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File No. 214824

BY EMAIL AND COURIER

Mr. Naizam Kanji
Senior Legal Counsel, Take-Over Bids
Ontario Securities Commission
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto, ON M5H 3S8

Dear Mr. Kanji:

Sears Holdings Corporation and Sears Canada Inc.

Further to our recent discussion, our firm has been retained by Hawkeye Capital Management, LLC ("**Hawkeye**"), Knott Partners Management LLC ("**Knott Partners**"), and Pershing Square Capital Management, L.P. ("**Pershing Square**") (collectively the "**Complainants**") in connection with serious concerns that the Complainants, in their capacities as shareholders of Sears Canada Inc. ("**Sears Canada**"), have with respect to the pending take-over bid for Sears Canada by Sears Holdings Corporation and its subsidiary SHLD Acquisition Corp. (collectively, "**Holdings**") and the proposed second step going private transaction.

The Complainants submit that actions taken and proposed to be taken by Holdings breach, and otherwise offend the policy rationale underlying, fundamental aspects of Ontario's securities laws in a manner contrary to the public interest. Please accept this letter as a formal complaint and a request that the Ontario Securities Commission (the "**Commission**") exercise its jurisdiction to investigate the matters described below and either have appropriate orders issued or convene a hearing with a view to ensuring that the rights of the minority shareholders of Sears Canada are protected.

Below is a summary of the facts relating to the pending acquisition of Sears Canada followed by a summary of the concerns being advanced by the Complainants. The facts set out herein are taken from publicly available information and information received from the Complainants. In certain instances, assumptions have been made as certain critical information has not been made available by Holdings.

Factual Overview

The Offer

On December 4, 2005, Holdings advised the directors of Sears Canada, for the first time and without prior discussion, at least to the knowledge of the independent directors, of its intention to take Sears Canada private.

On December 5, 2005, Holdings announced its intention to make an offer to acquire all of the outstanding common shares (the "**Target Shares**") of Sears Canada not owned by it at $16.86 per share. The announcement indicated that the offer would be subject to the typical condition that a majority (on a fully diluted basis) of the Target Shares not owned by Holdings be tendered. At that time, Holdings owned 57,732,517 Target Shares (53.8% on an undiluted basis). Holdings also disclosed that, on December 3, 2005, it had entered into a lock-up agreement with Natcan Investment Management, Inc. ("**Natcan**") pursuant to which Natcan agreed to tender 9,699,862 Target Shares (9.06% on an undiluted basis) into any such offer. The Complainants understand that Scotia Capital Inc. was and is the financial advisor to Holdings in connection with the bid (Scotia Capital Inc. and its affiliates are hereinafter collectively referred to as "**Scotia Capital**").

On December 6, 2005, the board of directors of Sears Canada formed a special committee (the "**Special Committee**"), consisting of the six independent directors of Sears Canada, to supervise the preparation of a formal valuation and to review and make a recommendation to the board of directors of Sears Canada with respect to the proposed offer. The Special Committee retained Genuity Capital Markets ("**Genuity**") to prepare the formal valuation required pursuant to Ontario Securities Commission Rule 61-501 ("**Rule 61-501**") and to provide a fairness opinion with respect to the proposed offer.

Further to its engagement of The Bank of Nova Scotia (the parent of Scotia Capital) in November of 2005, on December 22, 2005, Sears Canada entered into a secured $200 million three-year revolving credit facility and a secured US $260 million seven-year term loan with a syndicate of lenders. The Bank of Nova Scotia is the administrative agent, lead arranger, bookrunner for and lender under the facilities.

On January 10, 2006, Holdings applied to the Commission for exemptive relief from the requirement to include a formal valuation of the Target Shares or a summary thereof in its take-over bid circular. Sears Canada resisted the application and it was ultimately denied.

On February 7, 2006, Genuity delivered its Valuation and Inadequacy Opinion to the Special Committee indicating that the fair market value of the Target Shares was in the range of $19.00 to $22.25 and that the consideration under the proposed offer was inadequate, from a financial point of view, to the minority shareholders.

Notwithstanding the Valuation and Inadequacy Opinion, on February 9, 2006, Holdings commenced a take-over bid for the Target Shares at $16.86 per share (including as subsequently amended, the "**Offer**"). Despite Holdings' prior public statements, the Offer was not subject to a condition that a majority (on a fully diluted basis) of the Target Shares not owned by Holdings be tendered. At that time, it was disclosed that Scotia Capital is the dealer manager for the Offer.

In response to the Offer, on February 21, 2006, Sears Canada mailed its Directors' Circular in which the voting members of the board of directors (being the six independent directors comprising the Special Committee) unanimously recommended that shareholders reject the Offer. The Directors' Circular noted that the Special Committee believed that the offer was inadequate and opportunistically timed and that it exerted pressure on Sears Canada and the minority shareholders as evidenced by (i) Holdings' application for exemptive relief from the requirement to include a formal valuation of the Target Shares in the take-over bid circular and (ii) the absence of a minimum tender condition.

On February 27, 2006, the six independent directors of the board of Sears Canada gave notice that they would not stand for re-election to the board of Sears Canada.

On March 17, 2006, the initial expiration date of the Offer, Holdings took up 10,161,968 Target Shares of which 9,699,862 had been deposited pursuant to the lock-up agreement with Natcan. At this time, Holdings owned 67,894,485 Target Shares (63.2% on an undiluted basis).

On March 20, 2006, Holdings extended the Offer to March 31, 2006. In its Notice of Extension, Holdings stated that if it did not acquire a majority of the minority of Sears Canada, it would support the elimination of Sears Canada's practice of paying quarterly dividends. Holdings also advised the shareholders of Sears Canada that (i) it had initiated a search for three new independent directors for Sears Canada, (ii) at the next annual meeting of Sears Canada it would nominate and elect employees of Holdings and Sears Canada who would constitute a majority of the board of Sears Canada, and (iii) it would not support any extraordinary dividend or distribution to the public by Sears Canada in 2006.

On April 1, 2006, Holdings entered into a deposit agreement with Vornado Realty L.P. ("**Vornado**") pursuant to which, among other things, Vornado agreed to deposit 7,500,000 Target Shares into the Offer no later than April 7. These Target Shares were subsequently deposited and taken up such that Holdings owned 75,441,763 Target Shares (70.2% on an undiluted basis). As part of its deposit agreement, Vornado required, and Holdings agreed, to a purchase price "top-up" mechanism which, in essence, obligates Holdings to pay to Vornado any greater consideration paid by Holdings to acquire Target Shares at any time prior to December 31, 2008, together with the amount of any dividends paid thereon. This top-up mechanism was extended to all holders of Target Shares whose shares are acquired in the Offer.

On April 4, 2006, Sears Holdings extended the Offer to April 19, 2006 and increased the consideration under the Offer to $18.00 per share. At the same time, the Offer was revised to require tendering shareholders to remit to Holdings any dividends paid on the Target Shares by Sears Canada after the date of the initial Offer, including the regular quarterly dividend.

Two days later, Holdings entered into support agreements with unnamed shareholders in respect of 7,611,000 Target Shares (the "**Support Agreements**") pursuant to which the unnamed shareholders agreed to support a second step going private transaction at $18 per share, such transaction to be effected either as a share consolidation in which untendered Target Shares would be converted into the right to receive $18 per share or a plan of arrangement in which untendered Target Shares would be acquired by Holdings or Sears Canada for $18 per share. (On that day the closing price of the Target Shares on the Toronto Stock Exchange was $18.50.) Holdings publicly announced that, giving effect to the Support Agreements and together with the Target Shares taken up in the Offer, it owned or had support commitments for sufficient shares to assure the necessary shareholder approval of the second step going private transaction at $18 per share. The Complainants have reason to believe that Scotia Capital is one of the unnamed parties to the Support Agreements.

On April 7, 2006, Holdings formally extended the expiration date of the Offer to August 31, 2006 and indicated that the second step going private transaction would not be completed until December.

On April 12, 2006, after receiving an updated Valuation and Inadequacy Opinion from Genuity that confirmed their prior analysis as to value and their opinion as to inadequacy, the board of directors of Sears Canada advised by a Notice of Change to the Directors' Circular that they would not be making a recommendation to shareholders on the revised Offer. In the Notice of Change to the Directors' Circular it was disclosed that the Special Committee requested copies of the Support Agreements from Holdings, that copies were not provided and that, accordingly, the Special Committee was unable to assess whether the Target Shares subject to such agreements could be voted as part of the minority.

The Complainants

On April 14, 2006, Good Friday, the Complainants formed a group and began to work together with legal advisors to oppose Holdings' Offer for Sears Canada. The Complainants issued a press release the next business day disclosing their joint actor status and ownership position.

As of the date of this letter, Hawkeye owns or controls 1,525,872 Target Shares, Knott Partners owns or controls 1,114,300 Target Shares and Pershing Square owns or controls 5,601,400 Target Shares. In addition, Pershing Square is entitled to the economic benefit of 6,900,000 Target Shares. Pershing Square is entitled to the economic benefit of such

Target Shares pursuant to cash settled total return swaps entered into with SunTrust Capital Markets ("**SunTrust**") in which Pershing Square disposed of legal and beneficial ownership of the subject shares. The Complainants believe that in respect of a significant portion of the swaps entered into with SunTrust in November and December of 2005, SunTrust concurrently entered into total return swaps with Scotia Capital pursuant to which Scotia Capital acquired legal and beneficial ownership of the Target Shares subject to such swaps but not the economic interest therein. The Complainants surmise that the Target Shares which Scotia Capital has committed to vote in favour of the second step going private transaction under the Support Agreement are shares in respect of which Scotia Capital has no conventional economic interest.

Scotia Capital

As indicated above, the Complainants understand that Scotia Capital is and has been the financial advisor to Holdings in connection with, and the dealer manager for, the Offer and, while the facts surrounding the financial advisory role have not been disclosed, it is highly probable that such advisory relationship was established no later than November 2005. It would be typical for Scotia Capital to be entitled to a success fee under its engagement as financial advisor.

Summary of Complaints

On April 6, 2006, Holdings issued a press release announcing that it had entered into the Support Agreements with unnamed shareholders of Sears Canada and, as a result thereof, Holdings owned or had support commitments assuring it the necessary shareholder approval to effect a second step going private transaction at $18 per share. Holdings did not disclose in the press release, or at any subsequent time, the identities of the parties to the Support Agreements or the complete terms thereof and accordingly it is not possible for minority shareholders of Sears Canada to judge whether, in fact, majority of minority approval is so assured. The Complainants believe that Holdings' financial advisor and dealer manager, Scotia Capital, is party to a Support Agreement in respect of an estimated 4,300,000 Target Shares.

Holdings' Offer and the events surrounding it, including the secretive Support Agreements and the nature of the relationship between Holdings and Scotia Capital, represent a complex tapestry of public interest, regulatory policy, compliance and disclosure issues that strike at the core of the regulation of take-over bids and going private transactions in Canada.

The issues include:

- The public interest requires that a party as intimately linked to a bidder as Scotia Capital is to Holdings should not be able to determine the outcome of a vote that, as a

matter of both law and policy, is required to be determined by the true "minority" shareholders of the target.

- The Target Shares committed by Scotia Capital to be voted in support of the second step going private transaction do not qualify as "minority" shares for purposes of Rule 61-501 in that Scotia Capital is a "joint actor" with Holdings.
- If Scotia Capital has, under the swap agreements, the voting rights but no conventional economic interest in the relevant Target Shares, the votes relating to such Target Shares should not be counted as minority shares in determining the outcome of a critically important expropriative transaction that has been rejected by the Special Committee and deemed inadequate by the independent valuator.
- Holdings has violated s. 97(2) of the *Securities Act* (the "Act") by entering into a "collateral agreement, commitment or understanding" with a holder or beneficial owner of Target Shares that has the effect of providing to that holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.
- By entering into the Support Agreements, Holdings has violated s. 94(2) of the Act. Such agreements, which have the effect of ensuring that the Target Shares controlled by the counterparties to the agreements will be acquired outside of the bid, are effectively an "agreement, commitment or understanding" on the part of Holdings to acquire beneficial ownership of such shares made during the course of the bid in contravention of s. 94(2) of the Act.
- In light of the relationship between Holdings and Scotia Capital, if Scotia Capital owned or acquired, at any time after it was engaged by Holdings, voting rights in a sufficient number of Target Shares to affect materially the outcome of the vote on the second step going private transaction, Holdings ought to have disclosed that fact in its take-over bid circular or in an amendment to the circular. The failure to disclose that fact constitutes a misrepresentation.
- The Offer is coercive. Holdings is forcing on the minority shareholders of Sears Canada an insider bid that has been rejected by the Special Committee and deemed inadequate by the independent valuator. They are doing so through the unusual device of locking up sufficient votes to force through the majority of the minority vote on the second step going private transaction through an agreement with a shareholder that has a very different interest in the outcome of the transaction than other shareholders. By extending the Offer to August 31, 2006, proposing a second step going private transaction to close in December 2006 and advising shareholders that it has locked up sufficient votes to cram down the going private transaction, Holdings is coercing shareholders of Sears Canada into tendering in order to receive $18 now rather than wait eight months to receive $18 or commence the dissent and appraisal process.

Joint Actors and Minority Shareholder Approval

The fundamental purpose of the take-over bid provisions of Part XX of the Act is to protect the integrity of the capital markets, the interests of shareholders of an offeree company and to ensure that such shareholders are treated fairly and equally. These protections have evolved through Rule 61-501 and its predecessor instruments to enshrine majority of the minority approval as the key protection of shareholders against the conflicts of interest inherent in a going private transaction. Minority approval is required on the theory that minority shareholders' interests are being expropriated by a party with different interests and an information advantage and that this should not occur unless a majority of the disinterested shareholders agree.

The application of the minority approval protections of Rule 61-501 rely on the correct identification of persons who are "joint actors" with the offeror such that they are excluded from the minority. In this regard, the definition of "joint actor" in Rule 61-501 refers to the definition of "acting jointly or in concert" in s. 91 of the Act. It is a question of fact as to whether a person is acting jointly or in concert with an offeror. Section 91 establishes certain presumptions but is not exhaustive. Subsection 91(2) states that a registered dealer, acting solely in an agency capacity, not executing principal transactions for its own account and not performing services beyond customary dealers' functions, shall not be presumed solely by reason of such to be acting jointly or in concert with the offeror. However, s. 91(2) also indicates, as the Commission stated in *In the Matter of Seel Mortgage Investment Corporation and Dominion Trustco Capital Inc.* (1992), 15 OSCB 4287, "that relationships that go beyond an advisory or administrative role may, nonetheless, result in an advisor being construed to be acting jointly or in concert with its clients".

In the context of the Offer, Scotia Capital is the financial advisor to and dealer manager of Holdings. Were Scotia Capital only performing customary advisory and administrative functions for Holdings, it would not be presumed to be acting jointly or in concert with Holdings. However, in relationships that go beyond this, such as in this circumstance where it appears Scotia Capital has gone well beyond the traditional role of advisor and taken a hand as principal to deliver a transaction that has been rejected by the independent directors of the target and found to be inadequate by an independent valuator, the public interest requires that a party as intimately linked to an offeror as Scotia Capital is to Holdings should not be permitted to determine the outcome of a vote that, as a matter of both law and policy, is required to be determined by the true minority shareholders of the target. The public interest compels a finding that, at a minimum, Scotia Capital is a joint actor with Holdings and that Holdings should not be entitled to count Scotia Capital's Target Shares in the minority on any second step going private transaction.

Hand in hand with the fundamental requirement of actual substantive and procedural fairness is that take-over bids and going private transactions must be perceived to be substantively and procedurally fair. The appearance of an offeror and a party intimately

linked with it, such as its financial advisor, engaging in secretive transactions which are perceived to be delivering collateral benefits and accommodating the particular needs of that shareholder to the detriment of the minority shareholders, while failing to disclose critical information about the relationship, can only have a deleterious effect on the investing public's confidence in the Canadian capital markets. This too compels a finding that, at a minimum, Holdings should not be entitled to count in the minority votes by Scotia Capital on any second step going private transaction.

These conclusions are only made more compelling if it is correct that Scotia Capital acquired the Target Shares that are the subject of the Support Agreement for its own account during the period in which it was acting as financial advisor to Holdings. The exclusion of Scotia Capital from the minority is also made more compelling if it is true that Scotia Capital, as a consequence of entering into total return swaps, acquired legal and beneficial ownership (including voting rights) but no conventional economic interest in the subject Target Shares. As the courts have recognized, security holders with disparate economic interests should not vote in the same class to determine the outcome of a critically important expropriative transaction. Certainly a matter as fundamental as the majority of minority vote on a going private transaction cannot be allowed to turn on the votes of a party with no conventional economic interest in the shares that are the subject matter of the transaction.

Scotia Capital's interests may differ from those of the minority shareholders in two other important respects. First, as financial advisor to Holdings, it is entirely possible (and normal course) that Scotia Capital is entitled to a success fee under its financial advisory engagement agreement. (That agreement, if it exists, is neither filed nor disclosed in Holdings' take-over bid circular.) Secondly, as discussed below under the caption "Section 97(2) – Collateral Benefits", unlike other shareholders, Scotia Capital is largely indifferent to the Offer price due to the swap transaction discussed above. Its principal economic interest in the Offer and second step transaction is a valuable tax loss which we estimate, based on the limited facts available, to be in the order of $50 million, and possibly twice that amount as discussed below. The tax loss is locked-in, unaffected by the Offer price, and ensured by virtue of the restructuring of the Offer and second step transaction pursuant to the Support Agreements. These additional benefits to Scotia Capital also militate against treating its Target Shares as part of the minority.

Section 97(2) – Collateral Benefits

Section 97(2) of the Act prohibits an offeror from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities that are the subject matter of the offeror's bid that has the effect of providing consideration of greater value than that offered in the bid. The Commission has recognized that this fundamental protection will permit only rare exceptions – where an agreement (i) is entered into in contemplation of a take-over bid, (ii) is a condition to the offeror proceeding with the bid and essential to the offeror's business plan for the target going forward, (iii) is on

commercially reasonable terms and (iv) is not intended to increase the price offered to a shareholder in the bid.

The Support Agreements appear to have been negotiated, and the Offer and second step going private transaction in respect of Holdings and Sears Canada restructured, to accommodate the specific transaction structuring desires and for the specific benefit of the undisclosed shareholders that are party thereto.

It is clear that, in normal circumstances, it would not be rational or in a shareholder's economic interest to enter into the Support Agreement to receive $18 per share in late December 2006 when it could tender into the Offer today and receive $18 per share or sell into the market today and receive more than $18 per share. (The Target Shares have consistently traded above the Offer price and closed between $18.50 and $18.75 on each of April 3rd through 6th.) The refusal of Holdings to disclose the Support Agreements (publicly or to the Special Committee) leaves many unanswered questions, such as why the shareholders party thereto, including Scotia Capital, would voluntarily choose to pursue an apparently economically irrational result. The fact that Scotia Capital and these other shareholders apparently did so strongly suggests that something in the nature of the structural changes to the Offer and second step going private transaction that was required by these shareholders has the effect of providing to Scotia Capital and these other shareholders consideration of greater value than is being offered generally. Moreover, the fact that these shareholders agreed to vote their Target Shares in favour of the proposed second step going private transaction and deprive themselves of the right to tender into, or withdraw their Target Shares from, the Offer evidences that they received a valuable benefit.

It appears likely that Scotia Capital was motivated to enter into a Support Agreement by Holdings' promise to vary the Offer and second step going private transaction to accommodate Scotia Capital's tax objectives. Holdings' April 7, 2006 Notice of Variation and Change of Information disclosed that, pursuant to the Support Agreements, there will be a lengthy extension of the Offer to August 31, 2006 (and, in turn, the delay of completion of the second step going private transaction to December 2006) and that the nature of the second step going private transaction will be restructured. As a result, Scotia Capital will likely be entitled to a very significant tax loss deduction in connection with its Target Shares, notwithstanding that it received an extraordinary tax free dividend on its Target Shares in December 2005 and it will likely have no economic loss (*i.e.*, because of the total return swap). The tax loss deduction will be available to Scotia Capital because it will have held the relevant Target Shares for more than 365 days and is a Canadian corporate tax payer.[1] To achieve this result, Holdings agreed to postpone the second step

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[1] In December 2005, Scotia Capital and other shareholders of Sears Canada received a dividend of $14.26 per share on the subject shares which was tax free to Canadian corporate shareholders. The dividend paid presumably reduced the trading value of a Sears Canada common share by

going private transaction until December 2006. As a result, to be able to effect a second step going private transaction under Rule 61-501 without having to obtain a new independent valuation and to be able to count shares tendered under the Offer in the minority for majority of minority purposes, Holdings also had to extend the expiration of the Offer to August 31, 2006 to ensure that no more than 120 days elapsed between the expiry of the Offer and the second step going private transaction. The extension and restructuring of the transaction to achieve a particular tax benefit was done at the expense of the minority shareholders by unduly and unreasonably delaying the ability of the minority shareholders to exercise their appraisal remedy. Moreover, the tax benefit to be enjoyed by Scotia Capital is not available to all shareholders of Sears Canada – individuals and non-Canadian shareholders (whom the Complainants believe make up a substantial proportion of Sears Canada's shareholder base) do not benefit from the change and are prejudiced by the delay.

It is also noted that Scotia Capital may be able to obtain an additional tax benefit under the Support Agreement. The Support Agreements limit the second step going private transaction to one of two possible forms. One of those permitted forms is a share consolidation which is treated as a redemption for tax purposes. This would result in a substantial deemed dividend which would be tax free to Scotia Capital and other Canadian corporate shareholders and may create a further loss for tax purposes. If available, the magnitude of the additional tax benefit would be similar to the magnitude of the tax benefit resulting from the tax loss deduction described in the previous paragraph.

The collateral benefit arising as a result of the restructuring of the Offer and the proposed second step going private transaction (and the lack of conventional economic interest in the Target Shares) creates a situation where Scotia Capital would view the Offer and such going private transaction favourably for reasons other than the value of the consideration being offered to shareholders generally. A finding of a collateral benefit in contravention of s. 97(2) of the Act necessitates that the Commission take remedial action against Holdings and the Offer.

Section 94(2) – Agreements to Acquire

In furtherance of the goal of ensuring that shareholders of an offeree are treated fairly and equally, s. 94(2) of the Act prohibits an offeror from offering to acquire or making or entering an agreement, commitment or understanding to acquire, beneficial ownership of

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approximately the amount of the dividend, but did not reduce the tax cost of the common share to Scotia Capital. Thus, on the subsequent disposition of the Sears Canada common shares by Scotia Capital, Scotia Capital will realize a very significant tax loss. However, the so-called stop loss rules in the *Income Tax Act* (Canada) will generally not permit the deduction of the tax loss unless the Sears Canada common shares have been held for at least 365 days at the time of disposition.

any securities that are the subject matter of a take-over bid other than pursuant to the bid. The section permits an exception only for an agreement to tender into the subject bid.

Although Holdings has not disclosed the actual Support Agreements, the summary of selected terms set out in Holdings' April 7, 2006 Notice of Variation and Change of Information discloses that each Support Agreement provides that the second step going private transaction may take the form of a share consolidation pursuant to which minority shareholders will be squeezed out for cash or a plan of arrangement pursuant to which Holdings or Sears Canada would acquire all of the Target Shares held by the shareholders that are party to the Support Agreement. The purpose and ultimate effect of the Support Agreements is for Holdings to acquire, outside the Offer, the Target Shares held by Scotia Capital and the other parties thereto. This offends both the policy and intent behind s. 94(2).

The fact that the Support Agreements contravene s. 94(2) requires that the Commission take remedial action against Holdings and the Offer.

Disclosure

Consistent with the policy of requiring that shareholders be provided with the necessary information to permit them to make a reasoned and informed decision where an offer has been made to acquire their shares under a take-over bid, a take-over bid circular (and any amendments or variations thereto) cannot contain an untrue statement of a material fact, omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made or otherwise contain a misrepresentation likely to affect the value or market price of the securities subject to the offer.

In the context of the Offer, Holdings has not disclosed the identities of the parties to the Support Agreements or the complete terms thereof and accordingly it has not been possible for minority shareholders of Sears Canada to judge whether, in fact, Holdings' claims as to its success on majority of minority approval are correct. The disclosure made in Holdings' April 7, 2006 Notice of Variation and Change of Information appears, at a minimum, to omit facts that that the minority shareholders, and investors in capital markets generally, consider to be material. This is readily evidenced by the media coverage and speculation surrounding the Support Agreements and the parties thereto and this very letter, where pertinent facts have had to be assumed as they are not available from Holdings' minimalist disclosure. Such lack of disclosure creates an uneven playing field tilted heavily in favour of Holdings and requires remedial action.

In addition to the disclosure surrounding the Support Agreements themselves, it would appear that Scotia Capital acquired Target Shares while it was engaged as financial advisor to Holdings in connection with the Offer. At a minimum, given Scotia Capital's role in the transaction, if Scotia Capital owned, or acquired at any time after it was engaged by

Holdings, a sufficient number of Target Shares to affect materially the outcome of the vote on the second step going private transaction, that fact ought to have been disclosed by Holdings in its take-over bid circular or in an amendment to the circular. The failure to disclose that fact, if proven, constitutes a misrepresentation by Holdings and requires remedial action.

Coercion

As described above, Holdings is forcing on the minority shareholders of Sears Canada an insider bid that has been rejected by the Special Committee and deemed inadequate by the independent valuator. Holdings is doing so through the highly unusual device of purporting to lock up sufficient votes to force through the majority of the minority vote on the second step going private transaction through secretive Support Agreements that appear to convey unique benefits to certain shareholders, including Scotia Capital which has a very different interest in the outcome of the transaction than other shareholders by virtue of its role as financial advisor and dealer manager and for the other reasons described herein. This is done in the context of Holdings previously announcing that (i) the Offer would be without a minimum tender condition, and therefore could in effect constitute a partial bid which would result in illiquidity to minority shareholders not tendering into the Offer, (ii) Holdings would be assuming majority representation on the board of directors and cutting to a bare minimum the number of independent directors, and (iii) Holdings would endeavour to eliminate all dividends on the Target Shares.

While it is submitted that the Support Agreements and the position taken by Holdings with respect to the minority voting entitlements of the shareholders party thereto are contrary to Rule 61-501 and Part XX of the Act, such a finding is unnecessary to conclude that the Offer is coercive. The Commission has the authority to act against a transaction where the transaction strictly complies with all legal requirements if it has been designed to avoid the animating principles of the securities laws or is abusive to shareholders or otherwise undermines the integrity of the Canadian capital markets.

By extending the Offer to August 31, 2006, proposing a second step going private transaction to close in December 2006 and purporting to lock up sufficient votes to cram down the second step going private transaction while denying full information to the market, minority shareholders of Sears Canada are being coerced into tendering in order to receive $18 per share now rather than wait eight months to receive $18 per share or commence the dissent and appraisal process. Such conduct demands the intervention of the Commission to preserve the integrity of the capital markets and prevent the abuse of minority shareholders.

Relief Requested

In light of the fundamental importance of the Support Agreements to the decision to be made by minority shareholders as to whether to tender into the Offer, it is requested that

the Commission direct that all of the Support Agreements be made publicly available and, if necessary, exercise its authority under s. 127 of the Act to order that the Offer be cease traded until such time as Holdings makes all of the Support Agreements publicly available.

It is further requested that the Commission exercise its authority under Part VI of the Act to require Holdings (i) to make available to the Commission all other agreements between Holdings or any affiliate thereof and Scotia Capital or any affiliate thereof, including the dealer manager agreement and any financial advisory engagement agreement (the timing of the financial advisory engagement and the existence of any success fee should be of particular concern to the Commission), (ii) to disclose all information necessary to ascertain the eligibility of tendering shareholders and parties to the Support Agreements to be counted as part of the minority for purposes of approving the second step going private transaction and (iii) to disclose Scotia Capital's (and where the Commission considers it appropriate, any other shareholder's) interest in the Target Shares, the nature of such interests, the dates when such interests were acquired and the manner in which those interests were acquired.

If the complaints herein are substantiated, it is requested that the Commission, as applicable:

(a) exercise its authority under s. 127 of the Act to cease trade the Offer;

(b) order that (and/or take such other actions as is necessary under s. 128 of the Act such that), at a minimum, the Target Shares owned or controlled by Scotia Capital (and, as applicable, any other party to a Support Agreement) not be counted in the minority for purposes of Rule 61-501 and that, as a consequence thereof, Holdings:

  (i) be required to correct its public disclosure with respect to the inclusion of such shares in the minority for voting purposes;

  (ii) provide an opportunity for all shareholders who tendered on or after April 6, 2006 to withdraw their Target Shares from the Offer notwithstanding that such shares may have been taken up; and

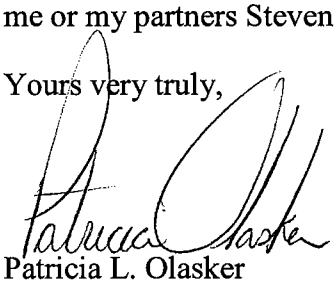
  (iii) not be entitled to count in the minority for purposes of Rule 61-501 all Target Shares deposited or taken up under the Offer in the period from April 6, 2006 to the date that is five business days after Holdings has complied with (i) above; and

(c) take such other actions and make such other orders as the Commission thinks fit.

In light of Holdings public statements regarding its ability to count the votes of the Target Shares that are subject to Support Agreements and that, if the submissions herein are correct, minority shareholders are being misled in this regard, the Complainants strongly urge the Commission to act quickly to address this situation. It should also be noted that effective May 9, 2006 the members of the Special Committee will cease to be directors of Sears Canada and from that date the minority shareholders will cease to have such directors working to protect minority shareholders' interests.

Should you wish to discuss any aspect of the foregoing, please do not hesitate to contact me or my partners Steven Harris (416.367.6936) or Luis Sarabia (416.367.6961).

Yours very truly,



Patricia L. Olasker

PLO/amm

cc: Steven Harris
Luis Sarabia