



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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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
CONRAD M. BLACK, JOHN A. BOULTBEE
AND PETER Y. ATKINSON**

**SETTLEMENT AGREEMENT
PETER Y. ATKINSON**

PART I – INTRODUCTION

1. By Notices of Hearing dated March 18, 2005 and July 12, 2013, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the “Act”), it was in the public interest to make orders against Peter Y. Atkinson (“Atkinson”) and other respondents, as set forth below.
2. These Notices of Hearing were issued in connection with the Statement of Allegations filed by Staff of the Commission (“Staff”) against Atkinson, Hollinger Inc. (“Hollinger”), Conrad M. Black (“Black”), F. David Radler (“Radler”), and John A. Boulton (“Boulton”) (together, the “Original Respondents”) on March 18, 2005 (the “Original Statement of Allegations”), and continued pursuant to an Amended Statement of Allegations filed against Atkinson, Black and Boulton (together, the “Respondents”) on July 12, 2013.

3. The Commission will issue a new Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement between Staff and Atkinson and to make certain orders in respect of Atkinson.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement to the Commission of the proceeding commenced by the Original Statement of Allegations and continued pursuant to the Amended Statement of Allegations against Atkinson according to the terms and conditions set out in Part IV of this Settlement Agreement. Atkinson agrees to the making of an order by the Commission in the form attached as Schedule “A” to this Settlement Agreement based on the facts summarized in Part III of the Settlement Agreement.
5. Staff will tender documents to the Commission evidencing the conviction and order entered against Atkinson in the United States, as summarized in Part III below. Pursuant to section 127(10) of the Act, the Commission is entitled to consider convictions or orders related to securities from another jurisdiction when deciding whether to make orders in the public interest, so as to facilitate protection of the capital markets and to avoid the duplication of proceedings and a waste of resources.

PART III – AGREED FACTS

6. In the Notice of Hearing dated March 18, 2005, the Commission announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1 of the Act, it would be in the public interest for the Commission to make certain orders in relation to the Original Respondents.
7. The Original Respondents subsequently brought a series of motions and requests to adjourn the proceeding (the “Adjournment Requests”) pending the outcome of proceedings in the United States which are described further below. The Original Respondents tendered undertakings to the Commission (the “Original Undertakings”) in support of several of the Adjournment Requests and the

undertakings were then attached to Orders of the Commission dated March 30, 2006 and April 4, 2007.

8. The Commission granted multiple adjournments at the request of the Original Respondents, and with the consent of Staff, ultimately adjourned the hearing *sine die* by Order dated October 7, 2009 pending the release of a decision of the United States Supreme Court in relation to a criminal proceeding in the United States involving the Respondents, among others.

(a) The United States Criminal Proceeding

9. On November 17, 2005, a Grand Jury in the United States District Court for the Northern District of Illinois (the “District Court”) indicted Black and Boulton on eight counts of criminal fraud and Atkinson on six counts of criminal fraud.
10. On July 13, 2007, after approximately four months of trial, Atkinson and the other Respondents were convicted by a jury on three counts of fraud. Two of the fraud counts related to the Respondents’ collection of purported non-competition payments pursuant to agreements with the American Publishing Company (“APC”), a Hollinger subsidiary. One fraud count related to the Respondents’ collection of purported non-competition payments in connection with Hollinger’s sale of assets to Forum Communications Inc. (“Forum”) and PMG Acquisition Corp. (“Paxton”).
11. Atkinson and the other Respondents moved for a judgment of acquittal on the convictions, but the trial judge reviewed the evidence and denied the motion in a detailed decision issued on November 5, 2007 (the “Conviction Appeal Judgment”). Atkinson and the other Respondents appealed their convictions to the United States Court of Appeals for the Seventh Circuit (the “Seventh Circuit”), but that court denied their appeals in a decision issued on June 25, 2008.
12. Certain of the Respondents then appealed the Seventh Circuit denial to the United States Supreme Court (the “Supreme Court”), and on June 24, 2010, the Supreme Court issued a parallel decision narrowing the scope of the “honest services”

provision of the U.S. fraud statute. The Supreme Court then vacated the Seventh Circuit decision and remanded the proceeding back to the Seventh Circuit for further consideration.

13. On October 29, 2010, upon remand from the Supreme Court, the Seventh Circuit vacated the two original conviction counts related to the APC payments after it was unable to conclude beyond reasonable doubt whether the jury's verdict on the APC payments had been rendered under the "honest services" section of the fraud statute or the "pecuniary fraud" section of the statute.
14. The Seventh Circuit did not disturb the convictions related to the Forum and Paxton payments. All of the Respondents sought leave to appeal this decision to the Supreme Court, but leave was denied on May 31, 2011.
15. On remand at the District Court, Atkinson was resentenced based on the fraud conviction relating to the Forum and Paxton payments. Atkinson was sentenced to time served (345 days) and was fined \$3,000.

(b) The United States Securities and Exchange Commission Proceeding

16. On October 9, 2009, Staff of the United States Securities and Exchange Commission (the "SEC") instituted an administrative proceeding against Atkinson in relation to the APC, Forum and Paxton payments, and the failure to accurately disclose the circumstances surrounding the payments in securities filings. Pursuant to a settlement offer, the SEC found that Atkinson had committed securities fraud and violated certain other provisions of the United States Securities Exchange Act of 1934. As a result, the SEC issued an order imposing various forms of injunctive relief against him, including a permanent bar from serving as a director or officer of a reporting issuer in the United States.

(c) Subsequent Events in Commission Proceeding

17. On November 14, 2012, the Commission approved the settlement agreement reached between Staff and Radler and approved an Order which, among other things, released Radler from the Original Undertakings.

18. On July 12, 2013, Staff filed an Amended Statement of Allegations against Black, Boulton and Atkinson, and withdrew the allegations contained in the Original Statement of Allegations against Hollinger, which remained subject to proceedings in the Ontario Superior Court of Justice pursuant to the *Companies' Creditor Arrangements Act*.

PART IV – TERMS OF SETTLEMENT

19. This proceeding will be settled on the terms set out below.
20. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Atkinson agrees with the facts set out in Part III of this Settlement Agreement.
21. The Commission will issue an order pursuant to subsection 127(10) of the Act in the form attached as Schedule “A” to this Settlement Agreement.
22. Atkinson agrees to provide the Commission with an undertaking in the form attached to this Settlement Agreement as Schedule “B” (the “New Undertaking”). Atkinson’s provision of the New Undertaking constitutes a material term of this Settlement Agreement and any breach of the New Undertaking will entitle Staff to bring a proceeding against Atkinson based on the facts summarized in Part III above. Atkinson agrees that he will waive any defence to such a proceeding that is based on the limitations period available under the Act.
23. Atkinson agrees to waive all rights to a full hearing, judicial review or appeal of this matter, subject to the terms set out in the New Undertaking.
24. Neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
25. Whether or not the Commission approves this Settlement Agreement, Atkinson will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission’s jurisdiction,

alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART V – DISCLOSURE OF SETTLEMENT AGREEMENT

26. If the Commission does not approve this Settlement Agreement:
- i. the Settlement Agreement and all discussions and negotiations between Staff and Atkinson before the settlement hearing takes place will be without prejudice to Staff and Atkinson; and
 - ii. Staff and Atkinson will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in this matter. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
27. Both parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve this Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART VII – EXECUTION OF SETTLEMENT AGREEMENT

28. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

29. A faxed or emailed copy of any signature will be treated as an original signature.

Dated this 20th day of September, 2013

“Peter Atkinson”

Peter Y. Atkinson

“Connie Paulo”

Witness

Dated this 19th day of September, 2013

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch



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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
CONRAD M. BLACK, JOHN A. BOULTBEE
AND PETER Y. ATKINSON**

- AND -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND PETER Y. ATKINSON**

**ORDER
(Section 127(10) of the Securities Act)**

WHEREAS on March 18, 2005, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") with respect to Conrad M. Black ("Black"), F. David Radler ("Radler"), Peter Y. Atkinson ("Atkinson"), John A. Boulton ("Boulton"), and Hollinger Inc. ("Hollinger") (together, the "Original Respondents").

AND WHEREAS the individual Original Respondents brought a series of motions and requests to adjourn the proceeding (the "Adjournment Requests") pending the outcome of a related criminal proceeding in the United States;

AND WHEREAS the individual Original Respondents tendered undertakings to the Commission in support of several of the Adjournment Requests, and these undertakings were then attached to Orders of the Commission dated March 30, 2006 and April 4, 2007 (the "Original Undertakings");

AND WHEREAS the Commission adjourned the hearing of the proceeding *sine die* by Order dated October 7, 2009, pending the release of a decision of the United States Supreme Court in relation to an appeal brought by Black and Boulton, or until a further order was made by the Commission;

AND WHEREAS on November 14, 2012 the Commission approved a settlement agreement reached between Staff and Radler and approved an Order releasing Radler from the Original Undertakings;

AND WHEREAS on July 12, 2013, Staff withdrew its allegations against Hollinger and filed an Amended Statement of Allegations against Atkinson, Black and Boulton (together, the “Respondents”);

AND WHEREAS the Original Undertakings remain in effect for the Respondents, and require them to refrain from:

- (a) acting or becoming an officer or director of a reporting issuer or an affiliated company of a reporting issuer;
- (b) applying to become a registrant and from being an employee, director or officer of a registrant or an affiliated company of a registrant;
- (c) engaging directly or indirectly in the solicitation of investment funds from the general public; and
- (d) trading in and acquiring securities of Hollinger.

AND WHEREAS on September 23, 2013, Atkinson provided an undertaking to the Commission in the form attached to this Order as Schedule “A” (the “New Undertaking”);

AND WHEREAS on September 23, 2013, the Commission convened a hearing and heard submissions from counsel for Staff and from Atkinson;

AND WHEREAS pursuant to section 127(10) of the Act and pursuant to the Settlement Agreement attached to this Order as Schedule “B” (the “Settlement Agreement”), Staff have filed documents evidencing the following facts:

- (a) On November 17, 2005, a Grand Jury convened in the United States District Court filed an indictment charging Atkinson with six counts of violating the United States Criminal Code;
- (b) On July 13, 2007, Atkinson was convicted by a jury in the United States District Court for the Northern District of Illinois (the “District Court”) of three counts of fraud. Two of these counts were vacated by the United States Court of Appeals for the Seventh Circuit on October 29, 2010, and Atkinson was resentenced in the District Court on the remaining conviction count to 345 days (time served) and a fine of US\$ 3,000, among other terms; and
- (c) On October 9, 2009, pursuant to a settlement offer, the United States Securities and Exchange Commission (the “SEC”) found that Atkinson had committed securities fraud and violated certain other provisions of the United

States Securities Exchange Act of 1934. As a result, the SEC issued an order imposing various forms of injunctive relief against Atkinson, including a permanent bar from serving as a director or officer of a reporting issuer in the United States.

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

1. Atkinson is released from the Original Undertakings;
2. Atkinson is required to comply with the New Undertaking; and
3. the Settlement Agreement is approved.

DATED at Toronto this day of September, 2013

**IN THE MATTER OF THE *SECURITIES ACT*
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-AND-

**IN THE MATTER OF
CONRAD M. BLACK, JOHN A. BOULTBEE
AND PETER Y. ATKINSON**

**UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION
OF PETER Y. ATKINSON**

I, Peter Y. Atkinson, am a Respondent to Notices of Hearing dated March 18, 2005 and July 12, 2013 issued by the Ontario Securities Commission (the "Commission") in this proceeding. I undertake to the Commission to refrain from:

- (a) becoming or acting as an officer or director of a reporting issuer or an affiliated company of a reporting issuer, as those terms are defined in the *Securities Act* R.S.O. 1990, c. S.5, as amended (the "Act");
- (b) applying to become or acting as a registrant or an employee, director or officer of a registrant or an affiliated company of a registrant as those terms are defined in the Act; and
- (c) trading or acquiring securities of Hollinger Inc. either directly or indirectly.

I undertake that if I initiate an application to the Commission under section 144 of the Act to vary or revoke the Order in the Matter of a Settlement Agreement between Staff of the Ontario Securities Commission and Peter Y. Atkinson, I will provide at least 90 days' notice of my application to Staff of the Commission.

Peter Y. Atkinson

Witness

Date:

Acknowledged as received by

John Stevenson
Secretary to the Commission

Date: