

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 INC.
(Application to vary under section 144 of the Act
to be heard April 21, 2005)

SUBMISSION OF STAFF OF THE ONTARIO SECURITIES COMMISSION

OVERVIEW

1. This submission sets out the views of the Staff of the Commission (“Staff”) in connection with the application dated April 11, 2005 (the “Application”) brought by the Applicants (as defined below) pursuant to section 144 of the Act to vary the Order of the Commission dated June 1, 2004, as previously varied by the Order of the Commission dated March 8, 2005 (the “Hollinger MCTO”), relating to certain officers, directors and insiders (the “Hollinger Respondents”) of Hollinger Inc. (“Hollinger”).

2. The applicants in this matter are Argus Corporation Limited (“Argus”) and its numbered company subsidiaries 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc. and 509647 N.B. Inc. (the “Numbered Subsidiaries”, and collectively with Argus, the “Applicants”). The Applicants are “insiders” of Hollinger and accordingly have been included as Hollinger Respondents in the Hollinger MCTO. As a result of the Hollinger MCTO, the Applicants are prohibited from trading in securities of Hollinger, except as permitted by the

Hollinger MCTO.

3. The Commission issued the Hollinger MCTO in June 2004 as a result of the failure by Hollinger to comply with its obligations under Ontario securities law to file interim and annual financial statements, related Management's Discussion and Analysis ("MD&A"), and an Annual Information Form ("AIF"). The Hollinger MCTO was issued in accordance with the terms of OSC Policy 57-603 *Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements* (the "MCTO Policy"). The terms of the Hollinger MCTO provide that the Hollinger MCTO will remain in effect until two full business days after all necessary filings have been made with the Commission.
4. The Applicants have made this Application to vary the Hollinger MCTO to permit the indirect sale by Argus of up to 200,000 Retractable Common Shares ("Shares" or "Hollinger Shares") of Hollinger in order for Argus to pay dividends to the holders of its publicly traded Class A and Class B Preference Shares and to pay certain other expenses, as described below. The Applicants estimate that the proceeds of such sales will be in the order of \$1.1 million.

STAFF POSITION

5. This Application is being made pursuant to section 144 of the Act. Section 144 of the Act provides that the Commission may make an order varying an order of the Commission if, in the Commission's opinion, to do so would not be prejudicial to the public interest.
6. In the present Application, the Applicants are seeking to vary a "management and insider cease trade order" (an "MCTO") that has previously been issued by the Commission pursuant to paragraph 2 of subsection 127(1) of the Act and in accordance with the MCTO Policy.

7. Based upon a review of the materials that have been filed to date, Staff are of the view that the Applicants have failed to demonstrate that the discretionary relief that they seek would not be prejudicial to the public interest. Accordingly, Staff are unable to recommend that the Commission grant the requested relief.

8. Staff have identified a number of public interest concerns associated with the requested relief. In summary, these concerns are as follows:
 - a. Staff are of the view that the requested relief is contrary to the principles that underlie the MCTO Policy, as recently articulated by the Commission in its Decision¹ dated March 27, 2005 relating to an application in connection with a proposed “going private transaction” involving Hollinger (the “Hollinger GPT Variation Application”). The MCTO Policy seeks to prevent trades by officers, directors and other insiders who may have an “informational advantage” over other market participants. The Applicants have failed to demonstrate that this informational advantage is not present in this case.

Moreover, Staff are of the view that the Application fails to adequately address whether the proposed Argus trades may contravene section 76 of the Act. The Executive Committee of Argus is comprised of Conrad Black, David Radler and Peter White. These individuals are also shareholders, directors and executive officers of The Ravelston Corporation Limited (“Ravelston”). Conrad Black, Ravelston and certain related parties are currently the subject of a Court-ordered inspection by Ernst & Young Inc. (the “Inspector”) in relation to a substantial number of related party transactions. Staff have questioned whether information regarding these transactions may constitute material undisclosed information about Hollinger. The Applicants have represented that Argus has no knowledge of any material fact or material change with respect to

Hollinger that has not been generally disclosed. However, the Applicants have not adequately explained the basis for this conclusion, in view of the fact that certain senior officers and directors who are the “mind and management” of Argus are the same persons who were involved in certain related party transactions that are the subject of the Inspection.

- b. Staff are concerned about the potential precedential impact of this Application both for Argus and for other Hollinger Respondents, such as Ravelston. The Applicants have represented that it is probable that Argus will need to make a similar application(s) in the future. Although the number of Shares that are the subject of the proposed Argus trades may be relatively small, Staff are of this view that this Application may establish a precedent for future applications involving increasingly large numbers of Shares. If the principles and objectives that underlie the MCTO Policy are not given effect in the present Application involving a small number of Shares, Staff are concerned that it may be difficult to assert such principles and objectives in the context of future applications, which may involve significantly larger amounts of Shares.

- c. The Applicants have not demonstrated that the potential prejudice to the public holders of the Argus Class A Preference Shares and Class B Preference Shares would warrant granting discretionary relief in the circumstances of this Application. Staff note that the dividends are cumulative and that there is no obligation to pay dividends unless and until they are declared by the Argus board of directors.

¹ *Re Hollinger Inc., et al* (2005), 28 OSCB 3309 (the “Hollinger GPT Variation Decision”) at Tab 2, Staff Submissions and Book of Documents (“Staff Submissions”).

- d. The Applicants have not adequately addressed a number of questions relating to the ability and willingness of Ravelston, the parent company of Argus, to provide financial support to Argus. While the Applicants have put in issue the willingness and/or ability of Ravelston to continue to advance funds to Argus, the Applicants have not filed any evidence in relation to Ravelston's financial situation. Staff are of the view that this evidence is relevant to the Commission's consideration of the Application, particularly in view of the fact that i) Ravelston has previously provided such support, ii) as described below, Ravelston has recently received a \$60 million dividend from Argus, and iii) it appears that part of the proceeds from the proposed Argus trades may be of direct or indirect benefit to Ravelston.

Staff understand that on April 19, 2005 Ravelston filed an application in the Ontario Superior Court under the *Companies' Creditors Arrangement Act* (the "CCAA") seeking protection from its creditors. Staff have not been served with any materials in relation to this CCAA application and are unable to respond as to the effect, if any, that the CCAA application may have on this Application. Staff note, however, that the CCAA application may suggest that evidence in relation to the financial situation and history of Ravelston may shortly be placed on the public record. As noted above, Staff are of the view that such evidence may be relevant to this Application.

- e. Staff are of the view that the Applicants have failed adequately to address questions relating to the payment by Argus of approximately \$60 million in dividends to Ravelston in April 2004 that resulted in extinguishing an approximately \$59 million debt obligation owed by Ravelston to Argus. Staff note that the liquidity concerns underlying the need to file the

Application can, to some extent, be attributed to the decision of the Argus board of directors, which did not have any independent directors at the time, to declare and pay the dividend to Ravelston when it was clear that Argus would not be receiving any dividend income from Hollinger in the near future.

- f. The Applicants have not adequately addressed questions relating to the extent to which payments of Argus litigation expenses may reasonably be considered as also being for the benefit of Ravelston and parties related to Ravelston. In view of the fact that Ravelston's indirect interest in Hollinger is held primarily through its Argus holdings, it may be reasonable to conclude that Argus litigation expenses ultimately represent Ravelston litigation expenses. It may be necessary for Ravelston to defend litigation relating to Argus since such litigation, if successful, will necessarily have an impact on Ravelston's principal asset, its indirect holdings in Hollinger. Staff are of the view that this evidence is relevant to the Commission's consideration of the Application.

BACKGROUND

(a) The Hollinger MCTO

9. Hollinger is amalgamated under the *Canada Business Corporations Act* (the "CBCA") and is a reporting issuer under the Act.
10. Hollinger is currently 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 for the year ended December 31, 2004; and
 - c. its AIF for the year ended December 31, 2003 and for the year ended December 31, 2004.
11. In May 2004, Hollinger applied to the Commission under 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).
12. The Hollinger MCTO was issued on June 1, 2004 pursuant to paragraph 2 of subsection 127(1) of the Act and was varied by a further order issued on March 8, 2005 pursuant to section 144 of the Act and paragraph 2 of subsection 127(1) of the Act. The Hollinger MCTO prohibits the Hollinger Respondents from trading in securities of Hollinger, subject to certain exceptions contained in the Hollinger MCTO, until two full business days after Hollinger’s required filings with the Commission are brought up to date in compliance with Ontario securities laws.

Hollinger MCTO, Staff Submissions, Tab 3.

13. 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 Hollinger International Inc. (“International”). International is incorporated under the laws of Delaware and is a reporting issuer in the Province of Ontario.
14. International is also in default of certain requirements of Ontario securities law and has previously made application for and been granted a management and insider cease trade order (the “International MCTO”). The Applicants are not seeking relief in respect of the International MCTO. The Applicants take the position that Hollinger is unable to remedy its default as a result of the continuing

default by International.

International MCTO, Staff Submissions, Tab 4.
Paragraph 29 of the Argus Application Record.

(b) Information about the Applicants

15. The Applicants in this Application are Argus and the Numbered Subsidiaries.
16. Argus is a corporation governed by the *CBCA* and is a reporting issuer in Ontario.
17. Argus is also in default of certain requirements of Ontario securities law and has previously made application for and been granted a management and insider cease trade order (the "Argus MCTO"). The Applicants are not seeking relief in respect of the Argus MCTO. The Applicants take the position that Argus is unable to remedy its default as a result of the continuing default by International and Hollinger.

Argus MCTO, Staff Submissions, Tab 5.
Paragraph 29 of the Argus Application Record.

18. Argus does not hold any Shares of Hollinger directly. Rather, Argus holds its Shares through the Numbered Subsidiaries. The only Applicants that will be directly trading Hollinger Shares, should the requested relief be granted, are certain of the Numbered Subsidiaries.
19. The corporate structure of the Applicants, and the relationship of the Applicants to Hollinger and International, is illustrated in the organizational charts included in the Staff Book of Documents.

Argus organizational charts, Staff Submissions, at Tab 6.
Organizational Chart from Breeden Report, Staff Submissions, at Tab 7.

(c) Ravelston's Ownership and Control of Argus

20. Ravelston is a holding company, the principal asset of which is its direct and indirect interest in Hollinger. As of March 4, 2005, Ravelston owned, directly or indirectly, 27,363,170 Shares of Hollinger, representing approximately 78.3% of all issued and outstanding Shares, and approximately 3.9% of the issued and outstanding Hollinger Series II Preference Shares. Conrad Black indirectly controls Ravelston.

Hollinger Management Proxy Information Circular dated March 4, 2005 at p. 69, Staff Submissions, at Tab 8.

21. Argus represents the primary vehicle through which Ravelston holds its interest in Hollinger. Argus is a subsidiary of Ravelston. All of the issued and outstanding common shares of Argus (the "Argus Common Shares") are held by Ravelston. The only voting shares of Argus are the Argus Common Shares.

Argus Application Record, paragraphs 5 and 6.

22. As described in the Argus Application Record, the only business of Argus today is its indirect holding of 21,596,387 Shares of Hollinger, being approximately 61.8% of Hollinger's 34,945,776 issued and outstanding Shares.

Argus Application Record, paragraph 17.

23. The registered office of Argus is currently the same as that of Ravelston, 10 Toronto Street, Toronto, Ontario M5C 2B7.
24. As illustrated in the following table, a majority of the senior officers and directors of Argus are also senior officers and/or directors of Ravelston:

Individual	Position with Argus	Position with Ravelston
Conrad Black	Director Chairman of the Board and CEO Member of the Executive Committee	Indirect control Direct or indirect shareholder Director and/or executive officer
F. David Radler	Director President Member of the Executive Committee	Direct or indirect shareholder Director and/or executive officer
Peter G. White	Director Executive Vice President and Secretary Member of the Executive Committee Member of the Audit Committee	Direct or indirect shareholder Director and/or executive officer
Barbara Amiel Black	Director	No information available
James A. Richardson	Director Member of the Audit Committee	No information available
J.A. Boulton	Director Executive Vice President	Indirect shareholder Director and/or executive officer
Robert E. Tyrrell	Director Member of the Audit Committee	No information available
Jonathan H. Marler	Director Member of the Audit Committee	No information available
Frederick A. Creasey	Vice President	Officer
Monique L. Delorme	Chief Financial Officer	No information available
Tatiana Samila	Treasurer	Officer

Argus Application Record at Tab A

Hollinger Management Proxy Information Circular dated March 4, 2005 at pp. 55-56,

Staff Submissions, Tab 8.

25. In view of the foregoing, Staff are of the view that Argus may reasonably be considered as a holding vehicle through which Ravelston holds its indirect interest in Hollinger. The 61.8% interest in Hollinger indirectly held by Argus represents

a substantial majority of the 78.3% interest in Hollinger held by Ravelston.

(d) The Proposed Argus Trades and Use of Proceeds

26. In the present Application, Argus is seeking a variation of the Hollinger MCTO to permit the sale by the Numbered Subsidiaries of up to 200,000 Hollinger Shares for estimated proceeds of up to \$1.1 million.

27. The Application indicates that the proceeds will be used substantially as follows:

Use of Proceeds	Amount of Proceeds	Extent to which Proceeds will, directly or indirectly, be for the benefit of Ravelston
Quarterly dividend on the Class A and Class B Preference Shares	\$503,406 (for May 1/05 and Aug. 1/05 dividends)	Ravelston holds 2,900 of the issued Class A Preference Shares. The Applicants estimate that approximately \$1,800 will be paid to Ravelston as dividends. (See para. 7 to 11 of the Argus Application Record.)
Outstanding fees for legal services	\$164,752	No information provided Staff take the view that such fees are indirectly for the benefit of Ravelston. (See para. 73 of the Argus Application Record.)
Accounting expenses	\$27,013	No information provided
Transfer agent fees	\$6,846	Nil
CCN Matthews for Report and News Release filings	\$14,225	Nil
Travel and accident insurance for employees	\$1,078	No information provided
Total Allocated Estimated Proceeds of Sale	\$717,320	

Total Unallocated Estimated Proceeds of Sale	\$382,680	The Application indicates that such fees may be used for <ul style="list-style-type: none">• Directors' fees• Costs associated with sale of Shares• TSX listing fees• Defence and litigation expenses• Other operating expenses. Certain of these expenses may be of direct or indirect benefit to Ravelston.
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(e) Argus' Financial Situation

28. As described in paragraphs 47 to 51, inclusive, of the Argus Application Record, Argus has represented that it currently has no income as a result of the fact that Hollinger has paid no cash dividends on its Shares since the first quarter of 2003.

29. As described in paragraph 15 of Argus' submissions at p. 13 of the Argus Application Record, Argus takes the position that if it is not permitted to sell the Shares that are the subject of the Application,

... its ongoing viability as an operating company and as a going concern will be severely prejudiced.

Argus will be unable to defend the litigation claims made against it and meet other litigation challenges.

It will be unable to pay its dividends and to pay its operating expenses.

It will be unable to pay its TSX listing expenses and its expenses related to regulatory compliance, including Reports and news releases.

It will be unable to prepare its financial books and records and file its financial information and eventually normalize its public reporting.

Its MCTO would soon be replaced by a Cease Trade Order and its public shareholders will lose

the trading liquidity that they presently enjoy.

As a result, the public shareholders of Argus will be harmed.

Argus Application Record, paragraph 15, at p. 13.

(f) The April 2004 Dividend Payment by Argus to Ravelston

30. Argus' principal source of revenue historically has been dividend income from its investment in Hollinger. However, Hollinger last paid a cash dividend in the first quarter of 2003. Argus has acknowledged that "There is no certainty that the Company will, in the future, receive cash dividends on its Hollinger Retractable Common Shares."

Argus Annual Information Form ("AIF") dated May 19, 2004 at p. 5, Staff Submissions at Tab 9.

31. Argus paid a dividend in excess of \$60 million to Ravelston in April 2004:

The Company paid a dividend of \$7.2156 per share on each outstanding Common Share and Class C Participating Non-Voting Preference Share of the Company on April 7, 2004 to The Ravelston Corporation Limited ("Ravelston"), the holder of these shares. The total amount of these dividends paid by Argus was \$60,242,496.01.

Argus AIF dated May 19, 2004 at p. 6, Staff Submissions at Tab 9.

32. Ravelston concurrently used this dividend payment to repay in excess of \$59 million in indebtedness to Argus:

Ravelston concurrently paid to Argus approximately \$59,242,289 due to Argus from the proceeds. This amount had been advanced by Argus to Ravelston at various times over the period dating back to at least 1997.

Argus AIF dated May 19, 2004 at p. 6, Staff Submissions at Tab 9.

33. As described in the material change report dated April 16, 2004 and filed by Argus, Argus represented that the payment of this dividend would not impact upon Argus' obligations to its Preference Shareholders:

Argus' dividend payment and Ravelston's repayment to Argus are not anticipated to result in a change in the business or operations of Argus.

Argus is to continue to pay quarterly dividends on its Class A and Class B Preference Shares in accordance with their share conditions. The next quarterly dividend on those shares is to be paid on May 1, 2004.

Argus continues to hold funds to provide for the payment of subsequent quarterly dividends on its Class A and Class B Preference Shares and indirectly holds approximately 61.7% of Hollinger Inc.'s common shares.

Material Change Report dated April 16, 2004 and filed by Argus, Staff Submissions at Tab 10.

34. As described in the material change report dated April 16, 2004, “the dividend declaration and payment was approved by Argus' Board of Directors after full consideration of the circumstances of Argus and its shareholders. Argus did not have any independent directors at the time of the transactions.”

(g) Alleged Inability of Ravelston to Provide Support to Argus

35. In the present Application, Argus has requested relief in part on the basis of certain representations that have been made about the ability and willingness of *Ravelston* to provide support to Argus:

Ravelston's Inability to Provide Support

52. On January 31, 2005, Ravelston loaned \$251,703 to Argus to provide the funds for Argus to pay its dividends at February 1, 2005, which dividends were paid on that date. The loan was made pursuant to a promissory note bearing no interest and due on February 28, 2006.
53. Ravelston has recently advised Argus that it is unable to advance additional funds to Argus for it to provide for the payment of its May 1, 2005 dividend or operational expenses.

Argus Application Record, paragraphs 52 and 53.

LEGAL PRINCIPLES

(a) Purposes and Principles of the Act

The Commission's Public Interest Mandate

36. The Commission's mandate is to ensure the protection of the public interest. The purposes of the Act are expressly set out at section 1.1:
- a. to provide protection to investors from unfair, improper or fraudulent practices; and
 - b. to foster fair and efficient capital markets and confidence in capital markets.

Securities Act, section 1.1

37. In pursuing the purposes of the Act, the Commission is mandated to have regard to six fundamental principles, including the principle that the "primary means for achieving the purposes" of the Act are "...restrictions on fraudulent and unfair market practices and procedures" and "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants."

Securities Act, section 2.1

(b) Section 144

38. Section 144 of the Act provides that the Commission may make an order varying an order of the Commission if, in the Commission's opinion, to do so would not be prejudicial to the public interest.
39. The Commission has recently indicated that the exercise of discretion involved in a section 144 application to vary a management cease trade order should not be viewed as a narrow, "technical" exercise, but rather requires a broad consideration

of the all of the facts and circumstances relevant to the Application.

Hollinger GPT Variation Decision, para. 27, Staff Submissions, Tab 2.

40. In Staff's submission, the consideration of the public interest in the present Application should not be restricted to the relatively small number of Shares that are proposed to be sold or the proposed use of proceeds but should consider broader market integrity issues and the principles underlying the MCTO policy.

(c) Principles underlying the MCTO Policy

41. The Commission has recently had occasion to consider the principles that are relevant to an application to vary an MCTO issued in accordance with the MCTO Policy in the Hollinger GPT Variation Application.
42. In the Decision of the Commission dated March 27, 2005 resulting from that application, the Commission held at paragraphs 40 to 42, inclusive, as follows:

OSC Policy 57-603

[40] The MCTOs do not, and are not intended to, restrain trading by shareholders of Hollinger Inc. and International generally. Pursuant to OSC Policy 57-605, the Commission will generally, where a company defaults in filing the Required Disclosure, impose an MCTO to prevent trades by those who may have material, undisclosed information. In other words, the Policy seeks to prevent trades by officers, directors and other insiders who may have an informational advantage.

[41] The Applicants submit that the Commission must find that the related parties who are proposing the GPT and who are subject to the MCTOs *in fact* have an informational advantage in the form of material, undisclosed information as a pre-condition to a refusal to vary the MCTOs. This attempt to shift the burden onto the Commission must fail.

[42] The MCTOs are prophylactic in nature. As noted above, they are generally imposed as a matter of course, not because the Commission has made a finding that the relevant subjects of the MCTOs have an informational advantage *in fact*, rather, because they *may* have such an advantage. To accept the Applicants' submissions in this regard would not only serve to shift the burden of proof onto the Commission, but would inappropriately fetter the Commission's discretion by creating a condition precedent to its exercise. These are applications to vary MCTOs under section 144 of the Act. The onus rests with the Applicants to demonstrate that the discretionary relief they seek would not be prejudicial to the public interest.

43. In Staff's submission, the "prophylactic nature" of the MCTO is informed by the statutory prohibition on insiders and other persons in a special relationship with a reporting issuer trading with knowledge of undisclosed material information about a reporting issuer contained in section 76 of the Act.

44. Section 76 of the provides that

No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

Securities Act, section 76(1).

45. Argus is a "person or company in a special relationship with a reporting issuer", as that term is defined in s. 76(5) of the Act, for the reason that Argus holds approximately 61.8 % of Hollinger Shares and accordingly is an "insider" of Hollinger.

(d) Preliminary Issue – Do Conrad Black and Ravelston also require relief?

46. Staff have advised Argus that Staff are of the view that Ravelston (and potentially other Hollinger Respondents) also require relief in order for the proposed Argus trades to proceed. Ravelston is named as a Hollinger Respondent on the Hollinger MCTO. The Hollinger MCTO provides that "... all trading, whether direct or indirect, shall cease...". As noted above, Argus represents the primary vehicle through which Ravelston holds its interest in Hollinger. Any sale by Argus of its Hollinger Shares will represent an indirect sale of, and will necessary reduce, Ravelston's indirect interest in Hollinger.

47. In response to this comment, Ravelston has advised Staff as follows:

... Ravelston had no role in the commencement of this proceeding and does not seek any relief, directly or indirectly. It is our view that if the application by Argus is successful, any trade carried out by Argus pursuant thereto would not be an indirect trade by Ravelston. ...

If, notwithstanding the foregoing, Commission staff believe that there is a technical requirement for Ravelston to be a party to the proceeding in order for the Commission to make such a remedial order, Ravelston would be agreeable to being added as a named party to the proceeding, but only on the express understanding that it is not deemed to be an applicant and will not be considered, for any purpose, to have made the application, sought relief, obtained the benefit of any relief granted or be bound by any findings made by the Commission.

Letter dated April 15, 2005 from Ravelston counsel to Argus counsel and to OSC Staff, Staff Submissions, at Tab 11.

48. In view of all the circumstances of this Application, Staff do not agree with the statement that “any trade carried out by Argus pursuant thereto would not be an indirect trade by Ravelston.” Staff note that Argus is a subsidiary of Ravelston. All of the issued and outstanding Argus Common Shares are held by Ravelston. Conrad Black indirectly controls Ravelston. Conrad Black is the Chairman of the Board and CEO of Argus. The Executive Committee of Argus is comprised of Conrad Black, David Radler and Peter White. These individuals are shareholders, directors and executive officers of Ravelston. In view of these circumstances, Staff do not believe that the acts and decisions of Argus can be meaningfully separated from the acts and decisions of Ravelston and its principals. Staff submit that it may reasonably be inferred that Conrad Black, as Chairman of the Board and CEO of Argus and indirectly the controlling shareholder of Argus, has authorized and directed Argus to make the Application and, should the requested relief be granted, effect the proposed Argus trades. Accordingly, Staff submit that the proposed Argus trades may reasonably be viewed as “indirect trades” by Conrad Black and Ravelston.
49. Staff note that Ravelston’s position in the present Application appears to be inconsistent with its position and the position of the other parties with an indirect interest in Hollinger and International in the Hollinger GPT Variation Application. Staff further note that Ravelston’s position appears to be inconsistent with that of Argus in the present Application. Argus does not hold any Shares of Hollinger directly. Rather, Argus holds its Shares through the Numbered Subsidiaries. The only Applicants that will be *directly* trading

Hollinger Shares are certain of the Numbered Subsidiaries.

50. For the reasons discussed below, Staff are unable to recommend that the Commission grant the requested relief. However, if the Commission determines that it would not be prejudicial to the public interest to grant the requested relief, Staff recommend that the Commission also grant this relief to the following parties who were applicants in the Hollinger GPT Variation Application but who are not Applicants in the present matter: 1269940 Ontario Limited, 2753421 Canada Limited, Conrad Black Capital Corporation, Conrad M. Black and Ravelston. Otherwise, the permitted sale by Argus may put these other entities in breach of the Hollinger MCTO.

PUBLIC INTEREST CONCERNS

51. Based upon a review of the materials that have been filed to date, Staff have identified a number of public interest concerns associated with the requested relief. These concerns are addressed below.

(a) MCTO Policy concern relating to an informational advantage and s. 76 of the Act

52. As noted above, the MCTO Policy seeks to prevent trades by officers, directors and other insiders who may have an informational advantage. Staff are of the view that the Applicants have failed to demonstrate that they do not have an informational advantage.
53. The Hollinger MCTO was originally imposed as a result of the failure by Hollinger to file audited financial statements in relation to its 2003 financial year. As of the date hereof, Hollinger remains in default of this and subsequent filing requirements.

54. Argus takes the position at paragraphs 78 to 81, inclusive, of the Application Record that the public “has been very well informed of developments respecting ... Hollinger...” as a result of
- a. “constant, unrelenting public scrutiny and disclosure”,
 - b. the recent OSC Hearings,
 - c. the seven reports that have been made publicly available by the Inspector, and
 - d. the bi-weekly reports and alternative financial information that have been provided by Hollinger in accordance with the MCTO Policy.

Argus Application Record at para. 78 to 81.

55. Staff submit that the MCTO Policy contemplates that the bi-weekly reports and the alternative financial information will constitute an adequate basis on which *non-management and non-insider* securityholders may continue to trade. However, the Applicants are insiders of Hollinger. Several of the Applicants’ directors and senior officers were until recently also directors and senior officers of Hollinger. The MCTO Policy contemplates that management and insiders of a defaulting reporting issuer not be permitted to trade unless and until the reporting issuer has remedied its defaults.
56. Staff submit that the information described in paragraph [54] a, b and c, together with the information in the bi-weekly reports and alternative financial information described in (d), does not represent an acceptable proxy for the outstanding audited annual financial statements and interim financial statements (and related MD&A).
57. Staff note, for example, that a recent report of the Inspector dated January 25, 2005 indicates that the Inspector is investigating 16,000 related party transactions involving Conrad Black, Ravelston and/or other related parties. The Inspection has not yet concluded. The information regarding the various related party transactions may give rise to an informational advantage to the Applicants over

other market participants. Staff are of the view that the Applicants have not adequately addressed this question.

Sixth Report of the Inspector dated January 25, 2005, Staff Submissions, Tab 12.

58. Moreover, Staff are of the view that the Application fails adequately to address whether the proposed Argus trades may contravene section 76 of the Act.
59. Argus has represented in paragraph 3 of its submissions, at p. 12 of the Argus Application Record, that “Argus has no knowledge of any material fact or material change with respect to ... Hollinger that has not been generally disclosed”.
60. Argus has not filed any evidence directly supporting this representation. While Argus has filed a verification statement signed by “Argus per Peter White”, Argus has not filed any evidence that addresses the knowledge of material information by other senior officers and directors of Argus, including Conrad Black.
61. The Executive Committee of Argus is comprised of Conrad Black, David Radler and Peter White. These individuals are shareholders, directors and executive officers of Ravelston. Conrad Black, Ravelston and certain related parties are currently the subject of a Court-ordered Inspection in relation to a substantial number of related party transactions.

Order of the Ontario Superior Court of Justice dated October 13, 2004, as varied by further Order dated October 26, 2004, pursuant to s. 229 of the CBCA appointing the Inspector, Staff Submissions, at Tab 13.

62. Staff have questioned whether information regarding these transactions may constitute material undisclosed information about Hollinger for the purposes of section 76. Staff are of the view that the Applicants have not adequately

addressed this question.

63. The Applicants submit in their supplemental submissions dated April 18 that the “true number of underlying transactions is considerably less [than the reference to 16,000 related party transactions in the Inspector’s sixth report] as there is considerable duplication or quadruplication of entries within these possible related party entries ...”.

Supplemental Submissions dated April 18, 2005 at p. 4.

64. However, the Applicants do not explain what these related party transactions consist of. Nor have the Applicants represented that neither Argus nor any of its directors or senior officers have knowledge of material information in respect of such transactions that has not been generally disclosed.
65. Although the Applicants have represented that Argus has no knowledge of any material fact or material change with respect to Hollinger that has not been generally disclosed. Staff are of the view that the Applicants have not adequately explained the basis for this conclusion, in view of the fact that certain senior officers and directors who are the “mind and management” of Argus are the same persons who were involved in certain related party transactions that are the subject of the Inspection.

(b) Precedential impact of the Requested Relief

66. Staff are concerned about the potential precedential impact of this Application both for Argus and for other Hollinger Respondents, such as Ravelston. The Applicants have represented that it is probable that Argus will need to make a similar application(s) in the future.

Supplemental Argus submissions dated April 18, 2005 at p. 10.

67. Although the number of Shares that are the subject of the proposed Argus trades may be relatively small, Staff are of the view that this Application may establish a precedent for future applications involving increasingly large numbers of Shares. If the principles and objectives that underlie the MCTO Policy are not given effect in the present Application involving a small number of Shares, Staff are concerned that it may be difficult to assert such principles and objectives in the context of future applications, which may involve significantly larger amounts of Shares.

68. Staff note that Hollinger has raised a similar concern in its submissions dated April 18, 2005: "... the relief, if granted, might presage further, perhaps serial applications by Argus for similar relief (perhaps in respect of increasingly greater numbers of the shares), in respect to which there would be no principled or policy objection."

Hollinger Submissions dated April 18, 2005 at p. 2.

69. Staff submit that one of the objectives of the MCTO Policy is to provide an incentive to management of a reporting issuer in default of its filing obligations to remedy the default as expeditiously as possible. Staff submit that the requested exemptive relief may be viewed as undermining this objective in that it suggests that it is acceptable for management and insiders to continue to trade in the absence of required financial disclosure.

(c) Balancing of interest of Preference Shareholders with other securityholders

70. The Applicants have not demonstrated that the potential prejudice to the public holders of the Argus Class A Preference Shares and Class B Preference Shares would warrant granting discretionary relief in the circumstances of this Application. Staff note that the dividends are cumulative and that there is no obligation to pay dividends unless and until they are declared by the Argus board

of directors.

71. Staff further note that Hollinger has represented that the sale of Shares by Argus may be prejudicial to the public securityholders of Hollinger:

It is axiomatic that the value of Ravelston (and its ultimate ability to satisfy the Civil Claim) derives in part from its equity ownership position in Argus, the value of which in turn derives from the latter's ownership interest in Hollinger. To the extent that Ravelston causes Argus to dispose of shares in Hollinger and to use the proceeds for any purpose which would reduce the value of Ravelston's equity in Argus, that reduction: (a) constitutes an erosion of Hollinger's collateral security against the assets of Ravelston; and (b) increases the risk to Hollinger that the amounts owing to it pursuant to the Civil Claim will not be fully realizable.

Hollinger submissions dated April 18, 2005 at p. 1

72. Staff submit that the MCTO Policy contemplates that there will be no trading by management and insiders for the duration of the reporting issuer's default. In the present Application, the Applicants are requesting that the Commission make an exception from this policy to permit sales of Shares to benefit one class of public securityholders, the Argus Preference shareholders. As Hollinger has noted, to the extent that such sales may be for the benefit of one class of public securityholders, it may be to the detriment of another class of securityholders, the Hollinger securityholders who have an interest in the collateral security against the assets of Ravelston.
73. Staff further note that Argus' ability to pay dividends on its Class A Preference Shares and Class B Preference Shares may have been impaired by the payment of \$60 million in dividends to Ravelston in April 2004. As described below, Staff are of the view that the Applicants have failed adequately to address questions relating to the payment of this dividend.

(d) Unresolved questions relating to the ability and willingness of Ravelston to provide support

74. The Applicants have not adequately addressed a number of questions relating to the ability and willingness of Ravelston, the parent company of Argus, to provide financial support to Argus. While the Applicants have put in issue the willingness and/or ability of Ravelston to continue to advance funds to Argus, the Applicants have not filed any evidence in relation to Ravelston's financial situation. Staff are of the view that this evidence is relevant to the Commission's consideration of the Application, particularly in view of the fact that i) Ravelston has previously provided such support, ii) as described below, Ravelston has recently received a \$60 million dividend from Argus, and iii) it appears that part of the proceeds from the proposed Argus trades may be of direct or indirect benefit to Ravelston.

75. As described in the Argus Application Record, Ravelston has previously loaned funds to Argus to provide funds for the February 2005 dividend payment:

52. On January 31, 2005, Ravelston loaned \$251,703 to Argus to provide the funds for Argus to pay its dividends at February 1, 2005, which dividends were paid on that date. The loan was made pursuant to a promissory note bearing no interest and due on February 28, 2006.

Argus Application Record at para. 52.

76. The Applicants have represented that Ravelston has advised Argus that it is "unable" to advance additional funds:

53. Ravelston has recently advised Argus that it is unable to advance additional funds to Argus for it to provide for the payment of its May 1, 2005 dividend or operational expenses.

Argus Application Record at para. 53.

77. While the Applicants have put in issue the willingness and/or ability of Ravelston to continue to advance funds to Argus, neither the Applicants nor Ravelston have filed any evidence in relation to Ravelston's financial situation or financial

history. Staff are of the view that such evidence is necessary for the proper consideration of this Application.

78. Staff understand that on April 19, 2005 Ravelston filed an application in the Ontario Superior Court under the *Companies' Creditors Arrangement Act* seeking protection from its creditors. Staff have not been served with any materials in relation to this CCAA application and are unable to respond as to the effect, if any, that the CCAA application may have on this Application. Staff note, however, that the CCAA application may suggest that evidence in relation to the financial situation and history of Ravelston may shortly be placed on the public record. As noted above, staff are of the view that such evidence may be relevant to this Application.

(e) Unresolved questions relating to the payment of the \$60 million Ravelston Dividend

79. Staff are of the view that the Applicants have failed adequately to address questions relating to the payment by Argus of approximately \$60 million in dividends to Ravelston in April 2004 that resulted in extinguishing an approximately \$59 million debt obligation owed by Ravelston to Argus.
80. Staff note that the liquidity concerns underlying the need to file the application for the requested relief can, to some extent, be attributed to the decision of the Argus board of directors, which did not have any independent directors at the time, to declare and pay the dividend to Ravelston when it was clear that Argus would not be receiving any dividend income from Hollinger in the near future.
81. Staff note that the submissions of several of the proposed intervenors are directed to this question.
82. Staff are of the view that the Applicants have not demonstrated that it would not be prejudicial to the public interest to grant the requested relief when the board of

directors of Argus made a business decision to effectively eliminate a claim against Ravelston in circumstances in which it had no other source of income.

(f) Unresolved Questions as to the Use of Proceeds

83. In addition to the failure to file evidence relating to the Ravelston Dividend, Staff submit that the Application also fails to set forth evidence and submissions in relation to the extent to which payments of Argus litigation expenses may reasonably be considered as also being for the benefit of Ravelston and parties related to Ravelston.
84. In view of the fact that Ravelston's indirect interest in Hollinger is held primarily through its Argus holdings, Staff believe that it would be reasonable to expect that Ravelston will continue to provide funding to Argus to permit Argus to continue to defend itself regardless of the outcome of this Application. It is necessary for Ravelston to defend litigation relating to Argus since such litigation, if successful, will necessarily have an impact on Ravelston's principal asset, its indirect holdings in Hollinger.
85. Accordingly, Staff are of the view that, to the extent that the proposed Argus trades are intended to fund litigation expenses, such litigation expenses ultimately represent a portion of Ravelston's litigation expenses.
86. Staff are of the view that the Applicants ought to file evidence and make submissions relating to whether the granting of the requested relief for such purposes would not be prejudicial to the public interest. For example, the Applicants have not filed evidence relating to the extent to which Ravelston and Argus are represented by the same counsel or the extent to which Argus' defence is being directed by Ravelston.

87. The Applicants have not filed any evidence or provided submissions on this issue. In the absence of such submissions and evidence, Staff are unable to conclude that it would not be prejudicial to the public interest to grant the requested relief.

CONCLUSION

88. For all of the above reasons, based on the information we have at this stage of the proceedings, Staff are unable to conclude that it would not be prejudicial to the public interest to grant the requested relief. Accordingly, Staff are unable to recommend that the Commission grant the requested relief.

April 20, 2005

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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