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May 18, 2006

**VIA EMAIL**

Ontario Securities Commission
20 Queen Street West, Suite 800
P.O. Box 55
Toronto ON M5H 3S8

**Attention: John Stevenson**
**Secretary**

Dear Sirs/Mesdames:

**Re: Sears Canada Inc.**

We are counsel to The Bank of Nova Scotia and its subsidiary, Scotia Capital Inc. While our clients are not parties to the proceedings in connection with the Notice of Hearing to be issued May 18, 2006 with respect to Sears Holdings Inc.'s bid for Sears Canada Inc., they are considering seeking status as an intervener. As a result of the letter of Davies Ward Phillips & Vineberg LLP dated April 24, 2006 and sent in connection with Sears Canada Inc., staff at the Ontario Securities Commission (the "Commission") requested that we respond to a number of allegations respecting our clients contained therein. We are attaching our letter dated May 5, 2006 to the Commission in response to that request and request that the Commission post it on its website in conjunction with the Notice of Hearing.

Yours very truly,

Garth M. Girvan

GMG/kl
Enc.

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May 5, 2006

Ontario Securities Commission
20 Queen Street W.
Suite 1903, P.O. Box 55
Toronto Ontario M5H 3S8

**Attention: Naizam Kanji**

Dear Sirs:

**Re: Sears Canada Inc.**

We are counsel to The Bank of Nova Scotia ("BNS") and its subsidiary, Scotia Capital Inc. ("Scotia Capital"). As you have requested, we are responding to the letter (the "Davies Letter") dated April 25, 2006 from Patricia Olasker to you, and in particular with respect to certain aspects of the Davies Letter that relate to BNS and Scotia Capital. This letter is supplemental to our letter to you of April 24, 2006 (the "Earlier Letter"). We have reviewed the letter of Osler Hoskin &Harcourt (the "Osler Letter") dated May 2, 2006, in response to the Davies Letter.

Unless otherwise indicated herein, defined terms in this letter have the meanings attributed to them in the Earlier Letter.

**Davies Letter**

Under the heading "Factual Overview – The Complaints", Davies makes the following statement: "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 language suggests that Scotia Capital acquired Sears Canada Shares pursuant and subject to the swap agreements with SunTrust (the "SunTrust Swap Agreements"). As we indicated in the earlier letter:

(a) Scotia Capital Institutional Equity had acquired, in the market for investment purposes, 513,000 Sears Canada Shares during the period from August 31, 2005 to December 16, 2006. These acquisitions were completely unrelated to any total return swaps entered into by BNS.

(b) BNS acquired in the market for its own account 4,000,000 Sears Canada Shares. These acquisitions were made with the objective of reducing the overall exposure of BNS to Sears Canada Shares. The SunTrust Swap Agreements did not obligate BNS to effect these transactions nor did they obligate BNS to consult with or advise SunTrust as to details of any steps taken by BNS to reduce its overall exposure to Sears Canada Shares. Under no circumstances could SunTrust require delivery to it of the Sears Canada Shares held by BNS or influence the voting or disposition of those shares.

Based upon the foregoing, it is not accurate to refer to the acquisition of Sears Canada Shares as being made pursuant or subject to the SunTrust Swap Agreements. In addition, BNS and Scotia Capital acquired legal and beneficial ownership of the acquired Sears Canada Shares as well as an economic interest therein. The fact that BNS had in the ordinary course entered into contractual arrangements to exchange cash payments with SunTrust under the SunTrust Swap Agreements does not mean that BNS or Scotia Capital have no economic interest in the acquired shares. Finally, we point out that the counterparty to BNS under the SunTrust Swap Agreements was SunTrust, not any of the Complainants referred to in the Davies Letter.

Under the heading "Factual Overview – Scotia Capital", it is stated that Scotia Capital's advisory role commenced no later than November, 2005. In fact, Scotia Capital was not approached by Sears Holdings with respect to an advisory role until late December and was not retained in such capacity until January 6, 2006. Scotia Capital's role was limited to advising Sears Holdings and acting as manager of a soliciting dealer group. Scotia Capital did not provide any valuation or fairness opinion with respect to the Sears Offer and did not participate in establishing the original or subsequent offer price.

Under the heading "Summary of Complaints – Joint Actors and Minority Shareholder Approval", it is surmised that Scotia Capital may have acquired Sears Canada Shares for its own account during the period in which it was acting as financial advisor to Sears Holdings. This is incorrect. After accepting the M&A retainer on January 6, 2006, no trades were effected in Sears Canada Shares by BNS or Scotia Capital Institutional Equity except in connection with the facilitation of client trading.

Under the heading "Summary of Complaints – Joint Actors and Minority Shareholder Approval", reference is made to a success fee. In connection with its M&A retainer on January 6, 2006, Scotia Capital was entitled to a work fee of $50,000 per month and a success fee of $400,000 if the Sears Offer had been successfully concluded at $16.86 per Sears Canada Share. If Sears Holdings were to acquire a majority of the minority shares at a price not significantly above $16.86 per share, Sears Holdings may in its sole discretion, pay a portion of the success fee to Scotia Capital. As disclosed in the Osler Letter and in a press release issued by Sears Holdings, Sears Holdings has indicated that it does not intend to pay a success fee to Scotia Capital.

In the same paragraph, the statement is made that Scotia Capital is largely indifferent to the Offer Price. This is not accurate. BNS and Scotia Capital Institutional Equity have an economic interest in the Sears Canada Shares owned by them and that economic interest is enhanced by any increase in price paid by Sears Holdings.

**Complainant Press Release**

We have reviewed the press release (the "Complainant Press Release") issued by the Complainants May 3, 2006. In that press release, the statement is made that "Scotia directed SunTrust to have its client, Pershing, sell a specified number of Sears Canada shares in "market on close" transactions which Scotia purchased in "market on close" transactions. These pre arranged trades at the direction of Scotia enabled Scotia to acquire the 5,300,000 shares previously owned by Pershing". This statement is untrue.

The Complainant Press Release further indicates that Scotia is entitled to be paid a success fee potentially totalling $4.9 million as dealer manager for the take-over bid. In fact Scotia Capital is not entitled to a fee for managing the soliciting dealer manager group. The per share fees are paid to any broker at a participating brokerage firm who is identified as having solicited a tender from his or her client. In its role as soliciting dealer manager, Scotia Capital invited over 100 firms, being members of the IDA, to join the soliciting dealer group. Whatever solicitation fee is ultimately payable will be distributed to brokers at many firms across Canada and only a portion would be paid to brokers within Scotia Capital. None of those fees will be paid to Scotia Capital M&A. In addition, the reference to the potential amount of the fee is misleading, in that it assumes the per share fee will be paid in respect of the entire minority interest. The per share fee is actually $0.10 per share to a maximum of $1,500 per shareholder, the latter being standard in the industry, and as indicated is only applicable to solicited tenders. Accordingly, such fees are either not payable at all, such as in connection with the holdings of one of the locked-up shareholders, or are capped at $1,500 in respect of holdings of more than 15,000 Sears Canada shares, such as those of other locked-up shareholders, those of shareholders who signed Support Agreements and those of the Complainants, among others. The actual fees paid under the soliciting dealer agreement will be well below $4.9 million.

The Complainant Press Release also refers to BNS and Scotia Capital having a significant short position in Sears Canada. At no time from August 31, 2005 through to today's date did BNS and Scotia Capital have a net short position in Sears Canada.

**Conflict of Interest**

On a final note, BNS and Scotia Capital wish to respond to the allegations of conflict of interest raised by the Davies Letter. Because of internal controls relating to the containment of confidential and/or material non-public information applicable to BNS, Scotia Capital Institutional Equity and Scotia Capital M&A, at the time of the acceptance of the M&A assignment, those involved in Scotia Capital on the M&A side were unaware that any Sears

Canada Shares were owned by BNS or Scotia Capital Institutional Equity. No information about the holding of Sears Canada Shares was communicated by Scotia Capital M&A to Sears Holdings in connection with taking on the M&A assignment. Similarly, no one at BNS involved in the Swap Agreements and no one on the Scotia Capital Institutional Equity trading desk was aware of Scotia Capital M&A's advisory engagement with Sears Holdings until the engagement letter had been entered into. Subsequent thereto, the only trading in Sears Canada Shares by Scotia Capital Institutional Equity was in connection with the facilitation of client trading and no one in BNS connected with the Swap Agreements effected any further trades in Sears Canada Shares.

With respect to the Support Agreements, Scotia Capital M&A did not participate in the negotiations by BNS or Scotia Capital with Sears Holdings and played no role in the decisions of BNS and Scotia Capital to enter into the Support Agreements. The arm's-length characterization of the negotiation of the Support Agreements is further demonstrated by the fact that at least one other shareholder of Sears Canada (which we understand is a Canadian financial institution) agreed to arrangements which we understand based upon public disclosure are substantially identical to those reflected in the Support Agreements to which BNS and Scotia Capital are parties.

In summary, BNS and Scotia Capital had various internal controls in place to meet regulatory requirements and to conform to best business practices in Canadian financial institutions. The activities of BNS and Scotia Capital in connection with Sears Canada were conducted in a manner consistent with these internal controls, thus eliminating any conflict of interest.

We trust the foregoing is responsive to your request.

Yours very truly,

**McCarthy Tétrault LLP**

Per:

Garth M. Girvan

GMG/jlj:kl
cc: Deborah Alexander, The Bank of Nova Scotia