Annexing Defendants’ Consent Solicitation Statement Containing Proposals In Direct Conflict With Transatlantic’s Charter**

21. Also on November 2, 2011, Validus delivered to Transatlantic a letter purporting to serve as the notice containing information in compliance with Section 6.4(b) of the Transatlantic Bylaws and demanding that the Transatlantic Board set a record date in connection

with Defendants' consent solicitation. Further, on November 2, 2011, Validus delivered a letter demanding that Transatlantic deliver to Validus, among other things, a list of Transatlantic stockholders as of such date.

22. On November 3, 2011, Defendants filed a third amended Preliminary Consent Solicitation Statement, which again did not alter the proposals to be voted on by Transatlantic stockholders.

23. That same day, Validus filed an amendment to its exchange offer (the "Validus Exchange Offer") to reflect Validus's revised merger terms, which is now set to expire on November 25, 2011.

24. Later that day, the Transatlantic Board, in consultation with its financial and legal advisors, unanimously determined that the Validus Exchange Offer was not in the best interest of Transatlantic's stockholders, and unanimously voted to recommend that Transatlantic's stockholders reject the Revised Exchange Offer.

25. On November 12, 2011, Transatlantic informed Validus that Transatlantic had set the record date for Validus's consent solicitation as the close of business of November 22, 2011.

26. Validus's notice to Transatlantic purporting to contain information in compliance with Section 6.4(b) of the Transatlantic Bylaws and demanding a record date contained the following six proposals to Transatlantic stockholders:

a. Proposal 1: "Amend Article III, Section 3.3 of the Amended and Restated Bylaws of Transatlantic (the 'Bylaws') in order to expressly provide that Transatlantic stockholders may fill any vacancies, however caused, on the board of directors of Transatlantic (the 'Transatlantic Board')." <sup>1</sup>

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<sup>1</sup> Article III, Section 3.3 of the current Transatlantic Bylaws provides in relevant part: "Any vacancy occurring in the Board of Directors by reason of death, resignation, or removal shall be filled only by

b. Proposal 2: “Amend Article III, Section 3.1 of the Bylaws in order to expressly provide that Transatlantic stockholders or the Transatlantic Board may determine the size of the Transatlantic Board.”<sup>2</sup>

c. Proposal 3: “Repeal any provision of the Bylaws in effect at the time this Proposal becomes effective (other than the amendments contemplated by Proposal 1 and Proposal 2) that was not included in the Bylaws filed by Transatlantic with the Securities and Exchange Commission on July 28, 2011.”

d. Proposal 4: “Remove, without cause, the following seven members of the Transatlantic Board (and any person or persons, other than those elected by this consent solicitation, elected, appointed or designated by the Transatlantic Board to fill any vacancy or newly created directorship on or after \_\_\_\_\_, 2011 and prior to the time that any of the actions proposed to be taken by this consent solicitation become effective): Richard S. Press, Stephen P. Bradley, Ian H. Chippendale, John G. Foos, John L. McCarthy, Robert F. Orlich and Michael C. Sapnar.”

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the affirmative vote of a majority of the remaining directors entitled to vote, even if the remaining directors may constitute less than a quorum of the Board of Directors.”

Proposal 1 would amend Section 3.3 to read (proposed deletions are indicated by brackets and additions are indicated by underlining): “Any vacancy occurring in the Board of Directors by reason of death, resignation, or removal shall be filled [only] by (i) the affirmative vote of a majority of the remaining directors entitled to vote, even if the remaining directors may constitute less than a quorum of the Board of Directors, or (ii) by the stockholders; provided, however, that any vacancy occurring as a result of a director being removed from office by the stockholders shall only be filled by the stockholders. A director elected to fill a vacancy shall serve for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by election at a regular meeting or a special meeting of the Board of Directors called for that purpose, or at an annual meeting or a special meeting of stockholders called for that purpose.”

<sup>2</sup> Article III, Section 3.1 of the current Transatlantic Bylaws provides in relevant part: “The number of directors, which shall constitute the Board of Directors, shall be not less than three (3) directors and may increase to such other number of Directors, not to exceed twelve (12) Directors, as shall be determined by the Board of Directors, from time to time.”

e. Proposal 5: “Elect Raymond C. Groth, Paul G. Haggis, and Thomas C. Wajnert (each, a ‘Nominee’ and collectively, the ‘Nominees’) to the Transatlantic Board to serve as directors of Transatlantic until the next annual meeting of Transatlantic stockholders and until their successors are duly elected and qualified.”

f. Proposal 6: “Fix, pursuant to Article III, Section 3.1 of the Bylaws, the number of directors constituting the entire Transatlantic Board at (x) the number of Nominees, if any, elected pursuant to Proposal 5 plus (y) the number of Transatlantic directors, if any, not removed pursuant to Proposal 4 and remaining in office immediately thereafter (other than any Nominee).”

27. Thus, Proposals 2 and 6, if approved, would grant Transatlantic stockholders the right to set the number of directors on the Transatlantic Board.

28. Transatlantic’s Charter, however, provides that only the Transatlantic Board—and not its stockholders—may determine the size of the Transatlantic Board. Specifically, Article FIFTH, paragraph 1 of the Transatlantic Charter provides in relevant part: “The number of directors of the Corporation shall be such as from time to time shall be fixed solely by the Board of Directors.” Proposals 2 and 6 are therefore void as a matter of law.

29. Moreover, without reducing the size of the Transatlantic board (which is currently fixed at eight directors) through a proper mechanism, it will be impossible for Validus’s three nominees, if elected, to alone constitute a quorum, and thus, they will be incapable of taking any action.

30. Further, to the extent Defendants update and amend their consent solicitation to propose to amend the Transatlantic Charter, such a mechanism would violate 8 *Del. C.* § 242(b), which provides that two discrete steps need to occur in order to make such an amendment: (i)

the board of directors must adopt a resolution proposing the amendment; and (ii) the proposed amendment must be voted upon at a special or annual meeting of stockholders. This requirement precludes Defendants from attempting to amend the Transatlantic Charter through the solicitation of written consents.

31. And, to the extent Defendants update and amend the proposals in their consent solicitation in any way, including, but not limited to, nominating additional persons to Transatlantic's Board of Directors, the notice that Validus submitted to Transatlantic on November 2, 2011, purporting to "include all information" required by the Transatlantic Bylaws in connection with consent solicitations, would be non-compliant with the Bylaws. Specifically, Section 6.4(b) of the Transatlantic Bylaws requires that any stockholder making proposals for written consent relating to the election of directors give notice to Transatlantic and that such notice include the following specific information:

- a. the name, age, business address and residence address of each director nominee;
- b. the principal occupation or employment of each director nominee;
- c. the class or series and number of shares of capital stock of Transatlantic which are owned beneficially or of record by each director nominee;
- d. a brief description of the proposals that are the subject of the consent solicitation, including the text of any resolutions proposed for consideration; and
- e. the language of any proposed amendment to the Transatlantic Bylaws.

32. Accordingly, any amendments to Defendants' proposals will require a submission to Transatlantic including additional information with respect to such additional nominees or amended proposals in a notice to Transatlantic that is compliant with the Transatlantic Bylaws.

Because any such notice will include materially different proposals and information and the previously submitted notice will not have contained the information required by Transatlantic's Bylaws, Validus will also need to seek a new record date for such solicitation.

### **IRREPARABLE HARM**

33. Proposals 2 and 6, if approved by the Transatlantic stockholders, would cause Transatlantic's bylaws to conflict with its Charter. These proposals would result in Transatlantic engaging in unlawful acts, which is *per se* irreparable harm.

34. Moreover, if Defendants' consent solicitation is allowed to proceed and the invalid stockholder proposals are approved, Transatlantic will encounter significant disruption and confusion as to the size and composition of its Board of Directors. Without clarity as to who is and who is not a member of the Transatlantic Board and as to the actual size of the Transatlantic Board, the Transatlantic Board will be incapable of effectively leading the Company as it conducts ordinary business and—of more immediate importance—as it considers possible acquisition or merger proposals from third parties, possibly including a proposal from Validus itself. Indeed, if the Validus nominees are elected and the Transatlantic directors are removed pursuant to Validus's invalid consent solicitation, Transatlantic would face the imminent risk of the Company being merged or sold on the basis of a decision by a Board whose size has been illegally fixed.

35. Indeed, Defendants at this moment are soliciting the consent of Transatlantic stockholders and may imminently deliver the results of a successful solicitation to Transatlantic. As Defendants made clear in their consent solicitation statement, Validus “plans to present the results of any successful solicitation with respect to the Proposals to Transatlantic as soon as possible.”

**COUNT I**  
**(Declaratory Judgment Pursuant to 10 *Del. C.* § 6512)**

36. Transatlantic repeats and realleges the allegations set forth in paragraphs 1 through 35 as if fully set forth herein.

37. Two of the proposals in Defendants' consent solicitation—Proposals 2 and 6—would, if approved, purport to allow the Transatlantic stockholders to set the number of directors on the Transatlantic Board of Directors. These proposals violate the Transatlantic Charter, which makes clear that only the Transatlantic Board may set the number of directors on the Company's Board. These proposals also violate Delaware law, including 8 *Del. C.* § 109(b), which prohibits the bylaws of a Delaware corporation from being inconsistent with the corporation's charter.

38. Transatlantic is entitled to a declaration of the Court that Proposals 2 and 6 violate the Transatlantic Charter and Delaware law, and are therefore void. Without such a declaration, Transatlantic's stockholders will be misled with regard to the validity and effect of these proposals. In short, if these proposals are not removed from Defendants' consent solicitation, Transatlantic's stockholders will face confusion when they vote on proposals that are obviously invalid and cannot be validly effectuated.

39. Moreover, the proposals, if approved, will result in a Board which is legally incapable of effectively leading Transatlantic.

40. An actual case or controversy exists between Transatlantic and Defendants over the validity of the proposals contained in Validus's consent solicitation. In particular, an actual case or controversy exists concerning the validity of Validus's consent solicitation proposals, and in particular, Proposals 2 and 6. An actual case or controversy also exists with respect to the effect of these proposals in the event they are approved by Transatlantic stockholders.

41. Transatlantic has no adequate remedy at law. Transatlantic and its stockholders have suffered, and, if not granted the relief sought in this action, will continue to suffer harm from Defendants' actions. In addition to the harms already described with respect to stockholder confusion, if the consent solicitation is not enjoined, and if the proposals sought by Defendants in their consent solicitation are approved by the Transatlantic stockholders, Transatlantic will be irreparably harmed in the following ways:

- a. Transatlantic will have a bylaw that is in direct conflict with the Company's Charter, in violation of 8 *Del. C.* § 109(b);
- b. Transatlantic will be left without a Board of Directors capable of taking action;
- c. The newly elected Board of Directors will be legally incapable of leading Transatlantic as it considers potential acquisition or merger proposals, including a proposal from Validus.

42. The Court should issue a declaration that Proposals 2 and 6 are void as a matter of law.

**COUNT II**  
**(Declaratory Judgment Pursuant to 10 *Del. C.* § 6512)**

43. Transatlantic repeats and realleges the allegations set forth in paragraphs 1 through 42 as if fully set forth herein.

44. Defendants cannot remedy the invalidity of their current consent solicitation without requesting a new record date from Transatlantic and submitting amended consent solicitation materials that comply with Section 6.4(b) of the Transatlantic Bylaws.

45. If Defendants attempt to remedy the invalidity of its consent solicitation materials by amending its consent solicitation to remove any of the proposals in its consent solicitation or

to nominate additional persons to Transatlantic's Board of Directors, the notice that Validus submitted to Transatlantic on November 2, 2011, purporting to "include all information" required by the Transatlantic Bylaws in connection with consent solicitations, would be non-compliant with the Bylaws. Specifically, Section 6.4(b) of the Transatlantic Bylaws requires that any stockholder making proposals for written consent relating to the election of directors give notice to Transatlantic and that such notice include the following specific information:

- a. the name, age, business address and residence address of each director nominee;
- b. the principal occupation or employment of each director nominee;
- c. the class or series and number of shares of capital stock of Transatlantic which are owned beneficially or of record by each director nominee;
- d. a brief description of the proposals that are the subject of the consent solicitation, including the text of any resolutions proposed for consideration; and
- e. the language of any proposed amendment to the Transatlantic Bylaws.

46. Accordingly, any amendments to Defendants' proposals will require the submission of an updated notice to Transatlantic that is compliant with the Transatlantic Bylaws. Because any such notice must also contain a request to the Transatlantic Board to fix a record date, Defendants must also seek a new record date from Transatlantic.

47. Transatlantic is entitled to a declaration that, if Defendants amend their consent solicitation in any way, they must request a new record date from Transatlantic and submit amended consent solicitation materials that comply with the notice provision of Section 6.4(b) of Transatlantic's Bylaws. Without such a declaration, the consent solicitation process will be invalid, as Defendants' consent solicitation will not comply with Section 6.4(b) of the

Transatlantic Bylaws. In short, if Defendants attempt to amend their consent solicitation materials without requesting a new record date or otherwise complying with Section 6.4(b) of the Transatlantic Bylaws, Transatlantic's stockholders will face confusion in their consent vote when they vote in a facially invalid consent solicitation.

48. Moreover, the amended proposals, if approved without having complied with the requisite notice provision and new record date, will result in a Board incapable of effectively leading Transatlantic.

49. An actual case or controversy exists between Transatlantic and Defendants over the requirements for Validus correcting its invalid consent solicitation materials. In particular, an actual case or controversy exists concerning whether Defendants may update their proposals without complying with Section 6.4(b) of the Transatlantic Bylaws.

50. Transatlantic has no adequate remedy at law. Transatlantic and its stockholders have suffered, and, if not granted the relief sought in this action, will continue to suffer harm from Defendants' actions. In addition to the harms already described with respect to stockholder confusion, if Defendants amend their consent solicitation proposals without requesting a new record date and otherwise complying with Section 6.4(b) of the Transatlantic Bylaws, Transatlantic will be irreparably harmed in the following ways:

- a. Transatlantic will be left without a Board of Directors capable of taking action; and
- b. The newly elected Board of Directors will be legally incapable of leading Transatlantic as it considers potential acquisition or merger proposals, including a proposal from Validus.

51. The Court should issue a declaration that Defendants, if they elect to move forward with their consent solicitation, must request a new record date and otherwise comply with Section 6.4(b) of Transatlantic's Bylaws.

**COUNT III**  
**(Preliminary and Permanent Injunction Enjoining Invalid Consent Solicitation)**

52. Transatlantic repeats and realleges the allegations set forth in paragraphs 1 through 51 as if fully set forth herein.

53. Transatlantic is highly likely to succeed on its claim that Proposals 2 and 6 in Defendants' consent solicitation are void as a matter of law.

54. The solicitation of written consents in furtherance of an invalid act constitutes irreparable harm.

55. The balance of equities favors Transatlantic. Validus is soliciting written consents through a consent statement that fails to disclose the invalidity of Proposals 2 and 6.

56. Transatlantic has no adequate remedy at law.

57. Transatlantic is entitled to a preliminary and permanent injunction preventing Defendants from continuing with their consent solicitation unless and until they remove the invalid proposals and obtain a new record date for any further consent solicitation.

**PRAYER FOR RELIEF**

WHEREFORE, Transatlantic respectfully requests that the Court enter its order and judgment as follows:

A. Declaring Proposal 2 in Defendants' consent solicitation invalid and void under Delaware law;

B. Declaring Proposal 6 in Defendants' consent solicitation invalid and void under Delaware law;

C. Declaring that Defendants, if they elect to move forward with their consent solicitation, must request a new record date and otherwise comply with Section 6.4(b) of Transatlantic's Bylaws;

D. Enjoining Defendants from moving forward with their consent solicitation unless and until such time as these proposals are removed from their consent solicitation materials, a new notice containing all information required by the Transatlantic Bylaws is submitted to Transatlantic, a new record date is requested in such notice, and a new consent solicitation is mailed to Transatlantic stockholders as of the newly established record date; and

E. Granting such other and further relief as the Court may deem just and proper.

/s/ Raymond J. DiCamillo

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Dated: November 18, 2011