IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED (the "Act")

- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INC.

- and -

IN THE MATTER OF
CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INTERNATIONAL INC.

SUBMISSIONS OF THE APPLICANT

1. The Applicant, Hollinger Inc. (the "**Applicant**"), brings these two applications pursuant to s. 144 of the Act seeking a variation of two management and insider cease trade orders restricting trade in the securities of the Applicant (the "**Hollinger MCTO**") and in the securities of Hollinger International Inc. (the "**International MCTO**") by certain directors, officers and insiders of the respective issuers.

2. Both orders were made as a result of the failure of the Applicant and Hollinger International Inc. ("**International**") to file interim and annual financial statements (and related MD&A) and Annual Information Forms as required by Ontario securities law.

3. Both orders indicate that they shall remain in effect until two full business days following receipt by the Ontario Securities Commission (the "**OSC**") of all filings required to be made pursuant to the Act.

(A) PURPOSE OF THE MANAGEMENT AND INSIDER CEASE TRADE ORDERS

4. The purpose of the Hollinger MCTO and the International MCTO (collectively, the "**MCTOs**") was to address defaults by the respective issuers in the filing of financial statements and related material required by the Act by ensuring that no shareholder who might be expected to have information which was not publicly available could benefit from such information by *unilaterally* engaging in a trade of the securities of the respective issuers.

5. Neither order was intended to prevent shareholders *as a group* from participating in a *common* transaction.

6. Neither order was intended to affect the ability of the remaining shareholders (those not subject to the MCTOs) from engaging in a trade of *their* shares, or exercising any other right attaching to their shares.

(B) FINANCIAL DISCLOSURE SUBSEQUENT TO THE MANAGEMENT AND INSIDER CEASE TRADE ORDERS

7. On January 18, 2005, International partially satisfied its default by filing its 2003 Form 10-K with the U.S. Securities and Exchange Commission, which included its audited financial statements for the year ended December 31, 2003 and related MD&A, which filing constituted International's 2003 Annual Information Form pursuant to the Act.

8. As the Applicant's principal asset is its shareholding in International, the foregoing filing was a necessary but not sufficient condition to the completion of the Applicant's required filings. The completion and audit of the Applicant's financial statements will require a level of cooperation from International and its auditors, which has not been forthcoming since the Applicant's loss of control of International in or about November 2003.

9. At present, there can be no assurance as to when or whether the Applicant will be in a position to file its audited financial statements in the foreseeable future.

10. On March 4, 2005, the Applicant disclosed via press release financial information in the form of an unaudited consolidated balance sheet as at September 30, 2004, together with notes thereto, prepared on an alternative basis (the "**Alternative Financial Information**"), a copy of which is included in the Applicant's management proxy circular dated March 4, 2005 (the "**Circular**").

(C) THE SPECIAL MEETING TO CONSIDER THE PROPOSED TRANSACTION

11. The Applicant has proposed a going private transaction by way of consolidation (the "**Proposed Transaction**"), the particulars of which are described in the Circular.

12. The Proposed Transaction will be put to a shareholder vote at a special meeting of shareholders of the Applicant (the "**Special Meeting**") to be held on March 31, 2005.

(D) SUMMARY OF THE PROPOSED TRANSACTION

13. The Applicant has two outstanding classes of shares, each of which is listed on the Toronto Stock Exchange: retractable common shares (the "**Common Shares**") and Exchangeable Non-Voting Preference Shares Series II (the "**Series II Preference Shares**").

14. The principal asset of the Applicant consists of its approximately 17.4% equity and 66.8% voting interest in International, a Delaware company, the outstanding shares of Class A Common Stock ("**International A Shares**") of which are listed on the New York Stock Exchange.

15. The Ravelston Corporation Limited ("**Ravelston**"), directly and indirectly, owns approximately 78.3% of the outstanding Common Shares and approximately 3.9% of the outstanding Series II Preference Shares.

16. The Proposed Transaction involves a consolidation of the outstanding Common Shares and Series II Preference Shares (collectively, the "**Consolidation**").

17. If the relevant resolutions are approved at the Special Meeting, the Applicant would consolidate its outstanding:

    (a) Common Shares at a ratio which would result in Ravelston (directly and indirectly) being the sole holder of Common Shares; and

    (b) Series II Preference Shares at a ratio which would result in no remaining holders of Series II Preference Shares.

18. Those holders of Common Shares holding fewer than the set threshold number of Common Shares will be entitled to be paid $7.60 plus the Additional Amount per Share (as defined below) in cash, together with one CCPR (as defined below), for each Common Share held at the date on which articles of amendment of the Applicant to effect the consolidation are filed.

19. Those holders of Series II Preference Shares holding fewer than the set threshold number of Series II Preference Shares (which will be all holders of Series II Preference Shares) will be entitled to 0.46 of an International A Share for each Series II Preference Share held at the date on which articles of amendment of the Applicant to effect the consolidation are filed.

20. The Consolidation is a "business combination" for the purposes of OSC Rule 61-501. As such, a committee of independent directors (the "**Independent Privatization Committee**") was established to review and consider the proposed Consolidation and make recommendations to the Applicant's board of directors (the "**Board**"), a formal valuation of the affected securities by an independent valuator, GMP Securities Ltd. ("**GMP**"), was obtained in accordance with such rule and is disclosed in the Circular and the transaction is subject to "majority of the minority" approval by holders of affected securities as required by such rule.

21. The Applicant currently has outstanding US$93.0 million aggregate principal amount of 11.875% Senior Secured Notes due 2011 (the "**Senior Notes**"). As is customary for similar debt instruments, the indentures governing the Senior Notes (the "**Indentures**") contain significant restrictions on the Applicant's ability to fund cash expenditures outside its normal course of business. As a result, amendments to the Indentures were required to be obtained in order to permit the Consolidation to be effected.

22. In October 2004, the Board approved various transactions in order to permit the proposed Consolidation to be considered by the Applicant's shareholders and to provide, if necessary, the financing to complete the proposed Consolidation. The transactions involved approval of amendments to the Indentures to permit, among other things, the retirement of all outstanding Common Shares (other than those held, directly or indirectly, by Ravelston) for cash pursuant to the proposed Consolidation and the retirement of all outstanding Series II Preference Shares for International A Shares owned, directly or indirectly, by the Applicant pursuant to the proposed Consolidation.

23. The Applicant also obtained amendments to the Indentures to permit the Applicant to incur additional indebtedness of up to US$40.0 million through the issuance of additional Senior Notes and obtained binding commitments from certain of the holders of Senior Notes for the issue and sale of up to US$40.0 million of additional Senior Notes for use in connection with the proposed Consolidation.

24. The amendments to the Indentures and the ability to draw upon the binding debt commitments become effective if, and only if, all necessary corporate, shareholder and regulatory approvals (the "**Common Share Approvals**") in connection with the Consolidation of the Common Shares have been obtained by March 31, 2005 (the "**March Deadline**")

25. In the event that all Common Share Approvals (including the relief sought herein) are not obtained by such date, absent a further consent of the holders of a requisite amount of the Senior Notes, the Applicant would not be permitted under its financing arrangements to effect the Consolidation.

26. For the reasons set forth in the Applicant's Application Letter, there can be no assurances that: (i) the consent of the holders of a requisite amount of Senior Notes to an extension to the March Deadline could be obtained, if sought; (ii) if a consent is sought, the cost and terms for obtaining such consent will be reasonable and appropriate; or (iii) Ravelston will continue to support a Consolidation transaction for the consideration contemplated. The Independent Privatization Committee explored the likelihood of an extension to the consent of the holders of the Senior Notes and were advised by the Applicant's agent, Jefferies & Company, Inc., that such consent would be very difficult to obtain, if at all, and would likely result in significant additional expense to the Applicant.

27. As originally announced, the Consolidation provided that Ravelston would support the transaction on the following terms: (i) holders of Common Shares (other than Ravelston and certain of its affiliated entities) would receive $7.25 in cash for each share held by them; and (ii) holders of Series II Preference Shares would receive 0.46 of an International A Share for each share held by them.

28. The Applicant and other parties are the subject of an order of the Ontario Superior Court of Justice (the "**Court**") wherein Ernst & Young Inc. ("**E&Y**") has been appointed as inspector to conduct an investigation of certain of the affairs of the Applicant. E&Y's final report will not be available by the date of the Special Meeting and it is not anticipated that it will be available for quite some time following the Special Meeting.

29. During the period of December 2004 to March 6, 2005, the Applicant, the Independent Privatization Committee and their respective legal counsel, together with GMP and its legal counsel, were involved in extensive discussions with staff of the Corporate Finance branch of the OSC on various matters and issues in connection with the proposed Consolidation. Such discussions, together with negotiations among the Independent Privatization Committee, Ravelston and their respective legal counsel, resulted in the following amended terms and conditions of the proposed Consolidation:

    (a) holders of Common Shares (other than Ravelston and certain of its affiliated entities) would receive $7.60 in cash for each share held by them plus the Additional Amount per Share (as defined below);

    (b) following the public release by International of its 2004 annual audited financial statements, an independent valuator will perform a formal valuation of the Common Shares under the supervision of the Independent Privatization Committee. The second valuation will, to the extent necessary, reflect information set out in such financial statements and update the value range determined for the Common Shares contained in the GMP valuation. Each holder of Common Shares (other than Ravelston and certain of its affiliated entities) will receive, subject to applicable laws, an additional amount per Common Share equal to the amount, if any, by which the mid-point of the updated valuation range exceeds $7.39, being the midpoint of the GMP valuation range (the "**Additional Amount per Share**"). In no event will the Additional Amount per Share be less than nil; and

    (c) in order to address concerns with respect to the possible uncertainty of value in respect of potential claims and litigation involving the Applicant, holders of Common Shares (other than holders who dissent and, in certain circumstances, U.S. holders) will receive a Contingent Cash Payment Right (a "**CCPR**") that would entitle them to participate in their proportionate interest in the economic benefit of certain potential claims and litigation.

30. Generally, the CCPR specified claims and litigation will be claims by the Applicant against Ravelston or Ravelston-related entities or persons arising from related party transactions occurring prior to the effective time of the Consolidation, including transactions reported on in any final report of E&Y, but excluding book debts referred to in the GMP valuation. The litigation will be controlled by a Litigation Panel comprised of three of the Applicant's current independent directors. The agreement governing the terms of the CCPRs will require approval of the independent directors of the Applicant and the receipt of all necessary regulatory approvals and the parties intend to seek a confirmatory order of the Court approving such agreement.

31. After considering the amended terms of the proposed Consolidation, the GMP valuation, the advice of its legal and financial advisors and various additional matters, the Independent Privatization Committee unanimously concluded to recommend to the Board that all necessary actions be taken in order that the special resolutions to effect the proposed Consolidation be submitted to the Special Meeting on March 31, 2005. The Board subsequently resolved to adopt

the report of the Independent Privatization Committee and unanimously adopted the resolution to call the Special Meeting without making a recommendation as to whether the Applicant's shareholders should accept or reject the Consolidation resolutions.

(E) THE ISSUE AT THIS HEARING

32. The Applicant seeks a variance of the MCTOs solely to permit any direct or indirect trades (including any acts in furtherance thereof) in the securities of the respective issuers that are required to effect, or may occur in connection with, the Proposed Transaction.

33. This hearing proceeds under s. 144 of the Act, which provides:

144(1) **Revocation or variation of decision** - The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest.

34. Accordingly, the OSC may grant the requested relief if it is of the opinion that the variance "would not be prejudicial to the public interest".

(F) THE REQUESTED VARIANCE IS NOT PREJUDICIAL TO THE PUBLIC INTEREST

35. The MCTOs, by their terms, restrict trading *only* by certain officers, directors and insiders named in the orders.

36. To the extent the Proposed Transaction will require any shareholder subject to the MCTOs to trade in their shares, the MCTOs will, unless varied, have a far broader effect than their terms provide. Unless varied, they would prevent the Proposed Transaction and effectively restrict *all* shareholders of the Applicant from being able to exercise their right to vote for or against the Proposed Transaction at the Special Meeting.

37. It is submitted that there are no facts or circumstances that would justify the OSC in preventing the shareholders from exercising their own judgment as to where their best interests lie with respect to the Proposed Transaction.

38. The MCTOs were responsive to specific defaults by the Applicant and International - the failure to file financial statements and other related reports.

39. The purpose and intent of the MCTOs could not have been to prevent all shareholders of the Applicant from effectively voting upon any business combination or other transaction in the nature of the Proposed Transaction unless and until the default is cured.

40. While the financial statements of the Applicant will not be current by the date of the Special Meeting, shareholders of the Applicant have the benefit of both International's audited financial statements current to December 31, 2003 and the Applicant's Alternative Financial Information, among other sources of publicly available information.

41. Under applicable corporate and securities laws, going private transactions by way of consolidation (like the Proposed Transaction) do not require management proxy or information circulars to contain financial statements of the issuer.

42. There are precedents where issuers have effected a going private transaction by way of consolidation in circumstances where the issuer was in default of its financial statement reporting obligations pursuant to applicable securities laws. See, for example, Perle Systems Limited ("**Perle**") dated October 28, 2003 (**Tab 1**) and Cinar Corporation dated January 14, 2004 (**Tab 2**). In each of such cases, the shareholders exercised their right to vote on the proposed going private transaction by way of consolidation.

43. The assessment of the propriety and reasonableness of any business combination affecting the shareholders, as in the above transaction, must ultimately be made by the shareholders. The absence of current statutory financial statements is one factor for the shareholders to consider in reaching their own decision.

44. Provided the process by which the proposed business combination is presented to the shareholders, and the process by which it is voted upon, is fair and reasonable, it could not be prejudicial to the public interest to permit the shareholders to make their own decision as to the propriety and reasonableness of the Proposed Transaction, and express it with their vote.

45. OSC Rule 61-501 provides for such a fair process.

46. The presentation of the Proposed Transaction to the shareholders of the Applicant, and the manner in which it will be voted upon, comply fully with the process provided for in such rule.

47. An independent valuation of the affected securities has been completed and included in the Circular. The valuation discloses in detail the assumptions, limitations and any "unique and unusual circumstances" upon which it was conducted.

48. The vote in respect of the Consolidation of the Common Shares will require "majority of the minority" approval in accordance with OSC Rule 61-501.

49. All shareholders of the Applicant have the right to dissent in respect of the proposed Consolidation and to be paid the fair value for their shares in accordance with the *Canada Business Corporations Act*.

50. Further, the Applicant formed the Independent Privatization Committee, a committee comprised of two directors independent from management, any interested party and their affiliates as recommended by the companion policy to OSC Rule 61-501. Both members of the Independent Privatization Committee have extensive business experience.

51. The mandate of the Independent Privatization Committee included conducting a thorough review of the proposed Consolidation and to make recommendations to the Board.

52. The Independent Privatization Committee selected and appointed the valuator that conducted the independent valuation of the affected securities.

53. Moreover, the Applicant and the Independent Privatization Committee and their respective legal counsel, together with the independent valuator and its legal counsel, engaged in extensive discussions regarding the Proposed Transaction with staff of the Corporate Finance Branch of the OSC from December 2004 to the issuance of the Circular.

54. These discussions in part resulted in additional terms to the proposed Consolidation intended to compensate for two areas of existing uncertainty, being the lack of current financial statements of International and the ongoing inspection by E&Y.

55. These additional terms, which are beyond the requirements and recommendations of OSC Rule 61-501, are as follows.

56. Should the delinquent financial statements of International, once publicly released, contain information which would bear on the value of the Common Shares - and as such bear upon a shareholder's consideration of the Proposed Transaction - the mechanism of the Additional Amount per Share is an effective and reasonable method of putting the Applicant's shareholders in the position they would have been in had such financial statements of International been available in advance of the Special Meeting.

57. With regard to the existing and potential litigation involving the Applicant, holders of Common Shares that do not dissent will receive a CCPR which will enable such shareholders to receive a pro rata share of the net proceeds of specified litigation upon a final settlement or judgment.

58. The specified litigation will be funded by the Applicant, and those funds and any proceeds payable to the Applicant will be held in escrow controlled by a Panel of Trustees. The Panel of Trustees will also have sole power and authority to commence, direct and supervise all matters involving certain actions comprising the specified litigation.

59. The process by which the net litigation proceeds of actual and potential specified litigation are managed and distributed to shareholders under the proposed transaction is a fair and reasonable method by which any uncertainty of the value in respect of existing and potential litigation which may arise from the results of the final inspection report of E&Y may be addressed. Accordingly, the use of CCPRs is an effective and reasonable method of putting the Applicant's shareholders in the position they would have been if the results of the inspection had been available in advance of the Special Meeting.

60. A similar method of addressing the uncertainty of value in respect of existing litigation was employed by Cinar Corporation ("**Cinar**") with respect to litigation involving its founders. Cinar presented a going private transaction to its shareholders which included "Contingent Cash

Entitlements" to address the issue of the distribution of the net proceeds of the litigation. In the case of Cinar, the shareholders voted to approve the transaction.

61. Cinar was also subject to a cease trade order prior to the implementation of the going private transaction and sought and received a variance of such order *In the Matter of Cinar Corporation*, (2004), 27 OSCB 1191 (**Tab 4**).

62. With regard to the Hollinger MCTO, the requested relief primarily relates to three shareholders who collectively own only 0.0024% of the outstanding Common Shares and a transfer of registered title to (and not beneficial ownership of) certain Common Shares to ensure that Ravelston will not, directly or indirectly, receive any consideration as a consequence of the Consolidation.

63. The opportunity for liquidity which the Proposed Transaction offers the shareholders of the Applicant is dependent upon the amendments to the Indentures described above. As disclosed above, the amendments are only effective if, and only if, the Common Share Approvals are obtained by the March Deadline.

64. As noted above, there can be no assurances that: (i) the consent of the holders of a requisite amount of Senior Notes to an extension to the March Deadline could be obtained, if sought; (ii) if a consent is sought, the cost and terms for obtaining such consent will be reasonable and appropriate; or (iii) Ravelston will continue to support a Consolidation transaction for the consideration contemplated.

65. Further, as Ravelston is the controlling shareholder of the Applicant, a third party is effectively prevented from making a competing offer or proposing a competing transaction without the involvement or support of Ravelston.

66. Ravelston has entered into arrangements with the Applicant that provide that if the requisite approvals are not obtained by the March Deadline, Ravelston will reimburse the Applicant for fees and expenses in connection with the Proposed Transaction. Should an extension to the March Deadline be sought, there can be no assurances that Ravelston will enter into additional arrangements covering the costs of the Applicant in pursuing the Proposed Transaction to a date beyond the March Deadline or, if so, whether the terms of the transaction and the price per Common Share will reflect such costs.

67. As with any similar significant transaction, any delay in completing the Proposed Transaction involves external risks (such as market risks and risks relating to international events, among others) which are beyond the control of the Applicant and may make any future arrangements with the holders of the Senior Notes or Ravelston impossible or unacceptable to the Applicant.

67. At present, the Applicant is incurring significant costs with respect to the Inspection, litigation expenses and public company and other expenses. The longer that the completion of the Proposed Transaction is delayed, the more likely it is that these continuing costs (and any additional costs which may be associated with extending the March Deadline) will impair the value of the Common Shares. Such a delay would provide an opportunity for Ravelston (or a third

party wishing to acquire the Common Shares) to consider the impact of these costs and the resulting diminution in value in determining whether to bid and, at what price.

68. The Applicant and its minority shareholders currently face troubled and uncertain times. Whether the allegations against the Applicant and others formerly associated with the Applicant ultimately prove to be founded or unfounded, and whether or when the Applicant will be in a position to remedy its filing deficiencies, the issues related to such matters will take a considerable amount of time to resolve. Until such resolution, the Applicant may not be in a position to offer satisfactory stability or certainty as to the value and liquidity of the investment of minority shareholders in the Applicant.

69. Therefore, unless the requested relief is granted, it is likely that the opportunity offered in the Proposed Transaction for Common Shareholders to obtain cash for their shares will not return in the foreseeable future.

(G) THE ISSUE FOR THE OSC IS *WHETHER* SHAREHOLDERS SHOULD BE PERMITTED TO VOTE

70. It is respectfully submitted that whether a particular shareholder intends to vote for or against the Proposed Transaction is irrelevant to the matter before the OSC on this hearing.

71. The application is brought to ensure that *all* shareholders have the opportunity to meaningfully express their vote at the Special Meeting.

72. The view of all shareholders would, of course, be relevant to the issue of whether the shareholders should be afforded an opportunity to vote on the Proposed Transaction at the Special Meeting.

73. Certain shareholder have already expressed their view in this regard at a hearing before the Honourable Mr. Justice Campbell wherein the issue was Shareholders have, through their participation in the March 7, 2005 hearing before Justice Campbell, wherein they sought an order directing that the Special Meeting of the Board proceed

74. As provided in s. 144 of the Act, the issue for consideration is broader than the interest of a particular shareholder and the question remains whether or not the requested relief "would not be prejudicial to the public interest."

75. The appropriate forum for each shareholder to express their self-interest with respect to the Proposed Transaction is at the Special Meeting, with his or her vote, and not at this hearing.

76. Any shareholder that is dissatisfied with the terms of the Proposed Transaction can not only vote against it, he or she can also elect to dissent. Dissent and appraisal rights are available to all shareholders in respect of the Proposed Transaction. Any shareholder who has any concerns about the fairness of the terms or the adequacy of the proposed consideration has the option of pursuing fair value through an appraisal proceeding.

(H) SUBMISSIONS ON THE LAW

(i) The requested variance is not prejudicial to the public interest:

77. The OSC has exercised its discretion under s.144 of the Act to vary a cease trade order to permit shareholders to vote on a going private transaction.

> ***In Re Cinar* (2004), 27 O.S.C.B. 1191 (Tab 4)**
>
> ***Re Grand Oakes Resources Corporation* (2003), 26 O.S.C.B. 7288 (Tab 5)**

78. A going private transaction is a common form of business combination which is expressly permitted under the Act and the CBCA, and is not inherently abusive or unfair:

> The Commission does not consider that the types of transactions covered by Rule 61-501 (the "Rule") are inherently unfair. The Commission recognizes, however, that these transactions are capable of being abusive or unfair, and has made the Rule to address this.
>
> **Companion Policy 61-501CP - To OSC Rule 61-501, s. 1.1 (Tab 6)**
>
> 2. The Director is of the opinion that GPT's are, subject to the following, permitted under the CBCA, whether the GPT follows a take-over bid (a multi-stage GPT) or not (a single-state GPT).
>
> 3. Generally the Director will be concerned with the substance of a GPT only in circumstances in which a complainant alleges that the substance of the transaction is oppressive or unfairly prejudicial to or unfairly disregards the interests of a person whose interest in a participating security is being terminated without his or her consent.
>
> 4. In the case of offering corporations, compliance with established regulatory indicia of fairness will, as a general rule, be viewed by the Director as sufficient. For example, compliance with the requirements set forth in Ontario Securities Commission Policy 9.1 (now 61-501) ....will usually suffice for these purposes.
>
> **CBCA Director's Policy Statement 11.21 - Notice of Revised Policy on Going Private Transactions, March 20, 1997 (Tab 7)**
>
> A going private transaction involving a public corporation is not in itself oppressive.
>
> ...In contrast the situation before this court involves a proposal for a single-step transaction that may or may not be approved by the requisite majority of public shareholders. The record to date indicates the proposed capital reorganization will comply with all statutory and regulatory prerequisites. There is a fair process underway, and one that will meet the reasonable expectations of the public shareholders...
>
> ***Stern v. Imasco Ltd.* 1999 CarswellOnt 3546, at pp. 15-16 (Tab 8)**

***In the Matter of Cablecasting Limited* (1978), O.S.C.B. 37, at p. 48 (Tab 9)**

79. OSC Rule 61-501 (Insider bids, Issuer Bids, Business Combinations, and Related Part Transaction) is intended to provide shareholders with procedural safeguards to ensure that shareholders are "treated in a manner that is fair and that is perceived to be fair." Thus, full compliance with this Rule ensures that shareholders have been treated fairly.

Companion Policy 61-501CP - OSC 61-501, s. 1.1 (Tab 6)

OSC Rule 61-501 (Tab 10)

80. The OSC has stated that its mandate in *granting* a cease trade order is not to interfere in transactions on the basis of its own view of fairness, but that absent a breach of the Act, such an order should only be granted where it is clearly demonstrated that the transaction is abusive of shareholders and the capital markets. It is submitted the same approach is appropriate to the consideration of whether a *variance* of a cease trade order should be made to permit a proposed transaction.

> And it would wreak havoc in the capital markets if the commission took to itself a jurisdiction to interfere in a wide range of transactions on the basis of its view of fairness through the use of the cease trade power under section 123. That, however, is not what we purport to do in this case, nor is it the stated basis upon which the Commission will exercise its section 123 jurisdiction, as indicated in its decisions in Cablecasting and Lindzon. The Commission's mandate under section 123 is not to interfere in market transactions under some presumed rubric of insuring fairness.
>
> The Commission was cautious in its wording in Cablecasting and we repeat that caution here. To invoke the public interest test of section 123, particularly in the absence of a demonstrated breach of the Act, the regulations or a policy statement, the conduct or transaction must clearly be demonstrated to be abusive of shareholders in particular, and of the capital markets in general. A showing of abuse is something different from, and goes beyond, a complaint of unfairness. A complaint of unfairness may well be involved in a transaction that is said to be abusive, but they are different tests. Moreover, the abuse must be such that it can be shown to the Commission's satisfaction that a question of the public interest is involved. That almost invariably will mean some showing of a broader impact on the capital markets and their operation.
>
> ***In the Matter of Canadian Tire Corporation et al* (1987), 10 O.S.C.B. 857, at 947, affirmed (1987) 10 O.S.C.B. 1771 (Div. Ct.), leave to appeal to Ont. C.A. refused (1987) 35 B.L.R. xx (note) (Ont. C.A.) (Tab 11)**
>
> It seems to us that the "abusive " test enunciated in Canadian Tire is still the applicable one, and that, absent a breach of the Act or the Regulation, we should not normally exercise our cease trade power in a case of this sort unless we first find that there has been something abusive of investors or the capital markets in the transaction. And, as stated in Canadian Tire, "abuse" is something more than "unfairness."

***Canfor Corporation and Slocan Forest Products Ltd.* (1995), 18 O.S.C.B. 475, at p. 18 (Tab 12)**

(ii) ***The Applicant has complied with the disclosure obligations under the Act and the Rule:***

81. OSC Rule 61-501, section 4.2, sets out the requirements for an information circular for a business combination. In addition to the requirements of National Instrument 51-102F5, an issuer is to disclose in the circular the information required by Form 33 of the Regulation.

82. Item 29 of Form 33 requires disclosure of any material facts concerning the securities of the issuer and "any other matter not disclosed in the foregoing that has not previously been generally disclosed and is known to the issuer but which would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer."

Ont. Reg. 1015, R.R.O. 1990, Regulation 1015, Form 33, Item 29 (Tab 13)

83. A similar disclosure requirement relating to take-over bids appears in Item 19 of Form 32 and has been interpreted by the OSC to provide that while shareholders are entitled to material disclosure, there is no entitlement to perfect disclosure:

> The standard of materiality put forth in *TSC Industries, Inc. c. Northway, Inc.*, 426 U.S. 438, 96 S.Ct. 2126 (U.S. Ill. 1976) and adopted in *Re MacDonald Oil, supra,* is informative. To grant the relief requested, the Commission must be persuaded that, on the basis of the evidence presented, the omitted facts are material because a Chapters shareholder would consider the Indigo Financials important when deciding whether to tender shares to the bid. This determination must not be made in isolation, but rather in the context of all the disclosure made available by Trilogy to Chapters' shareholders. As stated in the U.S. Supreme Court in *TSC Industries, supra:*
>
> > ...there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.
>
> Chapters ultimately had to demonstrate how the disclosure of the Indigo Financials, in light of the total amount of disclosure already made, would remedy the uncertainty of the post-bid valuation of the Chapters share price and allow for informed investment decisions.

***Re Chapters Inc.*(2001) 24 O.S.C.B. 1064, at paras 16 -17 (Tab 14)**

84. The OSC has, where appropriate, granted exemptions from the requirement to file certain financial statements in connection with a going private transaction.

***Re Xentel DM Incorporated* (2003), 26 O.S.C.B. 2825 (Tab 15)**

(iii) ***The MCTOs should not prevent a meaningful Special Meeting of the Applicant's Shareholders:***

85. OSC Policy 57-603 (Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements) provides that the OSC will generally respond to a default in filing annual or interim financial statements by issuing a cease trade order only against management and other insiders of the defaulting reporting issuer. The objective of the Policy is to ensure that trades are not made by persons who might be expected to have information which is not publicly available, and to avoid prejudice to those shareholders who have no control over the filings of the issuer. Precluding shareholders from voting on a transaction on the basis of a cease trade order that does not apply to them would be directly contrary to the intent of Policy 57-603:

> OSC Policy 57-603...provides that the OSC will generally respond to a default in filing annual or interim financial statements by issuing a cease trading order against management and other insiders of the defaulting reporting issuer. This differs from its practice prior to *2950995 Canada Inc., supra,* when it would issue a cease trading order that applied to all shares of the reporting issuer. The change in practice was made in order not to prejudice those shareholders of the issuer who had no control over the filing of financial statements.
>
> **Borden Ladner Gervais, *Securities Law and Practice, 3rd Edition,* para 22.7.11 (Tab 16)**
>
> **OSC Policy 57-603 (Tab 17)**

86. The issuance of a cease trading order is an extraordinary power which prevents shareholders from dealing with their property. It is respectfully submitted that a cease trade order should be varied where necessary to permit shareholders to exercise their own judgment with respect to their property.

> While the Commission frequently deems it in the public interest to issue temporary cease trading orders on a timely basis, it recognizes the power as an extraordinary one preventing, as it does, the owners of personal property from dealing with the property through the ordinary mechanisms of the marketplace. Through a figurative stroke of the pen, communicated immediately through the wire services and subsequently through newspapers, what is usually regarded as most freely marketable property, securities, is transformed into unmarketable property transferable only through an exempting order from the Commission. The Commission therefore, views it as imperative that this marketability be restored so soon as it is satisfied that the material facts upon which to base decisions to purchase or sell particular securities are available to all classes of investors and speculators.
>
> ...The public interest does not demand that the Commission, through the use of cease trading orders, attempt to ameliorate the risks by substituting its trading judgments for the public's.

Re Comaplex Resources International Ltd. (Re) **(1989), 12 OSCB 2663 (Tab 18)**

87. It is a well accepted principle of corporate law and in the public interest to protect the right of shareholders to vote at a meeting called to consider transactions put forward by the corporation:

> It is well accepted that the right of shareholders to call meetings is an important protection against the conduct of directors...This sentiment was express by Cotton L.J. In the following fashion in *Isle of Wight Railway Co. v. Tabourdin* (1883), 25 Ch. D. 320 , at p. 329:
>
> It is a very strong thing indeed to prevent shareholders from holding a meeting of the company, when such a meeting is the only way in which they can interfere, if the majority of them think that the course taken by the directors, in a matter which is intra vires of the directors, is not for the benefit of the company.
>
> ***RioCan Real Estate Investment Trust v. RealFund*** **[1999] O.J. No. 1349, at para16 (Tab 19)**

ALL OF WHICH IS RESPECTFULLY SUBMITTED

S. Dale Denis **Leah Price**

FOGLER, RUBINOFF LLP
Barristers & Solicitors
1200 - 95 Wellington Street West
Toronto-Dominion Centre
Toronto, Ontario
M5J 2Z9

Tel: (416) 864-9700
Fax: (416) 941-8876

Solicitors for Hollinger Inc. and 504468 N.B. Inc.