

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990 c. S.5 as amended**

AND

**IN THE MATTER OF AN APPLICATION BY
THE CATALYST CAPITAL GROUP INC.**

AND

IN THE MATTER OF CORUS ENTERTAINMENT INC.

APPLICATION

TO: THE SECRETARY OF THE COMMISSION
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
M5H 3S8

This application to the Ontario Securities Commission is brought by the applicant, The Catalyst Capital Group Inc. (the "**Applicant**"), in connection with the special meeting (the "**Meeting**") of holders of Class A participating shares and Class B non-voting participating shares of Corus Entertainment Inc. ("**Corus**") called to consider, and if deemed advisable, to approve, the proposed purchase (the "**Acquisition**") by Corus of Shaw Media Inc. ("**Shaw Media**") from Shaw Communications Inc. ("**Shaw**")

This application will come on for a hearing on a date, at a time and at a place to be set by the Secretary of the Commission.

1. The Applicant makes an application for:
 - (a) an order permitting this application to be heard;
 - (b) an order pursuant to section 127(1)5 of the *Securities Act* (Ontario) (the "**Act**") that Corus (i) amend or supplement its management information circular dated February 9, 2016 relating to the Meeting (the "**Circular**") to correct the materially misleading disclosure defects described further herein, (ii) issue a press release correcting such materially misleading disclosure defects, and (iii) send such amended or supplemented Circular to shareholders of Corus investors as of the record date for the Meeting not less than 10 days prior to the Meeting, as adjourned or postponed;
 - (c) an order pursuant to section 127(1)2 of the Act that trading cease in respect of any shares of Corus issued, or to be issued, under or in connection with the Acquisition, unless and until Corus satisfies the Commission that the provisions of section 1(b) above have been complied with;
 - (d) an order pursuant to section 127(1)2.1 of the Act that the acquisition of any shares of Shaw Media by Corus is prohibited unless and until Corus satisfies the Commission that the provisions of section 1(b) above have been complied with; and
 - (e) such alternative or further and other relief as counsel for the Applicant may request and the Commission may order.

2. The grounds for the application are:
 - (a) Corus is a reporting issuer under the Act and is a corporation existing under the *Canada Business Corporations Act*. Corus is an integrated media and content company that creates, broadcasts, licenses and delivers content across a variety of platforms for audiences around the world.

- (b) The authorized share capital of Corus consists of an unlimited number of Class A voting participating shares ("**Class A Shares**"); an unlimited number of Class B non-voting participating shares ("**Class B Shares**"); an unlimited number of Class 1 preferred shares, issuable in series; an unlimited number of Class 2 preferred shares, issuable in series; and an unlimited number of Class A preferred shares.
- (c) As at February 5, 2016, being the record date for the Meeting, there were 3,425,792 Class A Shares, 84,490,897 Class B Shares and no preferred shares outstanding. The Class B Shares are listed on the Toronto Stock Exchange under the symbol CJR.B.
- (d) Shaw is a reporting issuer under the Act and is a corporation existing under the *Business Corporations Act* (Alberta). Shaw's Class A Shares are listed on the TSX Venture Exchange, its Class B non-voting participating shares are listed on the Toronto Stock Exchange and the New York Stock Exchange and its Series A Class 2 cumulative redeemable rate reset preferred shares are listed on the Toronto Stock Exchange.
- (e) Shaw Media is a subsidiary of Shaw and is a corporation existing under the *Business Corporations Act* (Alberta). Shaw Media operates Global Television and 19 Canadian specialty television channels.
- (f) James Robert Shaw ("**JR Shaw**"), the Shaw Family Living Trust (which is controlled by JR Shaw) and their affiliates, including Ms. Heather Shaw, Ms. Julie Shaw, Mr. Bradley Shaw, Mr. Jim Shaw and voting entities controlled by them, hold over 84% of the voting interests in Corus (with less than approximately 10%

of the total equity interest) and over 78% of the voting interests in Shaw Media's parent company, Shaw (with less than approximately 15% of the total equity interest). As of March 2, 2016, the Shaw family's equity interest in Shaw is worth approximately \$1.2 billion and its equity interest in Corus is worth approximately \$100 million, a difference of more than \$1 billion.

- (g) The Applicant was founded in 2002 and is Canada's second largest private equity investment firm. The Applicant, together with funds managed by it, directly or indirectly, beneficially owns or exercises control over 321,800 Class B Shares, representing approximately 0.4% of the outstanding Class B Shares.
- (h) On January 13, 2016, Corus announced that it had entered into a share purchase agreement to purchase all of the shares of Shaw Media from Shaw for \$2.65 billion.
- (i) Corus will satisfy the purchase price for the Acquisition by the payment to Shaw of \$1.85 billion in cash and by the issuance to Shaw of approximately 71,364,853 Class B Shares.
- (j) The Acquisition will be financed with a combination of debt and equity. Corus intends to satisfy the purchase price for the Acquisition and finance the transaction costs, and refinance certain of Corus's existing indebtedness by way of the following: (i) \$2 billion from drawings under a new term credit facility; (ii) an estimated \$300 million from the proceeds of a future private placement of new senior unsecured notes (the offering of which has been put on hold due to the 9% - 10% interest rate investors were requiring on the notes); (iii) \$163 million from the remaining portion of the cash consideration (net of tax) received from Bell Media

on January 5, 2016 in connection with the sale of Corus's Pay TV business; (iv) approximately \$295 million from the gross proceeds of the sale of subscription receipts to acquire Class B Shares at a price of \$9.00 per subscription receipt issued pursuant to a private placement to the Shaw family for aggregate gross proceeds of \$32,040,000 and the remainder pursuant to an offering; and (iv) \$800 million from the issuance by Corus to Shaw of 71,364,853 Class B Shares based on a price of \$11.21 per Class B Share.

- (k) The Acquisition is a "related party transaction" pursuant to Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") as Shaw and Corus are controlled by the Shaw family. As the equity interest of the Shaw family in Shaw exceeds the equity interest of the Shaw family in Corus by more than \$1 billion, the Shaw family has an incentive to favour the interests of Shaw over the interests of Corus.
- (l) The Acquisition must be approved at the Meeting of holders of Class A Shares and Class B Shares by:
 - (i) a majority of the votes cast at the Meeting by or on behalf of the holders of Class A Shares in accordance with the requirements of the Toronto Stock Exchange, excluding any votes attached to Class A Shares held by interested shareholders;
 - (ii) a majority of the votes (50% + 1) cast by or on behalf of the holders of Class A Shares and the holders of Class B Shares at the Meeting, in each case voting separately as a class (excluding for these purposes, the votes cast by

certain "related parties" to Corus, including JR Shaw, the Shaw Family Living Trust and certain associates and affiliates, in accordance with the "minority approval" requirements of Part 8 of MI 61-101).

- (m) In addition to the requirement to have a "minority vote" of shareholders that excludes the votes cast by the related party and certain other specified parties, in a related party transaction it is incumbent upon the board of directors to ensure that the interests of minority shareholders are protected by: (i) adopting a process that ensures the related party does not benefit at the expense of the minority, (ii) obtaining a valuation of an independent expert as to the value of the consideration being exchanged, and (iii) providing clear, plain and non-confusing disclosure regarding the related party transaction. The fairness of the minority vote of shareholders turns in large part on these three factors being present.
- (n) Corus's press release announcing the Acquisition, its investor presentations, the Circular and its various other public disclosures have consistently and repeatedly contained materially misleading statements regarding the Acquisition that mislead shareholders as to the actual financial merits of the Acquisition. These misleading statements include:
 - (i) Statements materially overstating the EBITDA of Shaw Media and the combined EBITDA of the combined Corus/Shaw Media as a result of not adjusting for non-controlling interests in Shaw Media's subsidiaries and the sale of Corus's Pay TV business to Bell Media;

- (ii) Statements materially understating the cost to Corus of the acquisition of the Shaw Media assets as reflected by the ratio of Enterprise Value / Earnings Before Interest, Taxes, Depreciation and Amortization multiple ("**EV/EBITDA**"). As a result of not adjusting for non-controlling interests in Shaw Media's subsidiaries the EV/EBITDA multiple is 8.6x and not 7.7x; and
- (iii) Statements falsely claiming that the Acquisition is immediately accretive on an earnings per share and free cash flow basis, including by initially failing to account for and later materially understating the cost of new debt that Corus is incurring to complete the Acquisition, by not reducing the non-controlling interests in Shaw Media subsidiaries and by depressing Corus earnings due to the effect of one time charges.

In addition, the plethora of disclosure documents used by Corus has created general confusion for Corus shareholders and the market generally.

- (o) Corus has failed to disclose whether or not Shaw undertook a competitive process to sell Shaw Media to obtain an objective value with respect to the assets being sold.
- (p) The material misstatements and omissions of Corus referenced above go to the very core of the decision that Corus shareholders are being asked to make concerning the Acquisition, and were frequently highlighted by Corus as significant reasons to vote in favour of the resolution approving the Acquisition. Each of these statements misleads Corus shareholders regarding the Acquisition terms by

implying that Corus is getting better value than is in fact the case. Holders of Class B Shares are being asked to approve the Acquisition based, in large part, on their reliance on materially misleading statements that have appeared repeatedly regarding critical financial metrics provided by Corus in support of recommendation of its board of directors (the "**Corus Board**") to approve the Acquisition. The Circular and Corus's other public disclosures should contain accurate information to assist Corus shareholders in reaching their conclusion.

- (q) The prejudicial effect on Corus minority shareholders of the deficient and materially misleading disclosure of Corus concerning the Acquisition is symptomatic of the significantly flawed process adopted by the Corus Board in considering, negotiating, approving and recommending the Acquisition, which appears to have favoured the interests of the Shaw family over the interests of Corus's minority shareholders. Among other factors:
- (i) The Shaw family was involved in the transaction discussions from the outset and it was only after the terms of the Acquisition were substantially negotiated that a special committee was ultimately formed by the Corus Board to consider the Acquisition.
 - (ii) Corus's lead investment bank, RBC Capital Markets ("**RBC**"), which was heavily involved in structuring and negotiating the Acquisition from its earliest stages and provided a fairness opinion in respect of the Acquisition, had a clear conflict of interest. RBC has acted as an investment banker for Shaw on at least three transactions over the past two years, including one

mandate that occurred contemporaneously with the Acquisition. In addition to the significant fees RBC would have received from Shaw for these three mandates, RBC will also receive significant fees (which the Applicant estimates could total \$20-\$30 million) from Corus on completion of the Acquisition. RBC's parent chartered bank also stands to benefit from being the lead lender for the significant debt financing (in excess of \$2.5 billion) to be provided to Corus in connection with the Acquisition. In addition, RBC has also acted as a lender for Shaw in the past.

- (iii) Under the terms of the share purchase agreement dated January 13, 2016 between Shaw and Corus relating to the Acquisition, the Corus Board does not have the ability to change its recommendation to shareholders with respect to the resolution to approve the Acquisition (in other words, there is no "fiduciary out").
- (r) If the Acquisition is completed, holders of Class B Shares will experience a significant degree of dilution estimated at 55% in their ownership of Corus such that they are expected to own only approximately 45% of the issued and outstanding Class B Shares post-Acquisition.
- (s) The issuance of the Class B Shares by Corus as part of the Acquisition and the acquisition of any shares of Shaw Media by Corus is, in these circumstances, contrary to the public interest and should be cease traded because Corus shareholders are being asked by the Corus Board to approve the Acquisition based on materially misleading information concerning the financial merits of the

Acquisition and therefore without sufficient information to form a reasoned judgment concerning the Acquisition.

- (t) Corus's conduct, as described above, was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The affidavit of Gabriel de Alba, sworn March 4, 2016; and
- (b) Such further and other evidence as counsel for the applicant may advise and the Ontario Securities Commission may permit.

Date: March 4, 2016

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Robert W. Staley (#27115J)
Email: staley@bennettjones.com

Derek J. Bell (#43420J)
Email: bell@bennettjones.com

Jeffrey Kerbel (#24099O)
Email: kerbel@bennettjones.com

Kristopher Hanc (#53713D)
Email: hanc@bennettjones.com

Telephone: (416) 863-1200
Facsimile: (416) 863-1716

Lawyers for the applicant