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October 17, 2006

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Our Matter Number: 1053316

Sent via Facsimile and Email

Ontario Securities Commission
Cadillac Fairview Tower
Suite 1900, 20 Queen Street West
P.O. Box 55
Toronto, ON M5H 3S8

Attention: The Secretary to the Commission

Dear Sir:

Sears Canada Inc.

We are writing with reference to the Panel's request for submissions, communicated through Ms. Turcotte's email of October 16, 2006. The terms defined in Sears Holdings' application dated October 13, 2006 bear the same meaning in these submissions.

We understand that the Panel has requested submissions on the following point:

> The Panel notes that the application is silent on the issue of whether and how the applicant proposes to address the disclosure requirements arising out of the Order dated August 8, 2006 in connection with the meeting of Sears Canada shareholders to be held prior to November 15, 2006. Accordingly, the Panel would like to receive submissions on that point.

Sears Holdings intends to address the disclosure requirements arising out of the August 8, 2006 Order of the Commission in connection with the Meeting in two ways:

1. Sears Holdings has requested that Sears Canada include the specific disclosures prescribed by the terms of the Order in Sears Canada's information circular in respect of the Meeting, to be mailed to all Sears Canada shareholders in advance of the Meeting.

2. Upon completion of the appellate process, Sears Holdings will fully comply with the Order by amending the Offer to make all of the disclosures prescribed by the Order, except to the extent that the Order has been varied or vacated by the Court

of Appeal, in which case Sears Holdings will comply with any order made by the Court of Appeal.

Each of these points is discussed briefly below.

The Sears Canada Circular

As the Commission is aware, it is Sears Canada and not Sears Holdings that will be holding the Meeting of the Sears Canada shareholders. In addition, under Rule 61-501, it is Sears Canada and not Sears Holdings that will conduct the vote on the SAT at the shareholders' meeting and either include or exclude votes from the calculation of the required majority of the minority approval on the SAT. (In this regard, it should be noted that subparagraphs 3(a) and 4(c) of the Order require Sears Holdings to disclose to shareholders that Sears Holdings will do something, *i.e.*, exclude certain votes, that Sears Holdings has no power or ability to do.) The primary disclosure document in respect of the Meeting is the information circular prepared and distributed by Sears Canada.

Accordingly, Sears Holdings has requested that Sears Canada include the specific disclosures prescribed by the terms of the Order in Sears Canada's information circular in respect of the Meeting. The current draft of the disclosure that Sears Holdings is requesting Sears Canada to include in its circular is attached as Appendix "A" to these submissions.

As can be seen from a review of Appendix "A", the draft disclosure specifically discloses the identities and interests of the parties to the Support Agreements and a description of the material terms of the Support Agreements and the existence and terms of the release granted to Vornado pursuant to the Vornado Deposit Agreement. The draft disclosure also notes that the Support Agreements and Vornado Deposit Agreement are available for review in their entirety by shareholders, as those documents will have been filed on SEDAR.

In addition, the draft disclosure will make it absolutely and unambiguously clear to Sears Canada shareholders that:

- The effect of the Commission's Order is that the votes attached to the Subject Shares must be excluded from the calculation of the majority of the minority vote on the SAT.

- The Commission's Order is in full force and effect, and will remain so unless and until it is varied or vacated by the Court of Appeal.

- Unless the Court of Appeal grants leave, hears the appeal and allows the appeal so as to permit the votes attached to the Subject Shares to be included in the

calculation of the majority of the minority vote on the SAT, then such votes shall be excluded.

Accordingly, there is no possibility of confusion on the part of shareholders. Sears Canada shareholders will know that the vote will be conducted on the Meeting date and the outcome of the vote will be determined at a later date – namely, after the conclusion of the appellate process, in full compliance with either the Commission's Order or any superseding order of the Court of Appeal. They will be under no misapprehension about the fact that if they oppose the SAT, they should take steps to ensure that their votes are cast at the Meeting, because if the *status quo* is maintained and the Order stands, their votes could be determinative of the outcome of the vote.

Sears Holdings expects the appellate process to be completed expeditiously. The parties have agreed in principle to an expedited process. Sears Holdings expects that the outcome of the appellate process will be known prior to mid-December 2006, within a month after the Meeting.

As the Commission is aware, there is nothing unusual about shareholders not knowing whether certain votes cast at a shareholders' meeting will or will not count. For example, this occurs in situations in which votes are challenged at a shareholders' meeting and sorted out in judicial proceedings thereafter.[1] In addition, there is recent judicial precedent for a shareholders' vote on a going private transaction being conducted **prior to** the shareholders' knowing whether certain votes will or will not be included or excluded from the calculation of the majority of the minority. In *Scion v. Gold Fields*,[2] a dissident minority shareholder requested an adjournment of the Bolivar Gold Corp. shareholders' meeting for a vote on its plan of arrangement until after the shareholder's application for an order excluding certain disputed shares from the vote could be heard and determined by the court. Justice Morawetz of the Ontario Superior Court rejected the request, allowed the shareholders' meeting to proceed as scheduled and directed that if the vote were carried by the disputed shares, the Chair would announce at the meeting that the validity of those shares was disputed and would be considered by the court prior to the fairness hearing for the plan of arrangement. In other words, the court clearly contemplated that the final determination of the outcome of the shareholders' vote on whether the resolution in favour of the going private transaction was approved or not approved could be deferred until **after** the determination of subsequent court proceedings.

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[1] For example, *Blair v. Consolidated Enfield Corp.*, [1995] 4 S.C.R. 5.

[2] Order of Justice Morawetz of the Ontario Superior Court, January 11, 2006. Copy attached to this submission.

Sears Holdings believes that Sears Canada intends to comply with Sears Holdings' request, and make the foregoing disclosures in substantially the attached form in Sears Canada's information circular for the Meeting. Sears Holdings is certainly willing to work with Staff and the Commission to "fine tune" the disclosure, if particular changes that do not impair Sears Holdings' right of appeal are deemed necessary or desirable by Staff or the Commission.

Sears Holdings' Compliance with the Order

As indicated in the October 13, 2006 application, Sears Holdings has made a specific commitment to fully comply with the Order if its proposed appeal to the Court of Appeal is unsuccessful.

Sears Holdings has requested that Sears Canada reflect this commitment in the information circular for the Meeting, as follows:

> As part of Sears Holdings' application to the OSC dated October 13, 2006, Sears Holdings confirmed to the OSC that Sears Holdings will comply with the Order or any order resulting from the appellate process, as the case may be. Accordingly, if the Order is not varied or vacated as a result of the appellate process, Sears Holdings has committed to amending the Offer to provide all of the disclosures prescribed by the Order including, among other things, granting an identical release to the Vornado Release to all Shareholders [of Sears Canada] who have tendered or will tender to the Offer or whose shares are acquired under the Consolidation or any other subsequent acquisition transaction. In addition, Sears Holdings has confirmed that it will provide a release identical to the Vornado Release to all Shareholders [of Sears Canada] who have tendered or will tender to the Offer or whose shares are acquired under the Consolidation or any other Subsequent Acquisition Transaction whether or not such is required by any order resulting from the appellate process.

As a result of such disclosure, it will be unambiguously clear to all Sears Canada shareholders that one of two things will happen once the outcome of the appellate process is known. Either: (a) Sears Holdings will fully comply with the Order and all shareholders who have tendered or will tender to the Offer or whose shares are acquired under an SAT will be granted an identical release to the Vornado Release; or (b) Sears Holdings will comply with any order made by the Court of Appeal and all shareholders who have tendered or will tender to the Offer or whose shares are acquired under an SAT will be granted an identical release to the Vornado Release. There is no scenario in which one of those two things will not happen.

The stay sought by Sears Holdings in this application is necessary to preserve the efficacy of Sears Holdings' right of appeal and it does not in any way contravene the spirit or intent of the Commission's Order. Sears Holdings respectfully requests that the stay be granted.

Yours sincerely,

"original signed"

Mark A. Gelowitz
MAG:
Enclosures

c: Josée Turcotte
Margo Paul
Naizam Kanji
Michael Brown
Kelley McKinnon
Grant Haynen
Kathleen Keller-Hobson
Peter Howard
Paul Steep
Kent Thomson
Luis Sarabia
Patricia Olasker

APPENDIX "A"

PROPOSED DISCLOSURE FOR THE SEARS CANADA PROXY CIRCULAR

Support Agreements

The following is a summary of the Support Agreements and is qualified in its entirety by the full text of the Support Agreements, copies of which have been filed on SEDAR.

Each Shareholder that is a party to the Support Agreements has agreed:

(a) not to take any action which may in any way adversely affect the success of a Subsequent Acquisition Transaction;

(b) to use commercially reasonable efforts to consummate the Subsequent Acquisition Transaction;

(c) to not:

  (i) sell, transfer, pledge or create a lien on, or otherwise dispose of in any way, any Common Shares other than pursuant to a Subsequent Acquisition Transaction or by tendering into the Offer;

  (ii) except in favour of Sears Holdings, grant any proxies or powers of attorney or attorney in fact, or deposit the Common Shares into a voting trust or enter into a voting agreement, understanding or arrangement with respect to the voting of the Common Shares;

  (iii) relinquish or modify its right to exercise control or direction over or to vote any Common Shares; or

  (iv) enter into any agreement to do any of the foregoing;

(d) to vote (or cause to be voted) all the Common Shares at any meeting of the Shareholders, or any adjournment thereof, and in any action by written consent of the Shareholders:

  (i) in favour of the approval, consent, ratification and adoption of the Subsequent Acquisition Transaction and any actions required or deemed advisable by Sears Holdings in furtherance thereof; and

  (ii) against any action that is intended or would reasonably be expected to impede, interfere with, delay, postpone or discourage the Subsequent Acquisition Transaction; and

(e) to not exercise any dissent rights and to waive any rights of appraisal that it may have in respect of the Subsequent Acquisition Transaction.

Sears Holdings has agreed in the Support Agreements, subject to the provisions thereof:

(a) to cause a meeting of Shareholders to be held to vote on the Subsequent Acquisition Transaction, and any final court approval of the Subsequent Acquisition Transaction to be obtained, prior to November 15, 2006;

(b) to cause the Subsequent Acquisition Transaction to be completed between December 14 and 17, 2006, by either a share consolidation or plan of arrangement; and

(c) to consult with the Shareholder parties to the Support Agreements about what future steps should be taken to enable them to dispose of their Common Shares if the Subsequent Acquisition Transaction is not completed for any reason by December 17, 2006.

Vornado Release

The deposit agreement between Vornado Realty L.P. ("Vornado"), Sears Holdings and the Offeror dated April 1, 2006 (the "Vornado Deposit Agreement") included a release (the "Vornado Release") granted to Vornado. The terms of the Vornado Release are as follows:

> "In consideration for entering into the foregoing agreement, Sears Holdings Corporation, for itself and its affiliates, hereby releases Vornado Realty L.P. and its affiliates (and their respective officers, directors, employees and agents) from any and all claims and demands of any nature arising out of or otherwise based upon the activities of Vornado Realty L.P., and its affiliates (and their respective officers, directors, employees and agents) in connection with Vornado Realty L.P.'s acquisition and disposition of Common Shares of Sears Canada Inc. and entering into and performing this Agreement (it being understood and agreed that this release shall not apply to any claim relating to non-performance or breach by Vornado Realty L.P. of this Agreement). In addition, Sears Holdings Corporation agrees, promptly after the Sears Canada Control Time, to cause Sears Canada Inc. to execute an instrument expressly agreeing to this release on behalf of itself and its subsidiaries."

A copy of the Vornado Deposit Agreement has been filed on SEDAR.

Regulatory Proceedings with Respect to the Offer

On June 5, 2006, the Pershing Group filed an application with the OSC for relief against Sears Holdings and the Offeror under the Securities Act. The application of the Pershing Group concerned the conduct of Sears Holdings and the Offeror, including whether collateral benefits were conferred by the Vornado Deposit Agreement and the Support Agreements, and whether Sears Holdings had engaged in coercive or abusive conduct in connection with the Offer.

A hearing on the merits of the Pershing Group's application was heard for three days commencing July 4, 2006. On August 8, 2006 the Order was issued, together with the OSC's reasons. The Order cease trades the Offer until the Offeror's take-over bid circular is amended in the manner specified in the Order, the full text of which is set out in Schedule ●. The following is a summary of the principal terms of the Order:

Pursuant to the Order, the OSC has directed: (1) Sears Holdings and the Offeror to comply with Part XX of the Securities Act, R.S.O. 1990, c. S.5 ("Ontario Securities Law") in respect of the Offer and all other offers made or to be made for Common Shares; (2) the directors and senior officers of Sears Holdings and the Offeror to cause their respective corporations to comply with and to cease to contravene Ontario Securities Law; (3) that the Offer and any other offer made or to be made for Common Shares by Sears Holdings and the Offeror or any affiliate thereof is cease traded until the take-over bid circular in respect of the Offer or any other offer is amended to disclose (a) that Sears Holdings and the Offeror will exclude from the calculation of the required majority of the minority approval, on the anticipated second step subsequent acquisition transaction or any other offer and subsequent acquisition transaction in the future, the votes attached to the Common Shares held by or acquired from Scotia Capital Inc., The Bank of Nova Scotia and Royal Bank of Canada which are the subject of the Support Agreements, and (b) the identities and interests of the parties to the Support Agreements and a description of the material terms of the Support Agreements; (4) that the Offer is cease traded until the take-over bid circular in respect of the Offer is amended to disclose (a) the existence and terms of the Vornado Release, and (b) the grant by

Sears Holdings of an identical release to all shareholders of Sears Canada who have tendered or will tender to the Offer or whose Common Shares are acquired under the Subsequent Acquisition Transaction, and (c) that Sears Holdings will exclude from the calculation of the required majority of the minority approval, on the Subsequent Acquisition Transaction, the votes attached to the Common Shares held by or acquired by Sears Holdings and the Offeror from Vornado pursuant to the Vornado Deposit Agreement.

The terms of the Order relating to the Support Agreements apply to the outstanding Offer and to any subsequent offers made by Sears Holdings.

Sears Holdings appealed the Order to the Divisional Court. On August 29, 2006, the OSC granted an order staying the Order to the extent necessary to permit the Offeror to amend the Offer by extending the expiry time of the Offer until the appellate process in relation to the Order has been exhausted. On August 29, 2006, the Offeror issued a Notice of Extension extending the expiry date of the Offer to September 29, 2006.

The Divisional Court heard the appeal from the Order on September 18 and 19, 2006. On September 19, 2006, the Divisional Court dismissed Sears Holdings' appeal from the Order. On October 12, 2006 the Divisional Court released its reasons for its decision to dismiss Sears Holdings' appeal from the Order. On September 27, 2006, Sears Holdings filed a notice of motion for leave to appeal the decision of the Divisional Court to the Court of Appeal for Ontario.

On September 28, 2006, the Offeror issued a Notice of Extension extending the expiry date of the Offer to October 31, 2006.

Shareholder Approvals Required and Legal Considerations

The Consolidation is a "going private transaction" under the CBCA, and may be carried out only in accordance with applicable provincial securities laws, namely Rule 61-501 and Policy Q-27.

Accordingly, under the CBCA the Special Resolution must be approved by at least two-thirds of the votes cast at the Meeting by Shareholders present in person or represented by proxy. In addition, in order to comply with the requirements of Rule 61-501 and Policy Q-27, the Corporation may not proceed with the Consolidation unless Minority Approval is obtained.

Sears Holdings has sought leave to the Court of Appeal to appeal the decision of the Divisional Court, which dismissed Sears Holdings' appeal from the Order of the OSC cease trading the Offer. In the proposed appeal, Sears Holdings is seeking an order vacating the Order of the OSC. Unless the Court of Appeal grants leave to appeal and allows the appeal so as to permit the votes attached to Common Shares subject to the Support Agreements and/or the Common Shares deposited to the Offer pursuant to the Vornado Deposit Agreement to be included in the calculation of the Minority Approval in respect of the Special Resolution, then such votes will be excluded (for greater certainty, excluded from both the numerator and the denominator) from the calculation of votes cast in respect of the Special Resolution for purposes of determining whether Minority Approval has been obtained.

If the Court of Appeal has not yet determined whether to grant leave to appeal prior to the Meeting Date, or if leave to appeal has been granted but the Court of Appeal has not yet rendered its decision prior to the Meeting Date, Sears Holdings has proposed to the Corporation: (i) that the Corporation announce at the Meeting whether the Special Resolution has been approved by two-thirds of the Shareholders present in person or represented by proxy and voting on the Special Resolution; and (ii) that the Corporation not determine whether the Minority Approval has been obtained until promptly after the final determination by the Court of Appeal of this issue (unless Minority Approval is obtained at the Meeting without

including the votes attached to Common Shares subject to the Support Agreement and the Common Shares acquired by the Offeror pursuant to the Vornado Deposit Agreement).

Sears Holdings has requested that the Corporation state in this Circular that Sears Holdings acknowledges that Sears Canada will exclude from the calculation of the required Minority Approval the votes attached to the Common Shares subject to the Support Agreements or deposited to the Offer pursuant to the Vornado Deposit Agreement for purposes of calculating Minority Approval, unless and to the extent such votes are permitted to be counted in accordance with the final determination by the Court of Appeal of this issue.

As part of Sears Holdings' application to the OSC dated October 13, 2006, Sears Holdings confirmed to the OSC that Sears Holdings will comply with the Order or any order resulting from the appellate process, as the case may be. Accordingly, if the Order is not varied or vacated as a result of the appellate process, Sears Holdings has committed to amending the Offer to provide all of the disclosures prescribed by the Order including, among other things, granting a release identical to the Vornado Release to all Shareholders who have tendered or will tender to the Offer or whose shares are acquired under the Consolidation or any other Subsequent Acquisition Transaction. In addition, Sears Holdings has confirmed that it will provide a release identical to the Vornado Release to all Shareholders who have tendered or will tender to the Offer or whose shares are acquired under the Consolidation or any other Subsequent Acquisition Transaction whether or not such is required by any order resulting from the appellate process.

Under section 190 of the CBCA, a Registered Shareholder may dissent in respect of the Special Resolution. See "Right to Dissent".

To the knowledge of the Corporation, the aggregate number of votes attached to Common Shares that will be excluded in determining whether Minority Approval for the Special Resolution has been obtained is 72,843,517, being the aggregate number of votes attached to (i) 57,732,517 Common Shares held by Sears Holdings and its affiliates immediately prior to the commencement of the Offer, (ii) if Sears Holdings' appeal to the Court of Appeal is not successful, 7,500,000 Common Shares acquired under the Offer pursuant to the Vornado Deposit Agreement, and (iii) if Sears Holdings' appeal to the Court of Appeal is not successful, an aggregate of 7,611,000 Common Shares that are subject to the Support Agreements.

It is the intention of the Management representatives designated in the enclosed form of proxy to <u>not</u> vote the Common Shares in respect of which they are appointed proxy unless a Shareholder has specified in his or her proxy how the Shareholder's Common Shares are to be voted in respect of the Special Resolution.

The Corporation has provided the TSX with notice of the proposed Consolidation.