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Commission

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**IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF  
SEARS CANADA INC.,  
SEARS HOLDINGS CORPORATION,  
AND SHLD ACQUISITION CORP.**

**- AND -**

**IN THE MATTER OF  
HAWKEYE CAPITAL MANAGEMENT, LLC,  
KNOTT PARTNERS MANAGEMENT, LLC, AND  
PERSHING SQUARE CAPITAL MANAGEMENT L.P.**

**ORDER**

**Section 9(2) of the Act**

**WHEREAS** on August 8, 2006, the Commission issued its Reasons and Decision (the "Reasons") and made an order (the "Cease Trade Order") pursuant to subsections 104(1) and 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") that the offer to acquire (the "Offer") made by Sears Holdings Corporation and SHLD Acquisition Corp. (collectively, the "Offerors") for all of the outstanding common shares (the "Common Shares") of Sears Canada Inc. ("Sears Canada") be cease-traded until certain conditions are satisfied;

**AND WHEREAS** by notice of appeal dated August 9, 2006, the Offerors appealed to the Ontario Superior Court of Justice (Divisional Court) (the "Divisional Court") to set aside the Cease Trade Order;

**AND WHEREAS** on September 19, 2006, the Divisional Court dismissed the Offerors' appeal of the Cease Trade Order;

**AND WHEREAS** on September 27, 2006, the Offerors filed a Notice of Motion for Leave to Appeal the decision of the Divisional Court to the Court of Appeal for Ontario;

**AND WHEREAS** the parties (the "Parties") to the motion for leave to appeal the decision of the Divisional Court (the "Motion") have agreed to expedite the filing of materials with respect to the Motion;

**AND WHEREAS** in the support agreements (the "Support Agreements") between Sears Holdings Corporation and each of The Bank of Nova Scotia ("BNS"), Scotia Capital Inc. ("Scotia Capital") and Royal Bank of Canada, Sears Holdings covenanted that it would cause Sears Canada to hold a meeting of Sears Canada

shareholders (the "Meeting") prior to November 15, 2006 to consider a subsequent acquisition transaction ("SAT");

**AND WHEREAS** BNS and Scotia Capital have advised the Offerors and the Commission of their position that Sears Holdings would be in fundamental breach of the Support Agreements if the Meeting is not held prior to November 15, 2006 and that BNS and Scotia Capital would no longer be subject to the restrictions in the Support Agreements committing them to vote their Common Shares in favour of the SAT and restricting them from disposing of their Common Shares;

**AND WHEREAS** the Offerors advised the Commission that in order for Sears Canada to call and hold the Meeting for Sears Canada shareholders to vote on the SAT prior to November 15, 2006, Sears Canada must mail the Notice of Special Meeting of Shareholders and Management Proxy Circular (the "Proxy Circular") by no later than October 24, 2006 and that, as a result of the stated position of BNS and Scotia Capital, an inability to hold the Meeting prior to November 15, 2006 would vitiate the Offerors' appellate rights and prejudice the ability to complete the SAT if their appeal is successful;

**AND WHEREAS** it is impracticable for the Offerors' Motion and, if leave to appeal is granted, the appeal itself, to be determined by the Court of Appeal prior to October 24, 2006;

**AND WHEREAS** by an application dated October 13, 2006, heard on October 18, 2006 (the "Application"), the Offerors requested that the Commission stay the Cease Trade Order pursuant to subsection 9(2) of the Act to the extent necessary to permit Sears Canada to hold the Meeting to vote on the SAT prior to November 15, 2006 in order to preserve the Offerors' rights pending the outcome of the appellate process;

**AND WHEREAS** Staff of the Commission supported the Application of the Offerors provided that: (1) the Offerors represents to the Commission that the failure to hold the Meeting prior to November 15, 2006 would constitute substantial non-performance of the Support Agreements thereby entitling BNS, the Royal Bank of Canada and Scotia Capital to treat their respective Support Agreements as terminated; and (2) the information circular prepared for the Meeting contains the disclosure required by paragraph 4 of the Cease Trade Order; and full, true and plain disclosure about the Cease Trade Order, the Stay, the status of the Offer and the various levels of minority approval that may be required;

**AND WHEREAS** Hawkeye Capital Management, LLC, Knott Partners Management, LLC, and Pershing Square Capital Management L.P. opposed the Application of the Offerors on a number of grounds, as set out in their letter dated October 17, 2006;

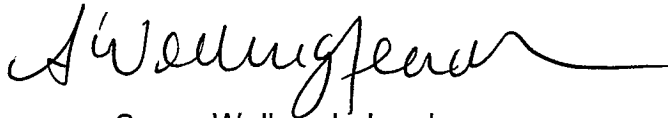
**AND WHEREAS** BNS and Scotia Capital supported the Application of the Offerors in order to preserve the status quo pending the outcome of the appellate process;

**AND WHEREAS** the Commission has determined that a stay of the Cease Trade Order, to the extent necessary to permit Sears Canada to hold the Meeting for Sears Canada shareholders to vote on the SAT, is necessary to preserve the Offerors' rights pending the outcome of the appellate process;

**IT IS HEREBY ORDERED THAT** the Cease Trade Order is stayed to the extent necessary to permit Sears Canada to hold the Meeting for Sears Canada shareholders to vote on the SAT, subject to the following conditions:

1. The Proxy Circular prepared in connection with the Meeting shall comply with the disclosure requirements set out in paragraphs 3 and 4 of the Cease Trade Order, in a form satisfactory to Staff of the Commission.
2. Sears Holdings shall prepare a letter to Sears Canada shareholders to accompany the Proxy Circular, which shall be written in plain language in a form satisfactory to Staff of the Commission, informing the shareholders of the status of the regulatory proceedings relating to the Offer (including the Cease Trade Order, the appellate process and the stay granted pursuant to this Order). The letter shall explain clearly the impact of the Court of Appeal either granting leave to appeal or not granting leave to appeal on the outcome of the vote to be held at the Meeting and shall be appended to the cover sheet of the Proxy Circular in order to alleviate any potential confusion amongst shareholders of Sears Canada.
3. In accordance with the Parties' representations to the Panel that they had agreed to expedite the filing of materials with respect to the Motion, Sears Holdings shall file a timetable for the exchange and filing of factums in connection with the Motion, to be agreed upon by the Parties, in order to facilitate, to the extent possible, a decision from the Court of Appeal on the Motion prior to the Meeting. This timetable, which was to be filed with the Office of the Secretary of the Commission as soon as practicable and no later than Tuesday, October 24, 2006, is appended to this Order.
4. Sears Holdings shall provide a list of registered shareholders of Sears Canada as at the record date of the Meeting to Hawkeye Capital Management LLC, Knott Partners Management LLC and Pershing Square Capital Management, L.P. by delivering such list to their solicitors no later than the close of business on Wednesday October 25, 2006 and a list of non-objecting beneficial owners of shares of Sears Canada as at the record date to such solicitors as soon as available.

DATED at Toronto this 23<sup>rd</sup> day of October, 2006.



Susan Wolburgh Jenah



Robert W. Davis

## **Schedule "A"**

### **Agreed Timetable for the Exchange and Filing of Factums and Supporting Materials on the Motion for Leave to Appeal the Decision of the Divisional Court to the Court of Appeal for Ontario**

Counsel for the parties to the motion for leave to appeal to the Court of Appeal for Ontario have agreed to a timetable for the exchange and filing of their respective factums and supporting materials on the motion in order to facilitate, to the extent possible, a decision from the Court of Appeal on the motion prior to the November 14, 2006 Sears Canada shareholders' meeting.

The agreed timetable is as follows:

- Sears Holdings' materials: October 24, 2006
- Respondents' materials: November 3, 2006
- Sears Holdings' reply materials: November 6, 2006
- Determination of Motion for Leave to Appeal: (joint request for expedited determination)