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Sent via Email and Messenger

The Ontario Securities Commission
Suite 1800
20 Queen Street West
Toronto, ON M5H 3S8

Attention: The Secretary of the Commission

Dear Sirs/Mesdames:

**Application by Teck Cominico Limited (“Teck”)
dated July 13, 2006 (the “Teck Application”)**

We are the solicitors for Inco Limited (“Inco”).

We are writing on behalf of Inco in response to Teck’s Application for, among other things, an order to cease trade the rights issued pursuant to the shareholder rights plan of Inco (the “Rights Plan”),¹ in respect of Teck’s offer to purchase all of the outstanding common shares of Inco (the “Inco Shares”) by way of a take-over bid circular dated May 23, 2006 (the “Teck Offer”).²

In providing this response, Inco relies upon all of the facts deposed to in the affidavits of R. James Anderson and Glen A. Barton sworn on July 17, 2006.

Overview

Inco respectfully submits that it is inappropriate for the Commission to hear the Teck Application at this time. In particular, Teck has failed to satisfy a number of important conditions necessary to complete its acquisition of Inco and its Application is therefore premature.

¹ Inco Rights Plan dated September 14, 1998, as amended, Exhibit “D” to the affidavit of Peter C. Rozee sworn July 13, 2006 (“Rozee Affidavit”), Volume I, Tab D.

² Teck Circular dated May 23, 2006, Exhibit “C” to the Rozee Affidavit, Volume I, Tab C.

Should the Commission determine that it is appropriate to hear the Teck Application, the sole issue will be whether the continuation of the Rights Plan is in the public interest. Inco submits that it is and that the Commission ought not to take the extraordinary step of cease trading the rights issued under the Rights Plan at this time. In particular:

- (a) the Rights Plan was adopted eight years before the Teck Offer was made and is therefore not a tactical rights plan;
- (b) the Rights Plan has been repeatedly approved by Inco's shareholders;
- (c) Inco's shareholders continue to support the Rights Plan;
- (d) the timing of the Teck Offer is opportunistic and unfair to Inco's shareholders;
- (e) the number of days the Teck Offer has been outstanding is not determinative;
- (f) the continuation of the Rights Plan would not deprive Inco's shareholders of choice;
- (g) if Inco does not acquire Falconbridge, there is a real and substantial possibility that additional proposals will emerge for Inco;
- (h) Inco is a global company and additional time will be required for potential bidders and the market to assess its value;
- (i) Inco is not seeking to equalize timing between Teck and other offerors; and
- (j) if the Rights Plan is maintained for the short period requested by Inco, Teck will continue to have its timing advantage over all other offerors.

Fundamentally, Teck has commenced this application under a misapprehension of the position Inco would take in relation to the Rights Plan in the circumstances that now prevail. Inco does not seek to maintain the Rights Plan for an indefinite period in order to block Teck's offer for the shares of Inco pending resolution of the Phelps Dodge transaction. Rather, Inco seeks to maintain the Rights Plan for a short period following a determination that Inco's offer for the shares of Falconbridge has not succeeded. If such a determination occurs, it is expected to occur by the end of July 2006.

The purpose of the maintenance of the Rights Plan in this scenario is to allow sufficient time for potential third-party purchasers of Inco (that have not been willing to bid for

Inco with the “overhang” of the potential acquisition of Falconbridge) to approach Inco with proposals for the shares of Inco as a stand-alone entity that may be “superior proposals” to the Phelps Dodge transaction. If that scenario is not allowed to run its course, Inco’s shareholders will forever lose the opportunity to reap the benefits of a competitive bidding process for Inco as a stand-alone entity, a proposition that has not been possible since Inco announced its offer for Falconbridge in October 2005.

Inco is not seeking to maintain the Rights Plan in order to equalize timing either between Teck and Phelps Dodge or between Teck and any third-party bidder for Inco as a stand-alone entity. Inco is prepared to allow the Rights Plan to terminate on a basis that will not interfere with Teck’s existing timing advantage over any such bidders, in terms of Teck’s ability to take up and pay for Inco shares if a majority of Inco shareholders choose to tender to the Teck Offer.

From the perspective of the best interests of Inco’s shareholders, the determination whether Inco’s offer for Falconbridge succeeds is a pivot point for the continued operation of the Rights Plan because:

- If Inco’s offer for Falconbridge succeeds, a key condition of Teck’s offer for Inco (that Inco purchase no shares of Falconbridge pursuant to its offer) will be unsatisfied, the Teck offer will lapse and this application will become moot.
- If Inco’s offer for Falconbridge does not succeed, Teck should not be permitted to use the tactical timing of its offer to “scoop” Inco without Inco having a reasonable time to receive potential superior proposals for Inco as a stand-alone entity, to enhance value for Inco’s shareholders.

There is, as deposed to by Mr. Anderson, a real and substantial possibility that such proposals for Inco will be forthcoming in such circumstances. Based upon the evidence filed on behalf of Teck, there is no reasonable prospect that Teck will allow its offer to expire without an extension to await the outcome of that process.

Background

The Parties

Inco is a corporation incorporated under the laws of Canada, with operations in Ontario, Manitoba and Newfoundland and Labrador, as well as outside Canada, with its head office in Toronto. Inco is a reporting issuer in Ontario, with its shares traded on the TSX as well as on the NYSE.

Teck is a corporation incorporated under the laws of Canada, with operations in British Columbia and elsewhere, with its head office in Vancouver. Teck is a reporting issuer in Ontario, with its shares traded on the TSX.

The Rights Plan

The Rights Plan was initially approved by Inco's board of directors in September 1998 and became effective in October 1998. It was amended in certain respects by the board in February 1999 to ensure that it was consistent with shareholder rights plans which had recently been adopted by other Canadian companies. The amended plan was approved by Inco's shareholders in April 1999, and, following minor amendments, was reconfirmed by Inco's shareholders at annual meetings held in April 2002 and April 2005. The Rights Plan remains in effect until October 2008.

The Rights Plan was designed and implemented to ensure that all Inco shareholders are treated fairly in connection with a take-over bid for Inco. In general terms, the Rights Plan provides for the issuance of a number of rights in connection with Inco shares that generally become exercisable when a person or entity (an "acquiror") announces its intention to acquire more than 20% of Inco's outstanding shares without complying with the "permitted bid" provisions of the Rights Plan and without obtaining the approval of the Inco board.

To qualify as a "permitted bid" under provisions of the Rights Plan (the "Permitted Bid Provisions"), an acquiror must make a formal offer, to all shareholders, for all of their shares, and be prepared to leave its offer open for 60 days and not to take up any shares unless a majority of Inco shares (excluding shares held by the acquiror) have been tendered pursuant to the bid. In addition, the Permitted Bid Provisions of the Rights Plan generally provide that in the event that a majority of Inco shares are tendered to the bid, the bid must remain open for deposits and tenders in respect of further shares for at least 10 days after that date.

The Falconbridge Offer

On August 15, 2005, Xstrata plc and Xstrata Canada Inc. (together "Xstrata") publicly announced the acquisition from Brascan Corporation of 19.9% of the outstanding common shares of Falconbridge Limited ("Falconbridge").

Inco and Falconbridge entered into a support agreement dated October 10, 2005 (the "Falconbridge Support Agreement").³ Under the terms of the Falconbridge Support Agreement, Falconbridge agreed to certain "non-solicitation" provisions and undertook to

³ Falconbridge Support Agreement dated October 10, 2005, as amended, Exhibit "A" to the Rozee Affidavit, Volume I, Tab A.

support Inco's offer for Falconbridge (the "Falconbridge Offer"). On October 11, 2005, Inco announced its intention to acquire all of the outstanding shares of Falconbridge.

The Falconbridge Offer has been extended by Inco on a number of occasions, principally to enable continued review of the proposed transaction by regulatory authorities. The necessary regulatory approvals have been obtained, and so it will not be necessary for the Falconbridge Offer to be further extended for that reason. The current expiry of the Falconbridge Offer is 3:00 a.m. EDT on July 28, 2006.

On May 17, 2006, Xstrata announced that it was offering to acquire all of the Falconbridge Shares that it did not already own (the "Xstrata Offer"). The Xstrata Offer currently expires on July 21, 2006. A shareholder rights plan (the "Falconbridge Rights Plan") that Falconbridge had put in place prior to the Xstrata Offer expires on July 28, 2006, as the result of the order of the Commission dated June 30, 2006.⁴

On July 16, 2006, Inco announced that it had increased the cash portion of the Falconbridge Offer and had reduced the minimum tender condition of the Falconbridge Offer to 50.01% of the outstanding shares of Falconbridge on a fully-diluted basis.⁵ Assuming full pro ration, Falconbridge shareholders would receive C\$18.50 in cash and 0.55676 of an Inco Share for each Falconbridge share under the revised offer. In addition, Falconbridge shareholders will receive the special cash dividend of C\$0.75 per Falconbridge common share declared by Falconbridge on July 16th.

The Teck Offer

On May 8, 2006, Teck announced its intention to make an offer to purchase the Inco Shares. On May 23, 2006, Teck mailed the Teck Offer to Inco's shareholders, which provided for consideration offered to Inco's shareholders of C\$28.00 in cash and 0.6293 of a Teck Class B Subordinate Voting Share for each Inco Share held, assuming full pro ration.

Teck's Offer is subject to a number of important conditions. Teck's Offer is conditional on the termination, expiration or withdrawal of the Falconbridge Offer, as well as the termination of the Falconbridge Support Agreement. In addition, the Teck Offer is conditional on the termination of the Rights Plan.

⁴ OSC Order dated June 30, 2006, Exhibit "K" to the Rozee Affidavit, Volume II, Tab K.

⁵ Inco press release dated July 16, 2006 announcing enhancements to the Falconbridge Offer, Exhibit "C" to the affidavit of R. James Anderson sworn July 17, 2006 ("Anderson Affidavit"), Inco Record, Tab C.

In Teck's Circular dated May 23, 2006 (the "Teck Circular"),⁶ Teck expressly acknowledged that its offer did not constitute or qualify as a Permitted Bid under the Permitted Bid Provisions of the Rights Plan. In particular, Teck stated that "The Offer is not a 'permitted bid' for the purposes of the Rights Plan because under applicable U.S. securities laws the Offeror is not permitted to have more than one Take-Up Date as a result of pro-rating the Offered Consideration".

After evaluating the Teck Offer, on May 31, 2006, Inco's board of directors unanimously recommended that Inco's shareholders reject the Teck offer and not tender their Inco shares.⁷

The Teck Offer currently expires on July 24, 2006.

The Phelps Dodge Transaction

On June 26, 2006, Phelps Dodge Corporation ("Phelps Dodge"), Inco and Falconbridge jointly announced their agreement to combine in a US\$56 billion transaction (the "Phelps Dodge Transaction"). Under the terms of the transaction:

- (a) Phelps Dodge will acquire all of the outstanding common shares of Inco for a combination of cash and common shares of Phelps Dodge.
- (b) Simultaneous with its entry into the combination agreement with Phelps Dodge (the "Combination Agreement"),⁸ Inco entered into an agreement with Falconbridge to increase significantly the Falconbridge Offer.

As a result of the July 16, 2006 amendments, the consideration offered in the Falconbridge Offer has been increased as described above. On that date, Phelps Dodge increased the cash portion of the consideration to be paid to the shareholders of Inco in the combination of Phelps Dodge and Inco by C\$2.75 per Inco Share. The consideration under the Phelps Dodge Transaction now has a value of C\$80.70 per Inco Share, based upon the closing price of Phelps Dodge stock on the NYSE and the closing US/Canadian dollar exchange rate on July 14, 2006. This represents a premium of approximately 15% to the value of the existing Teck Offer calculated at C\$70.30 as of the same date.

⁶ Teck Circular, p. 38, Rozee Affidavit, Volume I, Tab C.

⁷ Inco Directors' Circular rejecting the Teck Offer, pp i-iii, Exhibit "H" to the Rozee Affidavit, Volume II, Tab H.

⁸ Anderson Affidavit, para. 34(b), Inco Record, Tab 1.

After the completion of the Phelps Dodge Transaction, previous Phelps Dodge shareholders would own approximately 40% of Phelps Dodge Inco Corporation (the proposed name for the combined company), previous Inco shareholders would own approximately 31%, and previous Falconbridge shareholders would own approximately 29%. The transaction, which is subject to both Phelps Dodge and Inco shareholder approval, regulatory approvals and customary closing conditions, is expected to close in September 2006.

The Phelps Dodge Transaction is not conditional upon the successful completion of the Falconbridge Offer. In the event the Falconbridge Offer is not successful and the Falconbridge Support Agreement is terminated, the Phelps Dodge Transaction provides that each Inco Shareholder will receive the same consideration, *i.e.* 0.672 shares of Phelps Dodge stock plus C\$20.25 per share in cash for each Inco Share held.

Under the terms of the Combination Agreement, Inco is restricted from soliciting competitive offers from other parties. Similar to many other merger agreements, the Combination Agreement includes provisions which recognize and preserve Inco's ability to consider and respond to an unsolicited "Superior Proposal" from another third party. In particular, under the terms of the Combination Agreement, Inco's board may consider and respond to an unsolicited "Superior Proposal" that results in a transaction more favourable to shareholders from a financial point of view than the proposed combination, subject to a number of conditions.

Submissions

The Teck Application is Premature

When a bidder such as Teck seeks to invoke the jurisdiction of the Commission to cease trade a shareholder rights plan, it will not generally be permitted to do so until a point close in time to the bidder being able to complete its offer. The Commission should not entertain issues that may become academic as a result of intervening events.

The Teck Offer is conditional on the Support Agreement having been terminated without Inco acquiring any Falconbridge Shares. Based on Teck's public statements, there is no indication that Teck intends or is even able to waive this condition. If the Teck Application is heard before Inco's acquisition of Falconbridge is completed, and Inco subsequently acquires Falconbridge, the Teck Offer will be terminated and the hearing would have been a waste of time and resources for the Commission and the parties.

The Teck Offer is Not a Permitted Bid

The issue in this proceeding is not whether the Teck Offer is a Permitted Bid under the Rights Plan or whether it should be treated as a Permitted Bid, as this is a matter of

interpretation of the Rights Plan that can only be made by a court. In any event, the Rights Plan does not support such an interpretation. In particular, while the Rights Plan contemplates a Permitted Bid becoming a non-Permitted Bid,⁹ it does not provide for the transformation of the latter into the former. The bid must be a Permitted Bid from the outset in order to qualify as such under the Rights Plan.

Teck commenced its offer knowing that its failure to obtain the appropriate exemption from the SEC regarding take-up dates disqualified its offer from being a Permitted Bid under the Permitted Bid Provisions of the Rights Plan. It must accept the consequences of having done so.

That having been said, it should be noted that the SEC granted Teck an exemption from its prohibition against multiple take-up dates on June 21, 2006. In the intervening period of more than three weeks, Teck has neither amended its offer to bring it into line with the characteristics of a Permitted Bid, nor provided Inco's shareholders with any binding commitment that it will do so.

The Continuation of the Rights Plan is in the Public Interest

If the Commission determines that it is appropriate to hear the Teck Application, the issue before it will be whether the continuation of the Rights Plan is in the public interest. Stated differently, the issue in this application is whether the time has come for the Rights Plan to go. Inco respectfully submits that the answer to this question must be "No".

If Inco acquires Falconbridge, then the Teck Application will be moot as the Teck Offer will either be terminated or allowed to expire. However, if Inco fails to acquire Falconbridge then, for the reasons discussed below, the interests of Inco's shareholders and thus the public interest can be protected only if the Rights Plan is permitted to remain in effect for a reasonable period of time thereafter.

Overview of General Principles

The paramount consideration underlying the take-over bid provisions in Canadian securities legislation is the best interests of the shareholders of the target company. Canadian securities regulators have consistently recognized, including in *National Policy 62-202*, that it is appropriate for the board of a target corporation to adopt "defensive tactics" such as a shareholder rights plan in order to provide the board with sufficient time to pursue alternative transactions to enhance shareholder value.

⁹ Rights Plan, Article 1.1(aaa), p. A-13, Rozee Affidavit, Volume I, Tab D.

However, securities regulators have also recognized that there inevitably comes a time when a rights plan must be set aside and the shareholders of the target corporation must be permitted to make a decision about the merits of one or more competing bid(s).

Canadian securities regulators have identified and enumerated the factors they will generally consider in determining whether it is in the public interest for the rights plan to be terminated. In *Re Royal Host Real Estate Investment Trust* (1999), 49 OCSB 7819, the British Columbia, Alberta and Ontario Securities Commissions held that, although each application to terminate a rights plan turns on its own facts, the following considerations will often be relevant in determining whether a rights plan should be left in place:

- (a) whether shareholder approval of the rights plan was obtained;
- (b) when the rights plan was adopted;
- (c) whether there is broad shareholder support for the continued operation of the rights plan;
- (d) the size and complexity of the target company;
- (e) the other defensive tactics, if any, implemented by the target company;
- (f) the number of potential, viable offerors;
- (g) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- (h) the likelihood that, if given further time, the target company will be able to find a better bid or target company;
- (i) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
- (j) the length of time the bid was announced and made; and
- (k) the likelihood that the bid will not be extended if the rights plan is not terminated.

Each of these factors is considered below.

Application of the *Royal Host* Factors

(a) The Rights Plan Was Repeatedly Approved By Inco's Shareholders

In *Re Cara Operations Ltd.* (2002), 25 OCSB 7997, the Commission held that if a plan does not have shareholder approval, it generally will be suspected as not being in the best interests of the target company's shareholders (*Cara* at para. 65).

The Rights Plan was approved by Inco's shareholders in April 1999, and was subsequently reconfirmed by Inco's shareholders at annual meetings held in April 2002 and April 2005.

(b) The Rights Plan was Adopted Eight Years Before the Teck Offer was Made

The Commission held in *Cara* that tactical shareholders rights plans generally will not be found to be in the best interests of the target company's shareholders. The Commission went on to explain that a rights plan will be tactical and directed at a particular bid if it is not in place before a particular bid becomes evident (*Cara* at para. 64).

The Rights Plan is not a tactical rights plan as it was not adopted in response to, or in anticipation of, the Teck Offer. Rather, as discussed above, it was initially adopted in 1998 and has been continuously in effect since that time.

(c) Inco's Shareholders Continue to Support the Rights Plan

The Commission should recognize the shareholder approval of the Rights Plan in April 2005 as the best evidence of the views of Inco's shareholders as to whether the continued operation of the Rights Plan is in their best interests.

The evidence adduced by Inco in this proceeding shows that independent shareholders holding approximately 10% of the outstanding Inco Shares have provided specific confirmation in the context of this hearing that they support the continued operation of the Rights Plan and that they oppose Teck's application to the Commission.¹⁰

It should be noted that Teck has adduced no evidence of Inco shareholder support for its application.

¹⁰ Letters from Inco shareholders supporting continuation of the Rights Plan (various dates), Exhibit "I" to the Anderson Affidavit, Inco Record, Tab I.

(d) Inco is a Global Company and Additional Time Will be Required for Potential Bidders and the Market to Assess its Value

Inco is a global company, with a market capitalization of more than \$16 billion and revenues of \$4.5 billion in 2005. Given the scope and scale of Inco's operations, it can be anticipated that any third party that is considering making an acquisition proposal is likely to require several weeks to make its internal assessment, negotiate the terms of due diligence, negotiate its own support agreement, and permit Phelps Dodge to exercise its matching rights.

(e) Inco Has Not Employed Other Defensive Tactics Against the Teck Offer

Contrary to the assertions made by Teck, the Combination Agreement between Inco and Teck is not a "defensive tactic" aimed at thwarting the Teck Offer, but rather an agreement contemplating a competitive business proposal for consideration by Inco's shareholders which was and continues to be superior to the Teck Offer.

If the Teck Offer fails and the Phelps Dodge Transaction succeeds, it will be solely because of the verdict rendered by Inco's shareholders, in the exercise of their independent business judgment, on the respective merits of those proposed transactions.

(f)-(h) If Inco Does Not Acquire Falconbridge, There is a Real and Substantial Possibility That Additional Proposals Will Emerge for Inco

The Commission has recognized the need to balance the interests of shareholders against the duties of target boards. As the Commission stated in *MDC Corp. (Re)*, 17 OCSB 4971 at p. 14:

If there appears to be a real and substantial possibility that, given a reasonable period of further time, the board of the target company can increase shareholder choice and maximize shareholder value, then, absent some other compelling reason requiring the termination of the plan in the interest of the shareholders, it seems to us that the Commission should allow the plan to function for such further period, so as to allow management and the board to continue to fulfill their fiduciary duties.

Teck concedes that the purpose of the Rights Plan was to give Inco's shareholders time to assess a take-over bid, and Inco's board of directors time to explore and develop alternatives. It is the evidence of Messrs. Anderson and Barton that if the Falconbridge Offer is terminated, there is a real and substantial possibility of an alternative bid or transaction for Inco emerging. Therefore, a consideration of the *Royal Host* factors (f) to

(h) supports the conclusion that the Rights Plan ought to be permitted to continue to serve its purpose. These are addressed by Mr. Anderson in paragraph 43(d)-(g) of his affidavit, as follows:

(d) Upon the termination of the Falconbridge Transaction and the Falconbridge Support Agreement, Inco will no longer be subject to its commitments under that agreement. As a result, for the first time since the launch of the Falconbridge Offer in October 2005, potential offerors would be able to make an offer for Inco on what would clearly be a stand-alone basis, *i.e.*, with certainty that no Inco-Falconbridge combination would be taking place, and that the acquisition opportunity would therefore be for Inco as a \$16 billion pure-play nickel producer (without the Falconbridge acquisition debt and likely in receipt of a US\$450 million break fee from Falconbridge), rather than potentially a \$30 billion diversified base metals conglomerate;

(e) While Inco is subject to non-solicitation covenants under the Combination Agreement, Inco is permitted and its board of directors would be required to consider and respond to unsolicited acquisition proposals from third parties that constitute or could reasonably be expected to constitute a "Superior Proposal";

(f) Inco conducted confidential discussions with a number of third parties following the announcement of the Teck Offer. I am unable to divulge further details of these discussions without materially damaging the interests of Inco. Due to Inco's commitment to the Falconbridge Offer and the terms of the Falconbridge Support Agreement, Inco was only able to engage in these discussions on a basis that included the consummation of the Falconbridge Offer as an integral element of a planned transaction, while providing superior value to the Teck Offer. The Phelps Dodge Transaction met these requirements - but based on the confidential discussions that took place with other third parties, I believe that a wider range of transactions would have emerged for consideration in the event that a stand-alone Inco transaction had been available for discussion, and that one or more of these parties or other parties may remain interested in pursuing such an opportunity should it become available; and

(g) Upon the termination of the Falconbridge Support Agreement and the resolution of the Falconbridge Offer, a significant source of uncertainty in the eyes of third parties and the financial markets regarding Inco's situation will have been

removed. In my experience, potential bidders for public companies are very reluctant to enter a situation in which the obligations and status of the potential target are unclear - and the complexity of the situation surrounding the Phelps Dodge-Inco-Falconbridge-Teck-Xstrata combination of companies can be characterized as unique. In the event that the status of both Inco and Falconbridge is clarified through the termination of the Support Agreement or otherwise, the interest of potential bidders is likely to be rekindled as a result.

Contrary to Teck's submissions and the evidence of its witnesses, there has been no relevant "auction" for Inco. It is only in the event that Inco fails to acquire Falconbridge that Inco will be in a position to consider third-party proposals for the acquisition of Inco on a stand-alone basis.

In other words, the only "auction" for Inco on a stand-alone basis will take place if and when the Inco-Falconbridge transaction fails, a contingency that is expected to be definitively known within two weeks. It is at that time that the true choices for Inco's shareholders will become clear.

(i) The Timing of the Teck Offer is Unfair to Inco's Shareholders

The timing of the Teck Offer strongly indicates that it is an opportunistic bid for Inco, at a time when Inco was already contractually committed to the Falconbridge Offer by virtue of the Falconbridge Support Agreement. Inco was and continues to be constrained from exploring other value-enhancing alternatives for Inco that do not contemplate an Inco-Falconbridge combination.

Under the circumstances, the Teck Offer was designed and intended to exploit these constraints with a view to acquiring Inco quickly and cheaply as a stand-alone entity in the event that the Falconbridge transaction is not completed, before Inco's board of directors or shareholders have had any opportunity to consider other competing alternatives that would enhance shareholder value in the absence of a combination with Falconbridge.

This tactic is ultimately detrimental to Inco's shareholders as it deprives them of the opportunity to consider other potential offers for Inco as a stand-alone entity. The creation of such a closed process directly contravenes the intention underlying the take-over bid regulations that Teck is relying upon to terminate the Rights Plan.

(j) The Number of Days the Teck Offer Has Been Outstanding is Not a Determinative Factor

The Commission has held that the absolute number of days a bid has been outstanding is not a determinative factor (see *Cara* at para. 60). Although the Commission has also held that the onus on the party seeking to preserve a rights plan is a function of the length of time a bid has been outstanding, Inco submits that, on the basis of the foregoing, it has met this burden (*Cara* at para. 60).

Further, as Teck notes in its Application, the relative importance that the Commission will ascribe to each *Royal Host* factor will vary from case to case. It is submitted that in the circumstances of this case, minimal weight should be attached to the time which has elapsed since the Teck Offer was made as Inco has not yet had an opportunity to be considered on a stand-alone basis by other potential acquirors for any period of time since October 2005 due to its commitments under the Falconbridge Support Agreement.

(k) The Continuation of the Rights Plan Would Not Deprive Inco's Shareholders of Choice

Conspicuous by its absence in Teck's Application and supporting affidavits is any indication or suggestion that the Teck Offer will not be extended beyond its current July 24th expiration date.

In the event that the Inco-Falconbridge transaction fails, there is no pragmatic basis for concluding that Teck will not extend its bid for Inco for a reasonable time if required to do so by the continued operation of the Rights Plan. If a new third-party bidder emerges with a superior offer for the stand-alone Inco during that period, Teck will need to determine whether it wishes to continue in its aspirations to own Inco by making a competitive amendment to its offer. If no such bidder emerges, Teck will retain a significant timing advantage over the Phelps Dodge Transaction and over any third party's offer that may emerge, and it will be up to Inco's shareholders (as it should ultimately be) to balance the risks and rewards of the offers available to them.

Conclusion

The preservation of the Rights Plan is plainly in the best interest of Inco's shareholders as it is necessary to allow a competitive bidding process for Inco in the event that the Falconbridge Transaction is terminated. In such circumstances, there is a real and substantial possibility that other potential bidders will emerge and seek to acquire Inco on a stand-alone basis. The Rights Plan is the only mechanism which will ensure that Inco will have a meaningful opportunity to consider these strategic alternatives to enhance shareholder value in the face of Teck's opportunistic bid.

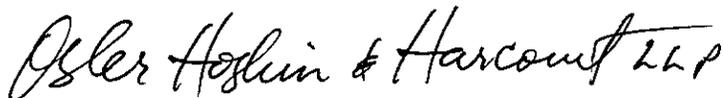
As Mr. Anderson has testified in paragraph 51 of his affidavit:

In the event that the Falconbridge Offer is terminated, the market will need a period of time to reassess the appropriate value for the Inco Shares, which may take up to 10 trading days. Furthermore, and in view of all of these factors, I believe that it would be appropriate for Inco to have approximately 30 days following the termination of the Falconbridge Support Agreement to allow another potential third party bidder to consider and potentially make an offer that has a chance of success without Teck being in a position to "scoop" the Inco Shares first and thereby preclude the possibility of third parties being eligible to participate in a competitive bidding process for Inco on a stand-alone basis.

For all of the foregoing reasons, Inco requests that the Commission either dismiss Teck's application, or, in the alternative, order that the Rights Plan be cease traded no earlier than **August 31, 2006**.

Yours very truly,

Osler, Hoskin & Harcourt LLP



per Larry P. Lowenstein and Mark A. Gelowitz
:sm

c: Naizam Kanji (Ontario Securities Commission)
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