

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

**- and -**

**HOLLINGER INC., CONRAD M. BLACK,  
F. DAVID RADLER, JOHN A. BOULTBEE  
AND PETER Y. ATKINSON**

**STATEMENT OF ALLEGATIONS OF STAFF  
OF THE ONTARIO SECURITIES COMMISSION**

Further to a Notice of Hearing dated March 18, 2005, Staff of the Ontario Securities Commission (the “Staff”) make the following allegations:

**THE RESPONDENTS**

**Hollinger Inc.**

1. Hollinger Inc. (“Hollinger”) is a reporting issuer in the province of Ontario and all other jurisdictions in Canada, and is a foreign private issuer registered with the United States Securities and Exchange Commission (the “SEC”). Hollinger’s retractable common shares and series II preference shares are currently listed and posted for trading on The Toronto Stock Exchange (the “TSX”).

2. By 1997, Hollinger had sold virtually all of its operating newspaper assets to Hollinger International Inc. (“International”). From 1997 onwards, Hollinger has been an international holding company and its assets have consisted primarily of investments in subsidiaries and affiliated companies, principally its investment in International.

3. As of December 31, 1997, Hollinger owned (directly and indirectly) approximately 84% of the voting shares and approximately 60% of the equity of International.

**Conrad M. Black**

4. Conrad M. Black (“Black”) was Chairman of the Board and Chief Executive Officer of Hollinger and International since 1978. Black was also a member of International’s Executive Committee. On November 19, 2003, Black retired as CEO of International. He continued to be non-executive Chair of the Board of International until January 17, 2004, when International announced that Black had been removed as non-executive Chair. On November 2, 2004, Hollinger announced the resignation of Black as Chairman, Chief Executive Officer and a director of Hollinger.

**F. David Radler**

5. F. David Radler (“Radler”) was a director of Hollinger since 1979. He held the position of Deputy Chairman, President, and Chief Operating Officer of Hollinger. On or around January 13, 2004, Radler became Co-Chief Operating Officer of Hollinger. Pursuant to an order issued November 18, 2004, Justice Campbell ordered the removal of three directors of Hollinger, including Radler.

6. Radler was a director of International since 1990. During the period from 1990 to October 1995, Radler was Chairman of the Board of Directors of International. Radler served as President and Chief Operating Officer of International since October 1995 and as Deputy Chairman of International since May 1998. Radler was also a member of International’s Executive Committee. On November 16, 2003, Radler resigned as an officer and director of International.

**John A. Boulton**

7. John A. Boulton (“Boulton”) was a director of Hollinger since 1987. He held the position of Executive Vice-President. Pursuant to Justice Campbell’s order issued November 18, 2004, Boulton was removed as a director of Hollinger. On December 1,

2004, Hollinger announced that Boulton was no longer the Executive Vice President of Hollinger.

8. From 1990 until 1995, Boulton served as a Director of International. From 1995 through 2002, Boulton served as International's Chief Financial Officer. In 1998, Boulton became Executive Vice-President of International until his termination on November 16, 2003.

#### **Peter Y. Atkinson**

9. Peter Y. Atkinson ("Atkinson") was a director of Hollinger since 1996. During the period 1996 through 2001, Atkinson was the Vice-President and General Counsel of Hollinger. Atkinson then became the Executive Vice President of Hollinger and remained in that position until January 9, 2004, when he resigned as an officer and director of Hollinger.

10. Atkinson had served as a Vice President of International since 1997 and as a Director and Executive Vice-President since 2002. On November 16, 2003, Atkinson resigned as a director of International. However, he continued to hold the position of Executive Vice-President of International and assist in the Strategic Process defined below. Atkinson resigned as an officer of International as of April 27, 2004. He subsequently entered into a consulting agreement with International.

### **RELATED ENTITIES AND INDIVIDUALS**

#### **Hollinger International Inc.**

11. International is the principal subsidiary of Hollinger. It is a newspaper publisher. International is incorporated under the laws of Delaware with its principal place of business in Chicago, Illinois. It is a reporting issuer in the province of Ontario and all other provinces of Canada. The Class A Common shares of International are listed and posted for trading on the New York Stock Exchange.

12. On June 17, 2003, the board of directors of International established a special committee of independent directors (the “Special Committee”) to investigate, among other things, certain allegations regarding related party transactions.

13. On November 17, 2003, International announced that the board of directors had commenced a strategic process involving, among other things, a process to evaluate International’s alternatives to sell some or all of its assets (the “Strategic Process”). As well, Black and International entered into a formal contract to address Black’s obligations with respect to certain non-competition payments and the Strategic Process (the November 15, 2003 “Restructuring Proposal”).

14. The Restructuring Proposal stated that certain non-competition payments were not properly authorized on behalf of International, including US\$16.55 million paid to Hollinger and US\$15.6 million paid to Black, Radler, Boulton, and Atkinson. Black agreed to repay International the full amount of the non-competition payments that he received (US\$7,197,500), and to seek repayment from Hollinger of the US\$16.55 million that it received, plus interest.

#### **Ravelston Corporation Limited**

15. The Ravelston Corporation Limited (“Ravelston”) is a privately held corporation that was incorporated under the Ontario Business Corporations Act (the “OBCA”) on October 10, 1968. Black, through a holding company, is the controlling shareholder of Ravelston. Other Ravelston shareholders include Radler, Boulton and Atkinson.

#### **Argus Corporation Limited**

16. Argus Corporation Limited (“Argus”) is a Canadian public company and a reporting issuer in Ontario and Quebec. Certain classes of Argus’ preference shares are listed and posted for trading on the TSX. Ravelston owns all of the voting Common Shares and Class C Preference Shares of Argus, and 2,900 of the issued Class A Preference Shares \$2.60 Series.

17. Argus is a holding company and its primary asset is its investment in Hollinger. As of December 31, 1997, Ravelston owned (directly and indirectly through Argus) approximately 62.6% of Hollinger.

## **OVERVIEW OF STAFF'S ALLEGATIONS**

18. Staff make the following allegations in respect of the conduct of the Respondents:

**(a) Diversion of Funds - Hollinger**

Hollinger was a vehicle used to divert funds in the aggregate amount of US\$16.55 million from International to Hollinger in connection with International's sales of certain U.S. Community newspaper properties. These transactions are referred to below as American Trucker; Community Newspaper Holdings Inc. ("CNHI I"); Horizon Publications Inc. ("Horizon"); Community Newspaper Holdings Inc. ("CNHI II"); Forum Communications Company ("Forum"); and PMG Acquisition Corp. ("PMG");

**(b) Non-Compliance with Continuous Disclosure Obligations**

Hollinger failed to comply with its continuous disclosure obligations by not disclosing information concerning the transactions referred to above, including non-competition payments in the aggregate amount of US\$16.55 million paid to Hollinger in 1999 and 2000. Hollinger did not disclose information concerning these non-competition payments until December 1, 2003, at which time disclosure was made in Hollinger's interim consolidated financial statements for the nine months ended September 30, 2003;

**(c) Misstatements and Omissions in Hollinger's Filings**

Hollinger made statements in its continuous disclosure filings with the Commission that, in a material respect and in the light of the circumstances under which they were made, were misleading or untrue or did not state a

fact that was required to be stated or that was necessary to make the statements not misleading, including statements in respect of:

- non-competition payments in the aggregate amount of US\$15.6 million paid to Black, Radler, Boulton and Atkinson in connection with the Forum, PMG and CNHI II transactions (also referred to below as the “U.S. Community Newspaper” transactions);
- non-competition payments in the aggregate amount of Cdn\$81,722,389 (Cdn\$80 million, plus interest) paid to Ravelston, Black, Radler, Boulton and Atkinson in connection with International’s sale of assets to CanWest Global Communications Corporation (“CanWest”); and
- non-competition payments in the aggregate amount of Cdn\$7,940,000 made to Black, Radler, Boulton and Atkinson in connection with International’s sale of assets to Osprey Media Group Inc. (“Osprey”);

**(d) Failure to Disclose Interest of Insiders in Material Transactions**

Hollinger failed to provide material information in the April 14, 2000 Hollinger Management Proxy Circular concerning the interest of Hollinger’s insiders in the Horizon asset sale transaction, and the April 2001 Hollinger Management Proxy Circular concerning the interest of Hollinger’s insiders in the CanWest and CNHI II transactions. In particular, the approximately Cdn\$80 million (plus interest) payments made to Ravelston, Black, Radler, Boulton, and Atkinson in the CanWest transaction, and the approximately US\$9.5 million payments made to Black, Radler, Boulton and Atkinson in the CNHI II transaction, were not disclosed contrary to requirements of Ontario securities law;

**(e) Failure to Disclose Executive Compensation for Fiscal Years 1998 to 2001**

Hollinger failed to disclose information in respect of compensation paid to its Chief Executive Officer and four most highly compensated executive

officers in Hollinger's Management Proxy Circulars dated April 9, 1999, April 14, 2000, April 10, 2001 and April 18, 2002 (for fiscal years 1998 to 2001), contrary to disclosure requirements of Ontario securities law;

**(f) Failure to File Financial Statements**

Hollinger failed to file its interim statements (and management's discussion and analysis related thereto) for the three-month period ended March 31, 2004 and subsequent interim filing requirements, and failed to file its annual financial statements (and management's discussion and analysis related thereto) and its Annual Information Form ("AIF") for the year ended December 31, 2003, contrary to the requirements of Ontario securities law;

**(g) Failure to Implement Effective Conflict of Interest Practices**

During the material time, Hollinger and the Individual Respondents failed to implement appropriate policies to identify, and fully disclose transactions with, or indirectly involving, related parties or transactions where conflicts of interest arose by virtue of the personal gain to individual officers/directors. These failures exacerbated a management culture that disregarded appropriate practices to address conflicts of interest. In particular, the respondents failed to adequately disclose and address the many conflicts of interest on the part of Black, Radler, Boulton and Atkinson in the transactions set out above; and

**(h) Conduct of the Individual Respondents**

- (i) Black, Radler and Boulton authorized, permitted or acquiesced in the conduct of Hollinger described in paragraphs (a) to (g) above;
- (ii) Atkinson authorized, permitted or acquiesced in the conduct of Hollinger described in paragraphs (c) to (g) above;
- (iii) In addition, Staff allege that Black, Radler, Boulton and Atkinson authorized the diversion of funds characterized as non-competition

payments in the amount of at least US\$15,600,000 and Cdn\$89,662,389 as follows:

Black: US\$7,197,500 and Cdn\$23,000,972

Ravelston: Cdn\$38,818,135

Radler: US\$7,197,500 and Cdn\$23,000,972

Boulton: US\$602,500 and Cdn\$2,421,155

Atkinson: US\$602,500 and Cdn\$2,421,155; and

- (iv) Further, Black, Radler, Boulton, and Atkinson breached their fiduciary duties owed to Hollinger and International. The breaches occurred in several ways, principally using the asset sales by International to divert funds from International to Hollinger, Ravelston, Black, Radler, Boulton and/or Atkinson through payments characterized as non-competition payments. This conduct improperly benefited the respondents to the detriment of International.

19. Black, Radler, Boulton and Atkinson, in breach of their fiduciary duties owed to Hollinger and International, failed to provide to the audit committee and boards of Hollinger and International full and complete disclosure of all aspects of the asset sale transactions, as described above, in which they had a personal interest.

20. Black, Radler, Boulton and Atkinson faced the highest standard of disclosure of all pertinent information to the audit committee and Boards of Hollinger and International, particularly in circumstances where they would benefit personally. Their omissions of information and failure to accurately present facts constitutes egregious conduct in the circumstances and is a violation of their fiduciary duty to Hollinger and to International.



## SUMMARY OF THE TRANSACTIONS

### **The American Trucker Transaction**

21. On May 11, 1998, International and its subsidiary Southam Business Communications U.S.A. Inc. (“Southam USA”) entered into an asset purchase agreement to sell certain assets, including the publications known as *American Trucker* and *Mine and Quarry Trader*, and related publications, to Intertec Publishing Corporation (“Intertec”), for approximately US\$75 million (the “American Trucker transaction”).

22. Intertec, Southam USA, and International executed a non-competition agreement in which Intertec agreed to pay International an additional US\$2 million as consideration for the non-competition agreement at closing.

23. Radler signed the asset purchase agreement and the non-competition agreement on behalf of International and its subsidiary. Hollinger was not a party to the American Trucker transaction or the non-competition agreement.

24. On or about May 1, 1998, the International Executive Committee, consisting of Black, Radler and one independent director, approved the sale to Intertec for approximately US\$75 million and International’s execution of the non-competition agreement.

25. On February 1, 1999, Hollinger received US\$2 million from International as a purported non-competition payment in connection with the American Trucker transaction. On February 22, 1999, Hollinger transferred proceeds, including the US\$2 million, to International for the repayment of debt. This loan payment was not reviewed or approved by the audit committee or board of directors of Hollinger.

### **The Community Newspaper Holdings Inc. (“CNHI I”) Transaction**

26. On February 1, 1999, International entered into an asset exchange agreement to sell certain of its assets to Community Newspaper Holdings, Inc. and its subsidiary, Newspaper Holdings, Inc. (“NHI”) for approximately US\$456 million. Hollinger was not a party to

the asset exchange agreement. However, Hollinger was identified in the asset exchange agreement as a party to the non-competition agreement, along with International.

27. Also, on February 1, 1999, International and Hollinger entered into a non-competition agreement with NHI which provided that US\$50 million of the purchase price was allocated as consideration for the non-competition agreement. The non-competition agreement did not allocate the amounts to be paid to International or Hollinger. Radler signed the non-competition agreement on behalf of Hollinger.

28. On February 1, 1999, International paid Hollinger US\$12 million in relation to the non-competition agreement.

29. On February 22, 1999, Hollinger transferred proceeds, including the US\$12 million, to International for the repayment of debt. This loan payment was not reviewed or approved by the audit committee or board of directors of Hollinger.

30. Prior to signing the agreements above, on November 30, 1998, Radler had presented the proposed CNHI I transaction and International's non-competition agreement to International's board of directors for approval. Black was present at this meeting. The Hollinger non-competition agreement and the US\$12 million non-competition payment to Hollinger were not disclosed to nor approved by International's Audit Committee or board of directors.

31. At a February 26, 1999 International board of directors meeting, Black advised the board that the CNHI I transaction had been successfully concluded. Radler was also present at this board meeting. Neither Black nor Radler disclosed to International's board of directors that Hollinger had signed a non-competition agreement and had received US\$12 million as a non-competition payment.

### **The Horizon Transaction**

32. On March 31, 1999, International entered into an asset exchange agreement to sell certain assets to Horizon for US\$46.8 million. Black and Radler collectively owned approximately 73% of Horizon. Hollinger was not a party to this agreement. However,

Hollinger was identified in the asset exchange agreement as a party to the non-competition agreement, along with International.

33. Also, on March 31, 1999, International and Hollinger entered into a non-competition agreement with Horizon in which Horizon agreed to pay US\$5 million. The non-competition agreement did not specify the allocation of the US\$5 million payment between International and Hollinger. Radler signed the non-competition agreement on behalf of Hollinger.

34. On August 9, 1999, Hollinger received US\$1.2 million from Horizon pursuant to the non-competition agreement.

35. Prior to signing the agreements above, Radler had presented the proposed Horizon transaction to International's board of directors. Black was present at this meeting. The Hollinger non-competition agreement and the US\$1.2 million non-competition payment to Hollinger were not disclosed to nor approved by International's Audit Committee or board of directors.

### **The CNHI II Transaction**

36. On September 28, 2000, International entered into an asset purchase agreement to sell certain assets to NHI for approximately US\$95.2 million. Hollinger was not a party to this agreement. However, Hollinger was identified in the asset purchase agreement as a party to the non-competition agreement, along with International.

37. On November 1, 2000, non-competition agreements were entered into between NHI and International, Hollinger, Black, Radler, Boulton and Atkinson. CNHI did not request that any of the individuals be added as parties to the non-competition agreement. The non-competition agreement provided that US\$3 million of the purchase price of US\$95.2 million was allocated as consideration for the non-competition agreements. The terms further allocated 75% or US\$2.25 million to International, and 25% or US\$750,000 to Hollinger. No reference was made in the non-competition agreement to any portion of the non-competition payment being paid to the individuals.

38. On November 1, 2000, Hollinger received the US\$750,000 payment pursuant to the non-competition agreement.

39. On November 21, 2000, International paid a total of US\$9.5 million as non-competition payments as follows: US\$4.3 million to Black, US\$4.3 million to Radler, US\$450,000 to Boulton and US\$450,000 to Atkinson. This amount was paid notwithstanding it exceeded the US\$3 million provided for non-competition payments in the agreement.

### **The Forum Transaction**

40. On September 30, 2000, International entered into an asset purchase agreement to sell certain assets to Forum for approximately US\$14 million. Hollinger was not a party to the asset purchase agreement. However, Hollinger was identified in the asset purchase agreement as a party to the non-competition agreement, along with International. Forum did not request a non-competition agreement from Hollinger.

41. Also, International, Hollinger and Forum entered into a non-competition agreement which allocated US\$400,000 of the purchase price as consideration for the non-competition agreement. The terms further allocated 75% or US\$300,000 to International and 25% or US\$100,000 to Hollinger. The non-competition agreement does not refer to any individual as a party to that agreement.

42. The Hollinger non-competition agreement was not executed by an authorized signing officer.

43. On October 2, 2000, Hollinger received US\$100,000 from Forum pursuant to the non-competition agreement.

44. On September 19, 2000, International's Executive Committee had approved the asset disposition to Forum and the execution of a non-competition agreement by International and "certain executive officers of International".

45. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with, or non-competition payments to, any individual executive officers of International.

46. In February 2001, Black, Radler, Atkinson and Boulton entered into non-competition agreements with American Publishing Company (“APC”), a wholly owned subsidiary of International. The non-competition agreements were backdated to December 31, 2000. In February 2001, APC issued cheques to each of Black, Radler, Boulton and Atkinson as follows: US\$2,612,500 to Black, US\$2,612,500 to Radler, US\$137,500 to Boulton, US\$137,500 to Atkinson. The cheques were backdated to December 31, 2000.

47. On April 9, 2001, APC issued the following additional cheques: US\$285,000 to Black, US\$285,000 to Radler, US\$15,000 to Boulton, and US\$15,000 to Atkinson. Black, Radler, Boulton, and Atkinson did not execute any non-competition agreement in connection with these purported non-competition payments.

48. The non-competition payments made to the individuals, referred to on paragraphs 46 and 47 above, purportedly were made in connection with the Forum Transaction and the PMG transaction (described below).

### **The PMG Transaction**

49. On October 2, 2000, International entered into an asset purchase agreement to sell certain assets to PMG for approximately US\$59 million. Hollinger was not a party to the asset purchase agreement. However, Hollinger was identified in the asset purchase agreement as a party to the non-competition agreement, along with International. PMG did not request a non-competition agreement from Hollinger.

50. Also, on October 2, 2000, International, Hollinger and PMG entered into a non-competition agreement, the terms of which allocated US\$2 million of the purchase price as consideration for the non-competition agreement. The terms further allocated 75% or US\$1.5 million to International and 25% or US\$500,000 to Hollinger. The non-competition agreement does not refer to any individual as a party to that agreement.

51. The Hollinger non-competition agreement was not executed by an authorized signing officer.

52. On October 2, 2000, Hollinger received the US\$500,000 payment pursuant to the terms of the non-competition agreement.

53. On September 18, 2000, International's Executive Committee (consisting of Black, Radler and Perle) approved the asset disposition to PMG and the execution of a non-competition agreement by International and "certain executive officers of Hollinger International".

54. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with, or non-competition payments to, any individual executive officer of International.

### **The CanWest Transaction**

55. In May 2000, Hollinger and CanWest commenced negotiations of what ultimately became the asset sale transaction with CanWest.

56. On July 26, 2000, the boards of directors of Hollinger, Southam and Hollinger Canadian Newspapers G.P. Inc. ("HCNGP") collectively met to consider approval of the CanWest transaction. Black, Radler, Boulton and Atkinson participated in this meeting. The boards of directors were informed at that meeting that the CanWest transaction had been approved by the board of directors of International earlier in the day. Black, Radler, Boulton and Atkinson had participated in the earlier International meeting. The boards of directors received a memorandum describing aspects of the CanWest transaction similar to the memorandum provided to the International board of directors, except that the following two paragraphs were not included:

Management Services Agreement

...

The Purchase Price was increased as a result of a reduction of Management Services Fees to be charged by Ravelston with respect to ongoing management of

the Newspaper Assets. Prior to closing, Ravelston and the Audit Committee will negotiate an appropriate sharing of such Purchase Price increase.

#### Non-Competition Agreement

Ravelston, Hollinger Inc. and Messrs. Black and Radler are required by CanWest to execute non-competition agreements. Prior to closing, such parties and the Audit Committee will negotiate, consistent with prior transactions, what portion of the Purchase Price should be allocated to the Non-Competition Agreements.

57. On July 26, 2000, the boards of directors passed a resolution approving the CanWest transaction in principle. While the board resolution referred to the non-competition agreement to be entered into between CanWest and Ravelston, Hollinger, Black and Radler, the board resolution does not refer to any payments to Ravelston or the individuals.

58. On July 30, 2000, International and its subsidiaries, Southam Inc., Hollinger Canadian Newspaper, Limited Partnership (“HCNLP”), and HCN Publications Company entered into a transaction agreement to sell several of its Canadian newspapers to CanWest for approximately Cdn\$3.8 billion. The agreement provided that Cdn\$80 million of the purchase price was allocated as consideration for non-competition agreements. The agreement also required the execution of non-competition agreements from Ravelston, Hollinger, International, Black, Radler, Boulton, and Atkinson. CanWest did not initially request non-competition agreements from Boulton and Atkinson. In late July, 2000, Atkinson asked Black that non-competition payments be made to him and Boulton in lieu of bonuses for their work on the CanWest transaction.

59. The transaction agreement does not specify any allocation of the Cdn\$80 million non-compete payment among the entities and individuals required to execute non-competition agreements.

60. It was Hollinger, through Boulton, that requested that Cdn\$80 million of the purchase price be allocated to the non-competition agreements. CanWest, at the time of closing, was indifferent as to the amount of the purchase price that would be allocated to the non-competition agreement. Further, CanWest did not specify which parties to the

non-competition agreements should receive an allocation of the total non-competition amount.

61. By memorandum dated August 9, 2000 from Atkinson to Black, Atkinson stated the following regarding the CanWest non-competition agreements and management fee issues:

*“ . . . I have discussed these issues with Jack [Boulton] and Mark [Kipnis]. We recommend that a payment totaling Cdn. \$80m be sought; \$50m for the restrictive covenants [non-competition agreements] and \$30m for the management fee reduction.*

...

*Please let me know if you agree with this approach. We have put a higher weighting on the restrictive covenants due to our hope that these payments can be free of tax.”*

62. In preparation for the September 11, 2000 International Audit Committee meeting, Mark Kipnis (“Kipnis”) (former Secretary and Vice-President Law of International and general counsel for International’s Chicago owned and operated properties) advised the International Audit Committee of certain interested party aspects of the CanWest transaction in his September 1, 2000 memorandum.

63. The memorandum states the following with respect to the Cdn\$80 million of the purchase price that was allocated in the transaction agreement to the non-competition agreement:

*“I. NONCOMPETITION AGREEMENTS*

*Conrad M. Black, F. David Radler, Hollinger International, Ravelston, Peter Atkinson and Jack Boulton have each been requested to execute non-competition agreements. The agreements effectively exclude them from any new Canadian newspaper acquisition. **The total portion of the purchase price allocated to the noncompetition agreements is Cdn\$50 million, approximately 1.4% of the Cdn\$3.5 billion purchase price (allocated Cdn\$19 million each to Messrs. Black and Radler, Cdn\$4 million each to***



*Hollinger and Ravelston, and Cdn\$2 million each to Messrs. Atkinson and Boulton). We are currently selling U.S. community newspapers to CNHI, Paxton [PMG] and Forum. Each transaction requires a noncompete agreement and the amounts allocated to the noncompetes are approximately 3.2%, 3.4% and 2.9% of the respective purchase prices. Immediate prior transactions where noncompetition agreements were entered into and approved were the large CNHI transaction and the American Trucker transaction, wherein noncompete agreements were allocated 11.5% and 2.5% of the respective purchase prices [**emphasis added**].*

## II. RAVELSTON MANAGEMENT AGREEMENT BREAK-UP FEE

*Ravelston has a longterm management agreement in place with Hollinger. The CanWest purchase price is based upon EBITDA. During the negotiations, Ravelston agreed to reduce its ongoing management fee by approximately Cdn\$11 million. The purchase price was accordingly upward adjusted by approximately Cdn\$110 million. In consideration for Ravelston reducing its management fee and consenting to CanWest having an early termination of its management agreements, **it is proposed that Ravelston receive a purchase price allocation of Cdn\$30 million, approximately 0.9% of the purchase price [emphasis added].***

64. The “interested party aspects” of the CanWest transaction were discussed at the September 11, 2000 International Audit Committee meeting. According to the minutes, Radler was present at the meeting. The minutes to the September 11, 2000 Audit Committee meeting refer to the memorandum prepared by Kipnis (as discussed above). It further states:

### *“Allocation for Noncompetition Agreements*

*. . . Mr. Kipnis noted that certain members of the Board of Directors and senior management would benefit financially from the transaction. He also noted that the execution of a noncompetition agreement by Messrs. Black and Radler, individually, was a requirement of CanWest and that CanWest originally insisted that Messrs. Black and Radler each receive Cdn\$26 million in order to justify their exclusion from Canadian newspapers. Messrs. Black and Radler negotiated Cdn\$12 million be reallocated to cover bonuses for senior management, which reallocation would save the Company additional bonus costs. The entire allocation (the “Noncompete Allocation”) aggregates 1.4% of the purchase price, which compares very favorably with noncompetition allocations in recent arms-length sale negotiations. A discussion ensued.”*

65. By memorandum dated October 27, 2000, the members of the board of directors of HCNGP received a package of material for their upcoming November 1, 2000 board meeting. Included in this package was a proposed resolution and the minutes from the July 26, 2000 meeting of the boards of directors of HCNGP, Hollinger, and Southam. The transaction agreement was originally reviewed and approved at the July 26, 2000 board meeting. In order to effect the transaction, certain reorganization steps had to take place, which required separate board approval. The proposed resolution dealt with the proposed reorganization steps.

66. The July 26, 2000 materials state that Ravelston, Hollinger, Black and Radler were parties to certain non-competition agreements in connection with the CanWest transaction. The HCNGP board was not advised that Boulton or Atkinson were parties to the non-competition agreements, nor was the Board advised of non-competition payments to Ravelston, Black, Radler, Boulton and Atkinson or the allocation of \$80 million of the purchase price to the non-competition payments made to Ravelston and the individuals.

67. On November 15, 2000, non-competition agreements were signed by Ravelston, Hollinger, International, Black, Radler, Boulton and Atkinson. The non-competition agreements do not refer to any allocation of payments to entities or individuals.

68. On November 16, 2000, International received Cdn\$81,722,389 (\$80 million plus interest) from CanWest in respect of the non-competition agreement. On the same date, International made payments in the aggregate amount of Cdn\$81,722,389 as follows:

Ravelston:	Cdn\$38,818,135
Black:	Cdn\$19,409,067
Radler:	Cdn\$19,409,067
Boulton:	Cdn\$2,043,060
Atkinson:	Cdn\$2,043,060

69. Hollinger and International, both parties to the non-competition agreement, did not receive any allocation of the non-competition payments.

70. On December 4, 2000, Black provided the International board of directors with a brief summary of the CanWest transaction. He also presented to the board of directors a resolution approving and adopting the minutes of the September 11, 2000 board of directors meeting as accurately reflecting the information presented at that meeting. Radler was also present at this meeting.

71. Black and Radler did not disclose the deficiencies in the information provided to the International Audit Committee or the board of directors on September 11, 2000. The board of directors approved the September 11, 2000 minutes at the December 4, 2000 board of directors meeting.

72. In preparation for the May 14, 2001 International Audit Committee meeting, Kipnis advised the International Audit Committee and the board of directors in his May 1, 2001 memorandum of certain inaccuracies contained in the September 11, 2000 minutes of the Audit Committee and board of directors meetings.

73. The memorandum states the following:

*“Background*

*. . . As a result of their review [by senior officers of International] and, with the benefit of input from counsel, it was determined that it is necessary to re-submit this matter to the Audit Committees and to the Boards of Directors for a ratification of the conclusion that the quantum of the payments (which is unchanged) is fair on the basis on which it was, in fact, approved. In a number of inadvertent respects the material reviewed in connection with the September 11<sup>th</sup> meetings did not reflect the documentation for the CanWest transaction. The September 11<sup>th</sup> material could be deemed to imply that Non-Competition Consideration received by certain individuals was in lieu of compensation and that the Non-Competition Consideration received by Ravelston was an “early break fee” in respect of its management services agreement with the Corporation and its principal Canadian subsidiary (emphasis added).*

*. . .*

74. On May 14, 2001, the International Audit Committee ratified the fairness of the CanWest non-competition payments based on information provided in the May 2000 memorandum, and discussions held at the meeting, the duration of which was 20 minutes.

## **The Osprey Transactions**

### ***Osprey I***

75. On July 31, 2001, International and its subsidiaries HCNLP, XSTM Holdings (2000) Inc. (“XSTM”), and 3048509 Nova Scotia Company (“3048509”), entered into a purchase agreement to sell 28 community newspapers to Osprey for approximately Cdn\$220 million.

76. On July 31, 2001, International, Hollinger, HCNLP, XSTM, Ravelston, Black, Radler, Boulton, and Atkinson entered into a non-competition agreement with Osprey. The terms of the non-competition agreement allocated Cdn\$6,840,000 of the purchase price as consideration for the non-competition agreement.

77. On July 31, 2001, Osprey paid HCNLP the asset purchase price. On the same day, HCNLP advanced Cdn\$6.84 million to an International subsidiary, Hollinger International Publishing Inc. (“HIPI”), to pay the aggregate amount of Cdn\$6.84 million, as follows:

Black: Cdn\$3,094,286

Radler: Cdn\$3,094,286

Boulton: Cdn\$325,714

Atkinson: Cdn\$325,714

78. International, Hollinger, HCNLP, XSTM, and Ravelston, all parties to the non-competition agreement, did not receive any allocation of the non-competition payments.

79. Osprey accepted Hollinger’s proposal that Cdn\$6.84 million be allocated to the non-competition agreements. Osprey was indifferent as to the amount of the purchase price that would be allocated to the non-competition agreement and did not specify which parties should receive an allocation of the total non-competition amount.

80. In response to discussions with Hollinger’s external legal advisors as to how to structure or allocate the proposed non-competition payments, Atkinson responded (on May 28, 2001) by saying, in part, *“I have been stewing about this issue [the vetting by the*

*HCNLP board of directors of the non-competition payments] and I doubt our partnership [HCNLP] independents will be very comfortable with this concept [non-competition payments].”*

81. Further, by memorandum dated June 14, 2001 regarding the Osprey Non-Competition Agreements, Atkinson wrote the following to Black, Radler, Boulton and Kipnis:

“ . . .

*In the CanWest transaction, the LP [HCNLP] sold a number of community newspaper properties to CanWest while Southam sold the metros. We decided that the burden of the non-compete payments should be borne by Hollinger International so as to avoid any criticism from the LP minority shareholders regarding such payments. As a result, the audit committee and board of International approved the payments.”*

82. On July 24, 2001, the board of directors of HCNLP met to discuss the Osprey I transaction. Black, Radler, Boulton, and Atkinson were among those in attendance. Atkinson described the Osprey transaction to the board of directors. However, the allocation of the amounts to the individuals was not disclosed.

83. On July 31, 2001, the executive committee of Hollinger approved the non-competition agreement. The resolution did not address any payments to individuals in relation to the non-competition agreement.

### ***Osprey II***

84. By agreement dated November 30, 2001, HCNLP, International and 1496505 sold two community newspapers (Sarnia Observer and Chatham Daily News) to Osprey for Cdn\$35,664,915, of which, Cdn\$1,100,000 was allocated to the non-competition agreement. As part of the agreement, each of HCNLP, International, Hollinger, Ravelston, Black, Radler, Boulton, and Atkinson entered into a non-competition agreement with Osprey.

85. On November 30, 2001, non-competition payments, pursuant to the Osprey II transaction, were made to the following individuals:

Black: Cdn\$497,619

Radler: Cdn\$497,619

Boulton: Cdn\$52,381

Atkinson: Cdn\$52,381

86. International, Hollinger, HCNLP, and Ravelston, all parties to the non-competition agreement, did not receive any allocation of the non-competition payments.

87. Osprey accepted Hollinger's proposal that Osprey II be structured in a similar manner to Osprey I, in that approximately 3% of the purchase price, or approximately Cdn\$1.1 million, be allocated to the non-competition agreements. Osprey was indifferent as to the amount of the purchase price that would be allocated to the non-competition agreement and did not specify which parties to the non-competition agreements should receive an allocation of the total non-competition amount.

88. On November 22, 2001, the executive committee of Hollinger approved the non-competition payment in respect of Hollinger only. The resolution passed by Hollinger's executive committee did not refer to any other entity or individual in relation to the non-competition agreement, nor did the resolution address any payments to any individuals in relation to the non-competition agreement.

89. Materials and a proposed resolution distributed to the board of directors of HCNLP on November 23, 2001 do not identify the parties to the non-competition agreements, the amount attributed to the non-competition agreements, or the allocation thereof to the individuals.

90. The aggregate amount allocated as consideration for the two Osprey non-competition agreements was Cdn\$7,940,000. It was distributed to the following individuals:

Black: Cdn\$3,591,905

Radler: Cdn\$3,591,905

Boulton: Cdn\$378,095

Atkinson: Cdn\$378,095

91. On March 12, 2002, KPMG, LLP (Canada), then the auditors of Hollinger, were present during a discussion of non-competition agreements at the audit committee of Hollinger. At that time, KPMG reported to the audit committee that non-competition payments in the aggregate amount of US\$15.6 million had been paid to the Individual Respondents in relation to the US Community Newspaper transactions (Forum, PMG and CNHI II transactions), and that Cdn\$80 million (plus interest) non-competition payments had been paid to Ravelston and the four Individual Respondents in relation to the CanWest transaction. This was the first time the audit committee was made aware of these payments.

#### **Diversion of Funds – Hollinger**

92. On December 1, 2003, Hollinger disclosed in the company's interim financial statements for the nine month period ended September 30, 2003 (the "Interim Report") that US\$16.55 million was paid to Hollinger in 1999 and 2000, and that the audit committee and Special Committee of International had determined that the payments made to Hollinger were not authorized or approved by either the audit committee or the board of directors of International.

93. Hollinger engaged in conduct contrary to the public interest, and Black, Radler and Boulton, authorized, permitted or acquiesced in that conduct, in that Hollinger was used to divert funds from International to Hollinger in connection with the series of transactions referred to above. Set out below are some pertinent factors respecting improper diversion of funds in these transactions:

a) *American Trucker, US\$2 million:*

- Hollinger was not a party to the transaction or the non-competition agreement with the purchaser, Intertec;
- Hollinger received the non-competition payment from International on February 1, 1999, almost eight months after the date of the transaction (May 11, 1998);
- Hollinger transferred proceeds, including the US\$2 million, to International for the repayment of debt on February 22, 1999; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger. The loan payment made by Hollinger to International was not reviewed or approved by the Hollinger audit committee or board of directors.

b) *CNHI I, US\$12 million:*

- The non-competition agreement did not allocate the non-competition amount to be paid to International and Hollinger (US\$38 million and US\$12 million, respectively);
- Hollinger transferred proceeds, including the US\$12 million, to International for the repayment of debt on February 22, 1999; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger. The loan payment made by Hollinger to International was not reviewed or approved by the Hollinger audit committee or board of directors.



## c) Horizon, US\$1.2 million:

- International and Hollinger entered into a non-competition agreement with Horizon, a related entity controlled by Black and Radler;
- The non-competition agreement did not specify the allocation of the US\$5 million payment between International and Hollinger; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger.

## d) Forum, US\$100,000:

- The Hollinger non-competition agreement was not executed by an authorized signing officer; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger.

## e) PMG, US\$500,000:

- The Hollinger non-competition agreement was not executed by an authorized signing officer; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger.

## f) CNHI II, US\$750,000:

- The Hollinger non-competition agreement was not executed by an authorized signing officer; and

- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to Hollinger.

94. The payments in (a) through (f) were not publicly disclosed by Hollinger until December 1, 2003, at which time disclosure was made in Hollinger's interim consolidated financial statements for the nine months ended September 30, 2003.

#### **Diversion of Funds – Black, Radler, Boulton and Atkinson**

95. Black, Radler, Boulton and Atkinson engaged in conduct contrary to the public interest in that they diverted funds from International in connection with the series of transactions referred to above. Set out below are further particulars respecting these transactions:

- a) CNHI II: Black US\$4.3 million, Radler US\$4.3 million, Boulton US\$450,000, and Atkinson US\$450,000:
  - The non-competition agreement provided that US\$3 million of the purchase price was allocated to International and Hollinger as consideration for the non-competition agreements. No reference was made in the non-competition agreement to any portion of the non-competition payment being paid to the individuals;
  - Black, Ravelston, Boulton and Atkinson received aggregate US\$9.5 million as noted above, notwithstanding no provision for such payments had been made in the non-competition agreement; and
  - The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to the individuals.

b) Forum (APC): Black US\$2,612,500, Radler \$2,612,500, Boulton \$137,500 and Atkinson \$137,500:

- The non-competition agreements were between APC and the individuals. APC was not the purchaser of the assets (APC is a subsidiary of International). The individuals did not sign non-competition agreements with the purchaser;
- The non-competition agreements were prepared and signed in February 2001, backdated to December 31, 2000;
- The non-competition payments were issued by International in February 2001, backdated to December 31, 2000; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to the individuals.

c) PMG: Black US\$285,000, Radler US\$285,000, Boulton \$15,000 and Atkinson \$15,000:

- The non-competition payments were issued by APC, a subsidiary of International. The individuals did not sign non-competition agreements with the purchaser; and
- The audit committees and boards of directors of International and Hollinger did not review or approve the non-competition amount that was paid to the individuals.

d) CanWest: Ravelston Cdn\$38,818,135, Black Cdn\$19,409,067, Radler Cdn\$19,409,067, Boulton Cdn\$2,043,060 and Atkinson Cdn\$2,043,060:

(i) September, 2000 Approvals

The September 11, 2000 International Audit Committee and Board of Directors approvals of the non-competition payments and Ravelston early

termination fee were based on misstatements and omissions of material fact including, among other things:

- CanWest did not specify the amount of the purchase price to be allocated to the non-competition agreements;
- CanWest did not specify the allocation of the non-competition amount between the entities and individuals;
- CanWest did not insist on Black and Radler each receiving Cdn\$26 million; and
- Atkinson and Boulton proposed that each of them execute such agreements to secure payments (or “bonuses”) in relation to their work on the CanWest transaction.

(ii) May 2001 Approvals

The May, 2001 International Audit Committee and Board of Directors approvals of the non-competition payments were based on misstatements and omissions of material fact including, among other things:

- the non-competition amount (Cdn\$80 million, plus interest) did not reflect the value attributed by CanWest to the non-competition agreements. CanWest did not specify the amount of the purchase price to be allocated to the non-competition agreements;
- CanWest did not specify the allocation of the non-competition amount between the entities and individuals;
- the non-competition payments were not paid directly by CanWest to the individuals. CanWest paid the Cdn\$80 million, plus interest, to International, which in turn paid Ravelston and the individuals;

- the payments to Atkinson and Boulton had the character of compensation and were requested by each of them as bonuses in connection with their work on the CanWest transaction; and
  - there was no disclosure that Ravelston and the individuals collectively received Cdn\$1.7 million in interest on the non-competition payments.
- e) Osprey I: Black Cdn\$3,094,068, Radler Cdn\$3,094,068, Boulton Cdn\$2,043,060 and Atkinson Cdn\$2,043,060:
- Osprey did not specify the amount of the purchase price to be allocated to the non-competition agreements; and
  - Osprey did not specify the allocation of the non-competition amount among the individuals.
- f) Osprey II: Black Cdn\$497,619, Radler Cdn\$497,619, Boulton Cdn\$52,381 and Atkinson Cdn\$52,381:
- Osprey did not specify the amount of the purchase price to be allocated to the non-competition agreements; and
  - Osprey did not specify the allocation of the non-competition amount among the Individual Respondents.

96. In respect of the CanWest and Osprey transactions, there had been efforts on the part of the Individual Respondents to avoid fully disclosing the interested party aspects (non-competition and/or management services agreements) of these transactions with the HCNLP/HCNGP Audit Committee and boards of directors.

97. The diverted funds characterized as non-competition payments to Ravelston and the Individual Respondents totalled at least US\$15,600,000 in relation to the Forum, PMG and CNHI II transactions and Cdn\$89,662,389 in relation to the CanWest and the Osprey transactions, allocated as follows:

Black: US\$7,197,500 and Cdn\$23,000,972

Ravelston: Cdn\$38,818,135

Radler: US\$7,197,500 and Cdn\$23,000,972

Boulton: US\$602,500 and Cdn\$2,421,155

Atkinson: US\$602,500 and Cdn\$2,421,155

98. Black, Radler, Boulton and Atkinson, in breach of their fiduciary duties owed to Hollinger and International, failed to provide to the audit committee and boards of Hollinger and International full and complete disclosure of all aspects of the asset sale transactions, as described above, in which they had a personal interest.

99. Black, Radler, Boulton and Atkinson faced the highest standard of disclosure of all pertinent information to the audit committee and Boards of Hollinger and International, particularly in circumstances where they would benefit personally. Their omissions of information and failure to accurately present facts constitutes egregious conduct in the circumstances and is a violation of their fiduciary duty to Hollinger and to International.

#### **Non-Compliance with Continuous Disclosure Obligations**

100. For each of the transactions referenced above, the non-competition payment to Hollinger was not disclosed in any of Hollinger's filings with the Commission until it was disclosed by Hollinger on December 1, 2003 in the Interim Report that International was seeking repayment of US\$16.55 million of non-compete payments made to Hollinger in 1999 and 2000 in connection with US asset sales by International.

101. Hollinger therefore contravened its continuous disclosure obligations and other filing obligations under the Act.

102. Further, in respect of the above noted transactions, Black, Radler and Boulton, for the relevant fiscal years, authorized, permitted or acquiesced in the failure by Hollinger to comply with its continuous disclosure requirements under Ontario securities law. In addition, Black, Radler and Boulton, authorized, permitted or acquiesced in Hollinger making statements in its annual audited financial statements or other documents, described

above, required to be filed under Ontario securities law, that in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

### **Other Misstatements and Omissions in Hollinger's Filings**

103. Hollinger made statements in its continuous disclosure filings with the Commission that in a material respect and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that were necessary to make the statements not misleading, including statements in respect of:

- non-competition payments paid to Black, Radler, Boulton and Atkinson in connection with the U.S. Community Newspaper transactions;
- non-competition payments made to Ravelston, Black, Radler, Boulton and Atkinson in connection with International's sale of assets to CanWest; and
- non-competition payments made to Black, Radler, Boulton and Atkinson in connection with International's sale of assets to Osprey.

### **Disclosure of the U.S. Community Newspaper Transactions**

104. Hollinger failed to provide any disclosure of the U.S. Community Newspaper Transactions (CNHI II, PMG and Forum) in its April 10, 2001 (fiscal 2000) Management Proxy Circular. The Individual Respondents authorized, permitted or acquiesced in Hollinger's failures to disclose contrary to Ontario securities law, as particularized below.

105. Hollinger included the following statement in its April 2002 Management Proxy Circular (fiscal 2001):

#### *Related Party Transactions*

...

In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger, Hollinger International,

Lord Black and Messrs. Radler, Atkinson and Boulton entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 and 2000 of U.S.\$15,600,000, consisting of U.S.\$7,197,500 paid to Lord Black, U.S.\$7,197,500 paid to Mr. Radler, U.S.\$602,500 paid to Mr. Atkinson and U.S.\$602,500 paid to Mr. Boulton.

106. In addition to the misstatements and omissions relating to the non-competition payments received by Black, Rader, Boulton and Atkinson, stated below, Hollinger's disclosure was misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, in that the disclosure identified Hollinger as a party to the non-competition agreements, but failed to disclose that any non-competition payments were made to Hollinger. In particular, Hollinger's disclosure was misleading in that it received US\$16.55 million in non-competition payments in connection with the sale of the U.S. Community newspaper properties and it failed to disclose this in the April 2002 Management Proxy Circular or in prior documents for fiscal 2000 and 2001.

107. Hollinger made statements in other filings with the Commission, similar to the disclosure in the company's April 2002 Management Proxy Circular, referred to above. This includes the company's audited annual financial statements for the year ended December 31, 2001 and Hollinger's AIFs dated May 17, 2002 and May 16, 2003.

108. Hollinger made further statements in respect of the U.S. Community Newspaper transactions in its continuous disclosure filings with the Commission and the Individual Respondents authorized, permitted or acquiesced in Hollinger's conduct, that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, specifically, in regard to the following:



*Non-Competition Payments Made to Individuals*

## a) CNHI II, US\$9.5 million:

- The non-competition payments to the individuals (aggregate US\$9.5 million) were not specified in the agreements, and were in excess of the US\$3 million identified therein; and
- There was no review or approval by International's audit committee or board of directors of the non-competition amounts that were paid to the individuals.

## b) PMG and Forum (APC), US\$5.5 million:

- Non-Competition agreements were between APC and the individuals. However, APC was not the purchaser in the asset sale transactions, the individuals did not enter into non-competition agreements with the purchasers, PMG and Forum, and the non-competition agreements were not conditions of closing those transactions;
- No amounts were specified in the non-competition agreements between APC and the individuals;
- The non-competition agreements were signed in February 2001, backdated to December 31, 2000;
- The non-competition payments were issued by APC in February 2001, backdated to December 31, 2000; and
- There was no review or approval by International's audit committee or board of directors of the non-competition amounts that were paid to the individuals.

c) PMG and Forum, US\$600,000:

- The individuals did not enter into non-competition agreements with the purchasers, PMG and Forum, and the non-competition payments were not conditions of closing; and
- There was no review or approval by International's audit committee or board of directors of the non-competition amounts that were paid to the individuals.

### **Disclosure of the CanWest Transaction**

#### **Hollinger's November 2000 Material Change Report**

109. On November 22, 2000, Hollinger filed a material change report disclosing the following in respect of the CanWest transaction:

...

With respect to the newspaper assets sold to CanWest, Mr. Conrad Black and his associates have entered into a management services agreement until at least December 31, 2001 in order to ensure operating continuity. Hollinger will continue, for at least 5 years, as the managing partner of the jointly-owned *National Post*.

110. No reference was made in the November 2000 material change report that:

- approximately Cdn\$80 million (plus interest) in non-competition payments were made to Ravelston, Black, Radler, Boulton and Atkinson in connection with the CanWest transaction, and
- the terms of the non-competition agreement effectively precluded Hollinger and its affiliates from competing directly or indirectly in Canada with the Canadian businesses sold to CanWest for a period of five years, subject to certain limited exceptions.

111. Hollinger made statements in the filings referred to above in relation to the CanWest and Osprey transactions, and the Individual Respondents authorized, permitted or acquiesced in Hollinger's conduct, that in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not

state a fact that was required to be stated or that was necessary to make the statements not misleading.

### **Hollinger's April 2001 Management Proxy Circular**

112. Hollinger made no disclosure of the approximately Cdn\$80 million (plus interest) non-competition payments to Black, Radler, Boulton, Atkinson, and Ravelston in the Management Proxy Circular dated April 10, 2001. The April 2001 Management Proxy Circular was sent to Hollinger's securityholders in connection with the solicitation of proxies by the management of Hollinger to be used at the annual meeting of shareholders held on May 16, 2001.

113. Similarly, Hollinger made no disclosure of these non-competition payments in Hollinger's Annual Report for 2000, included in the proxy materials sent to securityholders in connection with the annual meeting of shareholders held on May 16, 2001.

114. In contrast, Hollinger made disclosure in respect of the non-competition payments made to Ravelston, Black, Radler, Boulton, and Atkinson in the Annual Information Form filed with the Commission on May 18, 2001. While the AIF is filed with the Commission, it is not provided to Hollinger's securityholders. Hollinger disclosed the following in the AIF:

Also, as required by CanWest as a condition to the transaction, Ravelston and Messrs. Black, Boulton, Radler and Atkinson, entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to CanWest for a five year period, subject to certain limited exceptions, for aggregate consideration received by them of \$80 million paid by CanWest in addition to the purchase price referred to above.

115. Hollinger made statements in its AIF and the Individual Respondents authorized, permitted or acquiesced in Hollinger's conduct, that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, in that, among other things, the amount of Cdn\$80 million paid to Ravelston, Black, Boulton, Radler and Atkinson was an allocation of a portion of

the total purchase price. It was not an amount “paid by CanWest in addition to the purchase price,” as stated in Hollinger’s disclosure.

116. Hollinger also failed to disclose that Hollinger and International were also required to enter into non-competition agreements with CanWest, but that neither received any allocation of the Cdn\$80 million attributable to non-competition agreements.

### **Disclosure of the Osprey Transactions**

117. Hollinger disclosed information concerning non-competition payments made to the individuals in respect of the Osprey transactions in its 2001 Annual Report as follows:

In connection with the two above sales of Canadian newspaper properties to Osprey, to satisfy a closing condition, International, the Company, Lord Black and three senior executives [Messrs. Radler, Atkinson and Boulton] entered into non-competition agreements with Osprey pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to Osprey for a five-year period, subject to certain limited exception, for aggregate consideration of Cdn. \$7.9 million (\$5.1 million). Such consideration was paid to Lord Black and the three senior executives and has been approved by International’s independent directors.

118. Hollinger made statements in other filings with the Commission concerning the Osprey transactions, similar to the disclosure in its 2001 Annual Report.

119. Hollinger’s statements referred to above were misleading in that the Company failed to disclose material information that the individuals receiving the payments requested those payments, and determined the quantum and allocation of those payments under the non-competition agreements.

### **Failure to Disclose Interest of Insiders in Material Transactions**

120. In April 2000 and 2001, Hollinger prepared Management Proxy Circulars in connection with the solicitation of proxies to be used at the Annual Meetings of Shareholders of Hollinger to be held on May 24, 2000 and May 16, 2001, respectively.

121. Hollinger was required to send these Circulars by virtue of s. 86(1)(a) of the Act. Section 176 of Ontario Regulation 1015 to the Act requires an information circular to contain the information prescribed by Form 30.

122. Item 8 of Form 30 requires disclosure of any material interest, direct or indirect, of any insider in any material transaction since the commencement of the reporting issuer's last financial year:

**Item 8 -- Interest of Insiders in Material Transactions:**

Where not previously disclosed in an information circular, **describe briefly, and where practicable, state the approximate amount of any material interest, direct or indirect, of any insider of the reporting issuer, any proposed nominee for election as a director of the reporting issuer or any associate or affiliate of such insider or proposed nominee in any transaction since the commencement of the reporting issuer's last financial year or in any proposed transaction which has materially affected or would materially affect the reporting issuer or any of its subsidiaries [emphasis added].**

123. Hollinger failed to disclose material information in the April 2000 Hollinger Management Proxy Circular concerning the interest of Hollinger's insiders in the Horizon asset sale transaction.

124. Further, Hollinger failed to disclose material information in the April 2001 Hollinger Management Proxy Circular concerning the interest of Hollinger's insiders in the CanWest and CNHI II transactions. In particular, it failed to disclose the Cdn\$80 million payment allocated to Ravelston, Black, Radler, Boulton and Atkinson in the CanWest transaction and the approximately US\$9.5 million payments made to Black, Radler, Boulton and Atkinson in the CNHI II transaction.

125. The Individual Respondents authorized, permitted or acquiesced in Hollinger's failures to disclose material information contrary to the requirements of Ontario securities law referred to above.

**Failure to Disclose Executive Compensation for Fiscal Years 1998 to 2001**

126. During the period from 1999 to 2002, Hollinger failed to make disclosure of all compensation paid by Hollinger and its subsidiaries to Black, Radler, Boulton, Atkinson and one other senior officer (the "Named Executive Officers") in the information circulars

dated April 9, 1999, April 14, 2000, April 10, 2001, and April 18, 2002 (for fiscal years 1998 to 2001) (collectively, the Hollinger Management Proxy Circulars). In particular, Hollinger failed to disclose in the Hollinger Management Proxy Circulars the following:

- the management fees paid to Ravelston by subsidiaries of Hollinger that were not wholly owned by Hollinger, including International and International's subsidiaries;
- the management fees paid by Hollinger and all subsidiaries, including International, to Ravelston:
  - i) that were paid to the Named Executive Officers (i.e., salaries and bonuses),
  - ii) that were retained by Ravelston for the benefit of the Named Executive Officers (i.e., resulting in an increase in value of the Named Executive Officers' shareholdings in Ravelston), and/or
  - iii) that were used by Ravelston for the benefit of the Named Executive Officers (i.e., perquisites and other benefits of a personal nature), and
- the non-competition payments that were paid to certain Named Executive Officers and/or Ravelston.

127. The Individual Respondents authorized, permitted or acquiesced in Hollinger's failures to disclose in the Hollinger Management Proxy Circulars all executive compensation paid by Hollinger and its subsidiaries to Ravelston and the Individual Respondents, contrary to the requirements of Ontario securities law. The following paragraphs provide a summary of the background of the Management Services Agreements, and disclosure provided in certain Hollinger Management Proxy Circulars.

128. In 1990, Hollinger (an operating company at that time) and Ravelston entered into a management services agreement ("1990 MSA"). Under the terms of the 1990 MSA,

Ravelston agreed to carry out the head office and executive responsibilities of Hollinger, which included “providing the services of the Individuals to serve in their present capacities and offices with Hollinger and/or its subsidiaries.” Hollinger paid Ravelston an annual management fee.

129. Prior to 1999, Hollinger disclosed in its management proxy circulars the amount of management fees paid to Ravelston by Hollinger and its subsidiaries. Hollinger further disclosed the amounts of compensation (salary and bonus) paid by Ravelston to the Named Executive Officers.

130. Hollinger’s disclosure practices changed in 1999 (fiscal 1998). In 1998, Hollinger and Ravelston restructured the management services arrangements. As restructured, Ravelston provided management services directly to other Hollinger related companies, such as International. Therefore, each of Hollinger and International negotiated separate management services agreements with Ravelston.

131. As a result, beginning in 1999 and through to 2002 (fiscal years 1998 to 2001), Hollinger failed to disclose in the Hollinger Management Proxy Circulars the management fees paid to Ravelston by International and Southam (i.e., subsidiaries that were not wholly-owned by Hollinger), and failed to disclose all compensation paid to the Named Executive Officers. This failure is contrary to the requirements of Ontario securities law and, in particular, contrary to the requirements set out in subsection 86(1) of the Act and 176(1) of the Regulation to the Act, requiring Hollinger to send to its securityholders an information circular in accordance with the requirements contained in Form 40 – Statement of Executive Compensation (now National Instrument 51-102 and related Form 51-102F6).

132. The effect of these disclosure deficiencies was to significantly understate the actual compensation paid to the Named Executive Officers. Particulars of such disclosure deficiencies are set out below.

***Hollinger's 1999 Management Proxy Circular (fiscal 1998)***

133. Hollinger disclosed the following in its Management Proxy Circular dated April 9, 1999 in relation to compensation paid to its Named Executive Officers from Hollinger and its subsidiaries:

*Pursuant to the Hollinger Management Agreement, in 1998 Hollinger and its wholly-owned subsidiaries paid a management fee of \$3,386,000 to Ravelston. The management fee paid by Hollinger and its wholly-owned subsidiaries is not calculated with reference to the compensation of Ravelston's executives who serve as officers of Hollinger and such subsidiaries, but rather reflects what is judged by the Compensation Committee to be fair value for the services described above rendered to those companies. The management fee payable to Ravelston under the Hollinger Management Agreement has been set at \$3,386,000, for 1999 (the same amount as was paid in 1998). The separate management fees paid to Ravelston in 1998 by Hollinger International and its subsidiaries are disclosed in the Management Proxy Circular of Hollinger International.*

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***Description of Officers' Remuneration***

***Hollinger does not provide cash remuneration to its executive officers as such. There is no basis upon which to allocate the aggregate amount payable under the Hollinger Management Agreements to individual officers because the individuals providing services to Hollinger pursuant to the Hollinger Management Agreements are not in fact receiving compensation primarily in respect of those services. Their individual cash compensation is determined by Ravelston (which, as mentioned above, derives management fees from a number of other companies) and not by the Compensation Committee of Hollinger (see "Report on Executive Compensation"). The aggregate cash compensation paid to executive officers of Hollinger as directors of Hollinger and its subsidiaries in 1998 was \$288,000 [emphasis added].***

134. The management service fees paid to Ravelston by International and Southam (a subsidiary of International) was approximately US\$32 million in fiscal 1998, as reported in International's March 26, 1999 Proxy Statement. Hollinger, therefore, failed to disclose in the 1999 Management Proxy Circular the amount of approximately US\$32 million paid to Ravelston by International in contravention of the requirements of Form 40 which required Hollinger to disclose amounts paid to Ravelston by Hollinger and all of Hollinger's



subsidiaries, including subsidiaries that were not wholly-owned by Hollinger (including International).

135. Further, in contravention of the requirements of Ontario securities law referred to above, Hollinger failed to disclose in its 1999 Management Proxy Circular the allocation of the management service fees that was paid to Ravelston as compensation to the Named Executive Officers.

***Hollinger's 2000 to 2002 Management Proxy Circulars (fiscal 1999 to 2001)***

136. Similarly, Hollinger failed to disclose in its 2000 to 2002 Management Proxy Circulars (fiscal 1999 to 2001) that International and Southam paid to Ravelston management service fees in the amount of approximately US\$38 million in fiscal 1999, US\$24 million, plus Cdn\$18.5 million in fiscal 2000 and US\$25.8 million, plus Cdn\$7.6 million in fiscal 2001. This contravened the requirements of Form 40 which required Hollinger to disclose amounts paid to Ravelston by Hollinger and all of Hollinger's subsidiaries, including subsidiaries that were not wholly-owned by Hollinger (including International).

137. Further, in contravention of the requirements of Ontario securities law referred to above, Hollinger failed to disclose in its 2000 to 2002 Management Proxy Circulars the allocation of the management services fees paid to Ravelston as compensation to the Named Executive Officers.

138. Further, Hollinger failed to disclose in the 2001 Management Proxy Circular (fiscal 2000) the non-competition payments that were paid to certain Named Executive Officers and/or Ravelston in connection with certain asset sale transactions, including Cdn\$80 million (plus interest) from the CanWest transaction, and US\$9.5 million from the CNHI II transaction. In the 2002 Management Proxy Circular (fiscal 2001), Hollinger failed to disclose the non-competition payments that were paid to certain Named Executive Officers and/or Ravelston in connection with certain asset sale transactions, including approximately US\$5.2 million from the Osprey transactions, and US\$5.5 million plus US\$600,000 from the PMG and Forum transactions.

**Failure to File Financial Statements**

139. Hollinger is currently in default of its filing requirements. Hollinger failed to file its interim statements (and management's discussion and analysis related thereto) for the three-month period ended March 31, 2004 and subsequent interim filing requirements. It also failed to file its annual financial statements (and management's discussion and analysis related thereto) and its AIF for the year ended December 31, 2003, contrary to the requirements of Ontario securities law.

140. In relation to Hollinger's contraventions of the filing requirements, the Commission issued on June 1, 2004 a management cease trade order against certain management and insiders of Hollinger. A temporary cease trade order had previously been made by the Director on May 18, 2004. The Commission issued similar cease trade orders against certain management and insiders of International, and HCNLP on June 1, 2004 and against certain management and insiders of Argus on June 3, 2004. These cease trade orders had been varied as of March 8, 2005.

**Failure to Implement Effective Policies and Procedures**

141. During the material time, Hollinger and the Individual Respondents failed to implement appropriate policies to identify, and fully disclose transactions with, or indirectly involving, related parties or transactions where conflicts of interest arose by virtue of the personal gain to individual officers/directors. These failures exacerbated a management culture that disregarded appropriate practices to address conflicts of interest. In particular, the respondents failed to adequately disclose and address the many conflicts of interest on the part of Black, Radler, Boulton and Atkinson in the transactions set out above.

**CONDUCT CONTRARY TO THE PUBLIC INTEREST**

142. Staff allege that the conduct set out above of Hollinger and of Black, Radler, Boulton and Atkinson violates securities laws as specified and constitutes conduct contrary to the public interest.

143. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 18<sup>th</sup> day of March, 2005.