IN THE MATTER OF THE SECURITIES ACT

R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act")

AND

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

AND

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CERTAIN DIRECTORS, OFFICERS AND INSIDERS OF
HOLLINGER INC.

(Application to vary under section 144 of the Act)

SUBMISSION OF STAFF OF THE ONTARIO SECURITIES COMMISSION

OVERVIEW

1. This submission sets out the views of the staff of the Commission ("Staff") regarding the two applications dated March 15, 2005 (the "Applications") brought by the Applicants (as defined below) pursuant to section 144 of the Act to vary the following Orders:

   a) the Order of the Commission dated June 1, 2004, as varied by the Order of the Commission dated March 8, 2005 (the "Hollinger MCTO"), relating to certain directors, officers and insiders (the "Hollinger Respondents") of Hollinger Inc. ("Hollinger"); and

   b) the Order of the Commission dated June 1, 2004, as varied by the Order of the Commission dated March 8, 2005 (the "International MCTO"),

relating to certain directors, officers and insiders (the "International Respondents") of Hollinger International Inc. ("International").

(The Hollinger MCTO and the International MCTO are collectively referred to as the "MCTOs" in this submission.)

2. The applicants in this matter are Hollinger, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Argus Corporation Limited, Conrad M. Black and The Ravelston Corporation Limited ("Ravelston") (collectively, the "Applicants").

3. The MCTOs were imposed because Hollinger and International have failed to comply with their obligations under Ontario securities law to file interim and annual financial statements, related Management's Discussion and Analysis ("MD&A"), and Annual Information Forms. The terms of the MCTOs provide that the MCTOs will remain in effect until two full business days after all necessary filings have been made with the Commission.

4. Hollinger has proposed a transaction (the "Going Private Transaction") by which The Ravelston Corporation Limited ("Ravelston"), which directly or indirectly owns 78.3% of Hollinger's common shares (the "Common Shares") and 3.9% of Hollinger's Exchangeable Non-Voting Preference Shares Series II (the "Series II Preference Shares"), will

   (a) effectively acquire all of the Common Shares that it currently does not own; and

   (b) eliminate the Series II Preference Shares.

   Ravelston is indirectly controlled by Conrad M. Black, an Applicant in this matter.

5. The Going Private Transaction requires the approval of the holders of the Common Shares (the "Common Shareholders") and the Series II Preference Shares (the "Preference Shareholders"). A special meeting of Hollinger shareholders has been scheduled for March 31, 2005 (the "Special Meeting") for this purpose.

6. The Applicants are named as respondents in the Hollinger MCTO and the International MCTO and are therefore prohibited from trading in securities of Hollinger and International, except as permitted by the MCTOs. The Applicants are seeking relief so as to permit certain trades of securities of Hollinger and International, and acts in furtherance of such trades, in connection with the Going Private Transaction.

7. For the Going Private Transaction, Hollinger has compensated for the lack of updated financial statements by

   (a) providing shareholders with a formal valuation of the Common Shares (the "Hollinger Valuation") prepared by GMP Securities Limited ("GMP") in accordance with the requirements of Commission Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* ("Rule 61-501" or the "Rule"); and

   (b) agreeing to increase the amounts paid to Common Shareholders (the "Additional Amount Per Share") if a second formal valuation (the "Updated Valuation") of the Common Shares conducted after the release of International's 2004 audited financial statements results in an increase in the valuation of the Common Shares.

8. Hollinger has also agreed to the creation of a litigation trust (the "CCPR Trust") to address concerns about an ongoing court-ordered inspection into Hollinger's

related party transactions (the "E&Y Inspection") and the value of potential claims that Hollinger and its shareholders may have against Hollinger's related parties (the "Additional Litigation Claims"). Under the terms of the Going Private Transaction, any related party claims other than those included in the Hollinger Valuation will be pursued by the CCPR Trust and the Common Shareholders will have a proportionate interest in the proceeds of litigation deposited in the CCPR Trust.

STAFF RECOMMENDATION

9. A number of proposed intervenors are asking to participate in the hearing of the Applications. In deciding whether intervenor standing should be granted, the Commission may consider the relevance of the arguments raised by the intervenors. Staff will respond, as required, to any further issues raised before the Commission by the intervenors.

10. Staff's current recommendation, based on the materials filed with the Commission to date, is that the Commission grant the relief requested on the basis that it would not be prejudicial to the public interest.

11. Staff is of the view that it would not be prejudicial to the public interest to afford the minority of the Common Shareholders (the "Minority Shareholders") the opportunity to vote on a transaction that would allow them to dispose of their shares on terms they may regard as favourable.

12. Rule 61-501 is the Commission instrument that addresses the disclosure that must be made available to shareholders when they vote to consider a "business combination" in which, among other things, an insider of an issuer proposes to take the issuer private. The focus of Rule 61-501 is on fairness to the holders of the "affected securities", which in this case are the Minority Shareholders, in circumstances in which the controlling shareholder of the issuer can eliminate

their interest without their consent.

13. The Going Private Transaction is a business combination under Rule 61-501. After reviewing the Hollinger Valuation and the enhanced disclosure required under the Rule, Staff is of the view that, in connection with the Going Private Transaction, Hollinger appears to have satisfied the disclosure requirements of the Rule. In addition, as discussed below, due to the unique circumstances surrounding the proposal, the Updated Valuation and the CCPR Trust were introduced as additional measures to enhance the level of fairness to shareholders, as discussed below.

14. As a result, Staff is of the view that the public interest strongly favours allowing the Minority Shareholders to vote on whether to accept the terms of the Going Private Transaction.

BACKGROUND

15. The Applicants have set out in detail the facts related to their applications in paragraphs 1 to 44 of the Applications. The key facts, as summarized below, are set out in the Circular (as defined below) and the Applications.

16. Hollinger is amalgamated under the *Canada Business Corporations Act* (the "CBCA") and is a reporting issuer under the Act.

17. The principal asset of Hollinger is its direct and indirect ownership of 17.4% of the equity and 66.8% of the voting interest in International. Hollinger also owns a portfolio of revenue-producing and other commercial real estate in Canada, including its head office building located at 10 Toronto Street, Toronto.

18. International is incorporated under the laws of Delaware and is a reporting issuer under the Act.

Financial Statements

19. Hollinger is in default of filing:

    (a) its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004, the six-month period ended June 30, 2004 and the nine-month period ended September 30, 2004;

    (b) its annual financial statements (and related annual MD&A) for the year ended December 31, 2003; and

    (c) its Annual Information Form for the year ended December 31, 2003.

20. In June 2004, at the time of the issuance of the International MCTO, International was in default of filing:

    (a) its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004;

    (b) its annual financial statements (and related annual MD&A) for the year ended December 31, 2003; and

    (c) its Annual Information Form for the year ended December 31, 2003.

21. International has partially satisfied its default by filing its 2003 Form 10-K with the United States Securities and Exchange Commission (the "SEC"), which form includes its audited financial statements for the fiscal year ended December 31, 2003 and related MD&A and will constitute Hollinger International's 2003

Annual Information Form for the purposes of Ontario securities law. On January 21, 2005, Hollinger International filed its audited financial statements for the fiscal year ended December 31, 2003 and related MD&A on the System for Electronic Document Analysis and Retrieval ("SEDAR").

22. International is currently in default of filing its interim financial statements (and related interim MD&A) for the three-month period ended March 31, 2004, the six-month period ended June 30, 2004 and the nine-month period ended September 30, 2004.

23. International has publicly disclosed that it does not expect to file its 2004 Form 10-K prior to March 31, 2005.

Management and Insider Cease Trade Orders

24. In May 2004, Hollinger and International applied to the Commission under OSC Policy 57-603 - *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* (the "MCTO Policy") requesting that a Management and Insider Cease Trade Order (as that term is defined in the MCTO Policy) be issued as an alternative to an Issuer Cease Trade Order (as that term is defined in the MCTO Policy).

25. The MCTOs were issued on June 1, 2004 (as varied by orders issued on March 8, 2005) and, as stated earlier, they prohibit the Hollinger Respondents and the International Respondents from trading in securities of Hollinger and International respectively (subject to certain exceptions), until two full business days after Hollinger's or International's, as applicable, required filings with the Commission are brought up to date in compliance with Ontario securities laws. The MCTOs were made pursuant to paragraph 2 of subsection 127(1) of the Act.

26. Hollinger and International have, as recommended in the MCTO Policy, been providing bi-weekly updates on their affairs and progress with respect to remedying the financial statement defaults by way of press releases (the "Default Status Reports").

The E&Y Inspection

27. Pursuant to an order of the Ontario Superior Court of Justice (the "Court"), Ernst & Young Inc. was appointed as inspector pursuant to s. 229(1) of the CBCA to conduct the E&Y Inspection. The E&Y Inspection focuses on ''related party transactions'' (as defined in the Court Order) between Hollinger (including any of its subsidiaries, other than International or its subsidiaries) and its related parties for the period January 1, 1997 to the date of the Order. Although various interim reports of the E&Y Inspection have been filed with the Court, it is unlikely that a final report will be filed with the Court prior to March 31, 2005.

28. The E&Y Inspection was ordered pursuant to an application to the Court under section 248 of the CBCA by a Preference Shareholder, Catalyst Fund General Partner I Inc., that owns 82.1% of the Series II Preference Shares. Catalyst does not own any Common Shares.

29. The Applicants have represented in the Application (at p. 14), and Hollinger has represented in the Hollinger Management Proxy Circular dated March 4, 2005 and filed on SEDAR on March 10, 2005 (the "Circular") (at p. 51) as follows:

> Irrespective of whether the Consolidation is completed or not, the Inspection will continue until it is completed in accordance with the order of the Court and a final report of the Inspector is submitted to the Court.

Additional Litigation Claims

30. According to the non-audited "Alternative Financial Statements" prepared by Hollinger for purposes of the Hollinger Valuation, certain of its directors have been advised that there are Additional Litigation Claims against Ravelston and related corporations and individuals for amounts in excess of $200 million. It is not clear whether the Additional Litigation Claims arise out of the interim reports of the E&Y Inspection.

The Going Private Transaction

31. The Going Private Transaction is structured as a consolidation of the outstanding Common Shares (the "CS Consolidation") and Series II Preference Shares (the "PS Consolidation, and together with the CS Consolidation, the "Consolidations") at a ratio which would result in:

    (a) Ravelston being the sole holder of the Common Shares; and

    (b) the exchange of all Series II Preference Shares for Class A common stock of International ("International A Shares").

32. For the Going Private Transaction to proceed in relation to the Common Shares, the CS Consolidation must be approved at the Special Meeting by (i) at least two-thirds of the votes cast by the Common Shareholders, under section 173 of the CBCA, and (ii) a majority of the Minority Shareholders under Rule 61-501.

33. For the Going Private Transaction to proceed in relation to the Series II Preference Shares, the PS Consolidation must be approved at the Special Meeting by (i) at least two-thirds of the votes cast by the Preference Shareholders, and (ii) at least two-thirds of the votes cast by the Common Shareholders under the CS Consolidation. Any failure to obtain the approval of the Preference Shareholders

will not prevent the CS Consolidation from proceeding, if it is otherwise approved.

34. On November 16, 2004, Ravelston notified Hollinger's Independent Privatization Committee that it would support the Going Private Transaction on the following terms:

(a) the Minority Shareholders would receive $7.25 in cash for each share held by them; and

(b) Preference Shareholders would receive 0.46 of an International A Share for each share held by them.

35. On March 6, 2005, Ravelston amended its offer (the "Revised Offer") as follows:

(a) Minority Shareholders would receive $7.60 in cash for each share held by them plus the Additional Amount per Share as determined by the Updated Valuation to be done after the release of International's 2004 10-K (the "Common Share Consideration"); and

(b) the Preference Shareholders would receive 0.46 of an International A Share for each share held by them (the "Preference Share Consideration").

36. In addition, Common Shareholders (including Ravelston) would receive one contingent cash payment right ("CCPR") per Common Share. Each CCPR will provide Common Shareholders with a proportionate interest in the CCPR Trust that is to be created prior to March 31, 2005.

37. Accordingly, if the necessary shareholder approval at the Special Meeting is obtained, and certain other conditions are satisfied, the following will occur in

connection with the CS Consolidation on or about April 8, 2005:

(a) Hollinger will issue to Ravelston one new (post-consolidation) Common Share in exchange for the 5,766,783 (pre-consolidation) Common Shares currently held, directly or indirectly, by Ravelston;

(b) Hollinger will pay to all other holders of Common Shares the Common Share Consideration for each Common Share held immediately prior to the Effective Date; and

(c) The CCPR Trust will issue CCPRs to all holders of Common Shares, other than Dissenting Shareholders and, if certain SEC approvals are not obtained, any U.S. Holders.

38. Similarly, if the necessary shareholder approval at the Special Meeting is obtained, and certain other conditions are satisfied, the following will occur in connection with the PS Consolidation on or about April 8, 2005:

(a) Hollinger will not issue any new (post-consolidation) Series II Preference Shares to any party since no party holds Series II Preference Shares in an amount equal to or greater than the consolidation ratio (namely, 1,701,995 Series II Preference Shares); and

(b) Hollinger will deliver to all holders of Series II Preference Shares, including Ravelston, the Preference Share Consideration. Upon the completion of the PS Consolidation, there will be no Series II Preference Shares outstanding.

39. The $7.60 in consideration guaranteed to the Minority Shareholders for the Common Shares under the Revised Offer represents a premium of approximately 76% to the closing market price of the outstanding Common Shares on the

Toronto Stock Exchange (the "TSX") of $4.31 on October 28, 2004 (the day that the Going Private Transaction was announced), prior to taking into account any further consideration that may be received by the Minority Shareholders as a result of the Updated Valuation and CCPR Trust.

THE APPLICATIONS

40. Pursuant to the Applications, Hollinger is seeking variations to the MCTOs to permit any direct or indirect trades, including any acts in furtherance of such trades, that may occur in connection with the Consolidations under the Going Private Transactions.

41. Staff is of the view that such relief is required since the Consolidations under the Going Private Transaction will involve, among other things, certain dispositions of securities held by certain of the Hollinger Respondents and International Respondents.

42. For example, the PS Consolidation involves certain direct or indirect trades and acts in furtherance of such trades including, but not limited to,

    (a) The transfer by Preference Shareholders, including Ravelston, of Series II Preference Shares to Hollinger in exchange for the Preference Share Consideration; and

    (b) The transfer by Hollinger of securities of International (i.e., the International A Shares) to Preference Shareholders, in exchange for the Series II Preference Shares, in connection with the PS Consolidation.

43. The CS Consolidation involves certain incidental direct or indirect trades of securities of Hollinger and acts in furtherance of such trades involving Hollinger and certain of the Hollinger Respondents, including, but not limited to, the

following:

(a) the transfer of Common Shares by Barbara Amiel Black (who owns 1,752 Common Shares (or 0.005% of the outstanding Common Shares)), J.A. Boultbee (who owns 1,094 Common Shares (or 0.003% of the outstanding Common Shares)) and Peter Y. Atkinson (who owns 5,479 Common Shares (or 0.016% of the outstanding Common Shares)), each a Hollinger Respondent, in exchange for the Common Share Consideration and CCPRs; and

(b) prior to giving effect to the CS Consolidation, the transfer of registered title to (and not beneficial ownership of) 483,584 Common Shares by 509647 N.B. Inc. to 509645 N.B. Inc., in each case a Hollinger Respondent and a direct or indirect wholly-owned subsidiary of Argus Corporation Limited, to ensure that Ravelston will not, directly or indirectly, receive any Common Share Consideration as a consequence of the CS Consolidation.

44. Staff does not agree with the submissions of Ravelston and certain other Applicants, at paragraphs 33 to 35, inclusive, of their submissions dated March 17, 2005 to the effect that the CS Consolidation and the PS Consolidation does not involve a "trade" under the Act.

ISSUES

45. Section 144 of the Act provides as follows:

> 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.

(2) **Terms and conditions** - The order may be made on such terms and conditions as the Commission may impose.

46. Staff is of the view that in determining whether to vary the MCTOs pursuant to section 144, the Commission should consider the following issues:

(a) Would varying the MCTOs to permit the Going Private Transaction be inconsistent with the MCTO Policy?

(b) Does the Going Private Transaction comply with Rule 61-501?

(c) Would varying the MCTO to permit the Going Private Transaction be prejudicial to the interests of the Minority Shareholders?

DISCUSSION

A. Would varying the MCTOs to permit the Going Private Transaction be consistent with the MCTO Policy?

47. Staff is of the view that the fact that the Commission has issued a management and insider cease trade order or an issuer cease trade order should not be an automatic bar to those who are subject to those orders from participating in a going private transaction. This position is consistent with the Commission's decision in *Re Cinar Corporation* (2004), 27 OSCB 1191 ("*Cinar*"), in which the Commission varied an issuer cease trade order to allow shareholders of an issuer that was in default of filing its financial statements to vote on a proposed going private transaction.

48. Where the substantive requirements of Ontario securities law, including Rule 61-501, have been satisfied and the transaction is not otherwise prejudicial to the public interest, Staff is of the view that a management and insider cease trade

order or an issuer cease trade order should not preclude a person that is prohibited from trading pursuant to the order from proposing to acquire securities by way of a going private transaction. This is also consistent with *Cinar*.

B. Does the Going Private Transaction comply with the requirements of Rule 61-501?

49. The Going Private Transaction is a "business combination" within the meaning of section 1.1 of Rule 61-501 because the interest of the Minority Shareholders may be terminated without their consent in a transaction that will result in Ravelston, a related party of Hollinger, owning all the Common Shares.

50. Rule 61-501 provides that, unless exempt, an issuer proposing to carry out a business combination must obtain an independent valuation of the affected securities (section 4.3(1)), obtain approval from a majority of the independent shareholders ("majority of minority") (sections 4.5 and 8.1) and provide enhanced disclosure in an information circular (section 4.2). These requirements are intended to address the potential for abuse or unfairness caused by the conflict of interest that exists when, as in this case, a controlling shareholder is in effect acquiring the issuer.

Valuation

51. In Staff's view, the Hollinger Valuation prepared by GMP appears to comply with the requirements of Rule 61-501. These requirements are set out in Part 6 of the Rule and additional guidance is provided in Part 5 of the Companion Policy to the Rule (the "Companion Policy"). All of the applicable valuation provisions are discussed below. The purpose of the valuation requirement is to ensure that shareholders have access to an independent source of analysis prior to making their own determinations.

52. Section 6.1 of the Rule requires the valuation to be prepared by a valuator that is independent of all interested parties and that has the appropriate qualifications. We understand that no party has raised any concerns about GMP's independence or qualifications. As required under section 6.2 of the Rule, the facts supporting the conclusion that GMP is independent and qualified to conduct a valuation in connection with the Going Private Transaction are set out at page 38 of the Circular.

53. Subsection 6.4 (1) of the Rule requires a valuation to contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation. GMP's opinion as to a range of values for the Common Shares and the Series II Preference Shares is set out at page C-1 of the Hollinger Valuation, attached as Exhibit "C" to the Circular. The Hollinger Valuation has also been prepared within the time frame required under clause 6.4(2)(b) of the Rule.

54. Clause 6.4(2)(e) of the Rule requires a valuator to provide sufficient disclosure in the valuation to allow readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion. Subsection 5.1(1) of the Companion Policy states that the disclosure standards in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada ("IDA") and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators represent a reasonable approach to meeting the applicable legal requirements. The subsection further provides that the appropriate level of disclosure is ultimately a determination to be made by the valuator in its professional judgment.

55. Staff has reviewed the Hollinger Valuation and is of the view that it provides a level of disclosure that supports the valuator's opinion and the calculations upon which such opinion is based. For example:

(a) it provides a description of Hollinger and its different assets that allows the reader to understand the valuation rationale and approach as well as the various factors influencing value that were considered;

(b) it states that the Common Shares are valued using a net asset value approach combined with a transaction premium approach and discusses the factors considered in selecting the valuation approach;

(c) it discloses the valuation methodologies considered in valuing Hollinger's holdings in International, including the key factors considered and assumptions used; and

(d) it includes the schedules supporting the valuator's opinion.

56. Subsection 5.1(4) of the Companion Policy provides that the valuation should provide a description of any limitations on the scope of review and of the implications of those limitations on the valuator's conclusions. The only scope limitations permitted are those "that arise solely as a result of unusual circumstances". Accordingly, the Commission has anticipated that there may well be unusual circumstances in which scope limitations would be appropriate, as is the case with the Going Private Transaction. This provision of the Companion Policy provides guidance to valuators on how they may be able to explain scope limitations to security holders relying on the valuation. In the case of the Hollinger Valuation, GMP's scope limitations and their implications are clearly set out under "Unique and Unusual Circumstances" and "Additional Assumptions and Limitations". Where applicable, scope limitations are also included throughout the Hollinger Valuation.

57. Clause 6.4(2)(a) of the Rule requires a valuation to be prepared in a diligent and professional manner. In Staff's view, there does not appear to be any evidence

that the Hollinger Valuation was not prepared in a diligent and professional manner by GMP.

58. In Staff's view, the Hollinger Valuation appears to comply with the requirements of the Rule.

Minority Approval

59. Under Rule 61-501, the CS Consolidation will require the approval of a majority of the Minority Shareholders (which excludes Ravelston and its affiliates) attending in person or by proxy at the Special Meeting.

C. Would varying the MCTO to permit the Going Private Transaction be prejudicial to the interests of the Minority Shareholders?

60. Section 144 of the Act requires the Commission to consider whether it would be prejudicial to the public interest to vary the MCTOs to allow the Going Private Transaction to proceed. In Staff's view, the public interest that the Commission should consider in these circumstances is the interests of the Minority Shareholders as it is their right to vote on the Going Private Transaction that is at issue.

61. Staff submits that this public interest analysis should have regard to the Additional Amount per Share that may be payable upon completion of the Updated Valuation and the potential value of the CCPRs. As indicated earlier in these submissions, the result of this analysis strongly favours the right of the Minority Shareholders to vote on the Going Private Transaction.

62. Staff has considered the public interest concerns raised by the lack of current and certain historical financial disclosure for Hollinger and International, the possibility of premature termination of the E&Y Inspection, and the difficulty of

valuing claims arising from the E&Y Inspection and the Additional Litigation Claims. In Staff's view, as discussed in more detail below, the combination of the Hollinger Valuation, the Additional Amount per Share potentially payable upon completion of the Updated Valuation and the possibility of future payments from the CCPR Trust provides, on balance, sufficient justification for permitting the Minority Shareholders to vote on the Going Private Transaction.

Financial Disclosure Concerns

63. Staff is of the view that the financial disclosure concerns are adequately addressed by the Updated Valuation mechanism, the Hollinger Valuation and other public disclosure available to the Minority Shareholders.

The Updated Valuation

64. Hollinger's principal asset is its control position in International. As part of the terms of the Going Private Transaction, a mechanism has been put in place to enable the Minority Shareholders to benefit from any increase in the value of the Common Shares that results from the release of International's Form 10-K relating to its audited annual financial statements for December 31, 2004. An independent valuator under the supervision of the Independent Privatization Committee will prepare an Updated Valuation that will take into account the new information. The Updated Valuation will be publicly disclosed upon receipt by Hollinger. Holders of Common Shares, other than those that have dissented, will receive the Additional Amount per Share that is equal to the difference by which the mid-point of the range in the Updated Valuation exceeds $7.39, being the mid-point of the value range determined for the Common Shares in the Hollinger Valuation. This additional amount has been guaranteed by Ravelston. This mechanism will provide the Minority Shareholders with the benefit of any increase in value indicated by the updated International financial statements.

The Hollinger Valuation

65. Hollinger's shareholders also have the benefit of the Hollinger Valuation. GMP determined that it was appropriate to value (i) Hollinger using a net asset value approach and (ii) the Common Shares using a combination of net asset value and transaction premium to market approach. GMP used three different methodologies to value International and then applied weights according to its estimate of the relative importance of each valuation method. As a result, the Hollinger Valuation provides considerable useful information for shareholders to guide them in making their decisions.

Other Disclosure

66. In addition to the Hollinger Valuation, shareholders of Hollinger have access to the Default Status Reports for Hollinger and International, the results of the interim reports relating to the E&Y Inspection, International's 2003 10-K, and the Alternative Financial Information that was prepared in connection with the Hollinger Valuation.

The E&Y Inspection and the Additional Litigation Claims

67. In Staff's view, the concerns raised about the completion of the E&Y Inspection and the failure to value claims arising from the inspection or from the Additional Litigation Claims are adequately addressed by, respectively, Ravelston's disclosure in the Information Circular stating that it will allow the E&Y Inspection to conclude and by the establishment of the CCPR Trust.

68. Under the terms of the Going Private Transaction, Minority Shareholders will receive as consideration one CCPR for each Common Share. The CCPRs will be issued by the CCPR Trust, which will be established prior to March 31, 2005.

69. The purpose of the CCPR Trust is to ensure that the Minority Shareholders will participate in the future proceeds, if any, received as a result of any claims that Hollinger or the Minority Shareholders may have against Hollinger's related parties, whether or not those claims arise out of the E&Y Inspection. As a result, the CCPR Trust will be able to pursue the Additional Litigation Claims, any claims arising out of the E&Y Inspection and shareholder oppression claims. Ravelston has agreed that it will allow the E&Y Inspection to be concluded and that the funds deposited in the CCPR Trust for the benefit of the Minority Shareholders will not be used to pay for the inspection.

70. The formation of the CCPR Trust and the issuance of the CCPRs address the uncertainty caused by the litigation that Hollinger is currently engaged in and that it may become a party to, whether as plaintiff or defendant, and provides the Minority Shareholders with the benefit from any upside to that litigation.

71. The CCPR Trust will have an initial term ending on June 10, 2011, with the possibility of two extensions of 3 years each to conclude litigation that commenced prior to the expiry of the original term. Ravelston will fund the CCPR Trust up to the amount of $10 million. The CCPR Trust will also be able to use litigation proceeds to fund the litigation. The CCPR Trust will be managed by an independent litigation committee that will be required make decisions that are in the best interests of the CCPR holders.

72. The CCPR Trust does not have an impact on any claims that Minority Shareholders choose to bring for oppression outside the CCPR Trust but, to the extent that oppression actions are taken within the CCPR Trust, they will be paid for by Ravelston.

73. The CCPR Trust provides Hollinger's Minority Shareholders with a number of advantages. First, they can cash out under the Going Private Transaction at a substantial premium to the pre-announcement market price without giving up

their future claims against Hollinger's related parties. Second, they do not have to pay for the litigation of those claims as the CCPR Trust will be funded partly by Ravelston and partly by future proceeds of litigation to the extent that the litigation panel of the CCPR Trust considers this advisable. Third, shareholders do not need to be concerned that the E&Y Inspection may be prematurely terminated as Ravelston has stated in the Circular and in the Applications that it will allow it to be concluded. Fourth, they will not have to pay their proportionate share of the cost of the E&Y Inspection even though they will be entitled to share in any proceeds of litigation resulting from the inspection. Finally, instead of risking having the share price drop back to the pre-announcement level and having to speculate on whether future litigation claims will result in the recovery of the share price, they can vote to accept the value of the company without these claims and have a chance to recover them in the future.

Shareholder Choice

74. The Commission, in a number of cases involving take-over bid defensive tactics, has acknowledged the importance of shareholder choice in determining whether they wish to dispose of their shares to an offeror. For example, in *Re Canadian Jorex Limited* (1992), 15 OSCB 257 at 266-7, the Commission stated:

> ...
>
> For us, the public interest lies in allowing shareholders of a target company to exercise one of the fundamental rights of share ownership – the ability to dispose of shares as one wishes – without undue hindrance from, among other things, defensive tactics that may have been adopted by the target board with the best of intentions, but that are either misguided from the outset or, as here, have outlived their usefulness.
>
> ...
>
> In Mr. Ward's view, therefore, the ultimate decision as to the value and appropriateness of a given bid, and thus as to whether or not it should be considered to be acceptable, should be

> left in the hands of the target board or its independent committee, and their professional advisers. Clearly, this is not the view that we take (nor does National Policy 38 [predecessor to NP 62-202 – *Defensive Tactics*], for that matter), since we have every confidence that the shareholders of a target company will ultimately be quite able to decide for themselves, with benefit of the advice they receive from the target board and others, including their own advisers, whether or not to dispose of their shares and, if so, at what price and on what terms. And to us the public interest lies allowing them to do just that.

75. In *Re Chapters Inc.* (2001), 24 OSCB 1657, the Commission, in cease trading a poison pill that would have deprived shareholders of the choice of tendering their shares to an existing bid, pending the launching of a competing bid favoured by the target company's directors, said at page 1662:

> Shareholders are more than capable of deciding between these factors and factoring in such considerations as market risk and the time value of money. The premise of the [take-over bid] legislation is based on shareholder choice and shareholders should have the right to exercise that choice.

76. The Delaware Court of Chancery in *Chesapeake Corp. v. Shore*, 771 A.2d 293 (2000), in disallowing amendments to articles of incorporation that would have resulted in a supermajority voting requirement being imposed as a defensive tactic, rejected a paternalistic approach toward shareholders and stated at page 328 that:

> Our law should also hesitate to ascribe rube-like qualities to stock-holders. *If stockholders are presumed competent to buy stock in the first place, why are they not presumed competent to decide when to sell in a tender offer after an adequate time for deliberation has been afforded them?* (italics in original)

77. This jurisprudence is consistent with shareholder choice as a significant public interest concern in change of control or going private transactions. With respect to the Going Private Transaction, Staff is of the view that there are adequate safeguards in place to eliminate any coercive elements and allow the Minority Shareholders to make their own decisions on how to vote.

Other Considerations

78. The Common Shares were trading at prices ranging from $3.10 to $4.31 during the month preceding the announcement of the Going Private Transaction. Staff submits that it is not unreasonable to expect that the price of its Common Shares will drop to a price approximating the pre-announcement level if the Minority Shareholders are not given the opportunity to vote on the Going Private Transaction (the closing price of the Common Shares on the TSX on March 1, 2005 was $7.28). It is unlikely that there would be a control premium attached to the Common Shares because, other than Ravelston, there is no other realistic purchaser of the Minority Shareholders' interest at this point in time. In addition, by virtue of the International poison pill, International has a veto over any arm's length change of control at the Hollinger level. Hollinger's Independent Privatization Committee has noted at page 35 of the Circular that Hollinger has not received any proposals for an alternative transaction, that Ravelston has not indicated a desire to divest its interest, and that the Common Shares lack liquidity and have a limited trading volume.

79. In these circumstances, it is Staff's view that the Minority Shareholders should be allowed to determine for themselves whether or not they want to remain shareholders of Hollinger. There is no guarantee that the March 31, 2005 deadline by which the Special Meeting with respect to the Going Private Transaction must be held can be extended or, if extended, whether Ravelston will be willing to offer the terms it is currently offering. Minority Shareholders should be the ones to decide whether to accept the consideration being offered to them now (with the additional potential upside) or to speculate on the possibility of future price appreciation which may not materialize.

80. Some of the applicants for standing in the hearing have expressed opposition to the Going Private Transaction on the basis of alleged conduct of certain principals

of Ravelston and the possible effect on International if Ravelston's ownership of the Common Shares changes from 78% to 100%. The conduct issues are being addressed in numerous regulatory and court proceedings (including by the Commission) and, in Staff's view, do not detract from public interest considerations that favour giving the Minority Shareholders the opportunity to vote on the Going Private Transaction. The same holds true for any potential effects of the Going Private Transaction on International, which are speculative at best. In this connection, it should be noted that

(a) Although this is referred to as a "going private transaction", Hollinger will remain a "reporting issuer" in Ontario unless and until the Commission makes a further Order deeming Hollinger to have ceased to be a reporting issuer;

(b) The Hollinger MCTO will remain in place unless and until the Commission makes a further Order revoking it or Hollinger remedies all of its filing deficiencies; and

(c) The International MCTO will remain in place unless and until the Commission makes a further Order revoking it or International remedies all of its filing deficiencies.

CONCLUSION

81. For all of the above reasons, our recommendation, based on the information we have at this stage of the proceedings, is that the Commission grant the requested relief on the basis that to do so would not be prejudicial to the public interest.

March 19, 2005

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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