



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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

- AND -

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

- AND -

## **IN THE MATTER OF CORUS ENTERTAINMENT INC.**

## **REASONS FOR DECISION**

**Hearing:** March 4 and March 7, 2016

**Decision:** April 25, 2016

<b>Panel:</b>	D. Grant Vingoe	- Vice-Chair and Chair of the Panel
	Mary G. Condon	- Commissioner
	Judith N. Robertson	- Commissioner

**Appearances:** Robert W. Staley  
Derek J. Bell - For the Applicant (the Catalyst Capital Group Inc.)

Larry Lowenstein  
Mark A. Gelowitz  
Shawn T. Irving  
Douglas Bryce  
Evan Thomas

- For the Respondent (Corus Entertainment Inc.)

Pamela Foy  
Naizam Kanji  
Jason Koskela  
Swapna Chandra

- For Staff of the Commission

Vincent A. Mercier  
Andrea L. Burke  
Matthew Milne-Smith - For Intervener (Shaw Communications Inc.)

## TABLE OF CONTENTS

I.	Background .....	1
A.	The Application and Motions.....	1
B.	The Parties .....	2
C.	The Shaw Motion .....	3
D.	Process for Addressing the Corus Motion and the Application .....	4
E.	The Corus Motion .....	4
II.	The Issue .....	4
III.	The Legal Test .....	4
IV.	Analysis .....	7
A.	History of the Acquisition.....	7
B.	Decision to Bifurcate the Hearing .....	8
C.	Application of the Legal Test to the Facts .....	8
	(a) The basis for the complaint .....	9
	(b) Timing of the Application .....	11
D.	Comment on Staff's Role with Respect to an Application by a Private Party .....	12
V.	Conclusion.....	12

## REASONS FOR DECISION

### I. BACKGROUND

#### A. The Application and Motions

[1] On March 4, 2016, a hearing was held before the Ontario Securities Commission (the "**Commission**") with respect to scheduling, preliminary matters, and motions in relation to an application dated March 4, 2016 (the "**Application**") filed by the Catalyst Capital Group Inc. (the "**Applicant**" or "**Catalyst**") in connection with the special meeting (the "**Meeting**") of holders of Class A participating shares and Class B non-voting participating shares of Corus Entertainment Inc. ("**Corus**") called to consider, and if deemed advisable, to approve, the proposed purchase (the "**Acquisition**") by Corus of Shaw Media Inc. ("**Shaw Media**") from Shaw Communications Inc. ("**Shaw Communications**").

[2] The Application was made pursuant to subsection 127(1) of the Ontario *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "**Act**"). The Applicant sought the following relief:

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

[3] On March 4, 2016, Corus filed a motion in relation to the Applicant's standing to bring the Application and sought an order from the Commission declaring that

the Applicant lacked standing and is not entitled to bring an application under section 127 of the Act in the circumstances (the "**Corus Motion**").

[4] On March 4, 2016, Shaw Communications filed a motion seeking an order from the Commission that Shaw Communications be granted leave to have full intervenor status as a party, including the right to adduce evidence and make submissions, on the Corus Motion and the hearing of the Application (should the Application proceed to a hearing on the merits) (the "**Shaw Motion**").

[5] Staff of the Commission ("**Staff**") took the position that the Commission should not exercise its discretion to hear the merits of the Application. In supporting the Corus Motion to deny Catalyst standing, Staff focused its submissions on the issues raised by the Applicant and the timeliness of the Application. Staff submitted that the Application raises no novel or complex issues that would warrant the intervention of the Commission so close to the Meeting.

## B. The Parties

[6] Corus is a federally incorporated company with its registered office in Alberta and its shares are listed on the Toronto Stock Exchange. Corus indicates in the Management Circular that it creates, broadcasts, licenses and delivers content across a variety of platforms for audiences around the world.

[7] Shaw Communications is an Alberta corporation with its registered office in Alberta and its shares are listed on the Toronto Stock Exchange and New York Stock Exchange. A news release from Shaw Communications dated March 1, 2016 indicates that Shaw Communications is a "pure-play connectivity provider focused on delivering superior consumer and business broadband communications over its wireline, WiFi and wireless infrastructure".

[8] Shaw Media, the subject of the Acquisition, is a wholly owned subsidiary of Shaw Communications with its registered office in Alberta. The Management Circular states that Shaw Media provides programming content through Global Television, speciality networks and digital platforms.

[9] The Applicant, Catalyst, is a private equity investment firm founded in June 2002. According to its website, the Applicant "specializes in control and/or influence investments in distressed and undervalued Canadian situations". According to the Applicant's dissident Proxy Circular, dated March 1, 2016 (the "**Dissident Proxy Circular**"), the Applicant has more than U.S. \$6 billion in assets under management.

[10] In the Dissident Proxy Circular, the Applicant indicates that it directly or indirectly beneficially owns over 321,800 Class B shares in Corus representing approximately a 0.4% interest in the issued and outstanding shares of Corus. It was not disputed that this position was acquired at some point in time after the announcement of the Acquisition.

[11] Staff also appeared before the Commission and made submissions as set out in paragraph [5] of these reasons.

### C. The Shaw Motion

[12] As described in paragraph [4] above, Shaw Communications filed the Shaw Motion in order to intervene as a full participant at the hearing. At the hearing on March 4, 2016, we granted Shaw Communications limited leave to intervene for the purpose of filing written submissions on both the Corus Motion and the merits of the Application and to respond to any questions from the Panel.

[13] In coming to this decision, we considered Rule 1.8 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168 and the factors set out therein to be considered in a motion to intervene, including:

- (a) the nature of the matter;
- (b) the issues;
- (c) whether the person or company is directly affected;
- (d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other factor the Panel considers relevant.

[14] These factors codify those considered by the Commission in granting intervenor status in other cases (see *Torstar Corporation and Southam Inc.* (1985), 8 OSCB 5068, *Hollinger* (2005), 29 OSCB 7071 at para. 44 citing *Albino* (1991), 14 OSCB 365 and *Magna International Inc.* (2011), 34 OSCB 800).

[15] Catalyst argued against the intervention of Shaw Communications, principally because the Application was limited to financial disclosures which were within Corus's control. Catalyst did not take issue in its Application with Shaw Communications' involvement in the process leading up to the Acquisition.

[16] We determined that granting limited intervenor status to Shaw Communications was appropriate considering that (i) Shaw Communications is directly affected by the Application by virtue of a potential delay in the Meeting, and (ii) Shaw Communications and Corus have different shareholders, their boards of directors owe duties to different corporations, and therefore, their submissions may differ. In light of these factors, it was sufficient for us to afford Shaw Communications with the opportunity to make written submissions and answer questions from the Panel in order to provide relevant information. Our decision not to grant full intervenor status also reflected the nature of the relief sought by the Applicant. In particular, the Applicant stated at the hearing that the requested relief was limited to additional or corrective disclosure concerning certain financial metrics in the Management Circular which would not be within the knowledge or

responsibility of Shaw Communications. In our view, this approach was also appropriate given the time constraints to hear this matter expeditiously.

#### **D. Process for Addressing the Corus Motion and the Application**

[17] At the hearing on March 4, 2016, we invited the parties to make submissions on the proposed procedure for hearing the Corus Motion and the Application. In light of the Corus Motion challenging the standing of the Applicant to bring the Application, we invited the parties to make submissions on whether a hearing should be held to consider the Corus Motion on standing and the merits of the Application together, or whether the Corus Motion and Application should be heard sequentially.

[18] Upon hearing submissions, we determined that it was appropriate in this specific case to bifurcate the hearing and consider the Corus Motion and Application on the merits separately for the reasons discussed in Part IV.B below. We issued an order to this effect (*Catalyst Capital Group Inc.* (2016), 39 OSCB 2230), and set a filing schedule for submissions. The order and the Notice of Hearing issued on March 4, 2016 set the hearing date as March 7, 2016 to consider the Corus Motion, and the merits of the Application, if necessary.

#### **E. The Corus Motion**

[19] On March 7, 2016, we heard the Corus Motion and determined that the Applicant lacked standing to bring the Application. Accordingly, the Corus Motion was granted, and the Application was dismissed without a consideration of the merits.

[20] On March 7, 2016, we issued an order (*Catalyst Capital Group Inc.* (2016), 39 OSCB 2238) granting the Corus Motion and dismissing the Application, which stated that our reasons were to follow. These are our reasons for denying the Applicant standing to bring the Application.

### **II. THE ISSUE**

[21] The Corus Motion raises the sole issue of whether the Commission ought to exercise its discretion to allow the Applicant, a private party, to bring an application under section 127 of the Act in the circumstances of this case.

[22] If decided in the affirmative, the Commission would hear the merits of the Application.

### **III. THE LEGAL TEST**

[23] Section 127 of the Act grants the Commission jurisdiction to intervene in the capital markets and make certain orders when the Commission determines that it is in the public interest to do so.

[24] The Supreme Court of Canada (the “**Court**”) has stated that “the [Commission] has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so” (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 (“**Asbestos**”) at para. 45). The Commission’s public interest jurisdiction allows the Commission to intervene in circumstances where there is no breach of the Act, the regulations or any policy statement (*Canadian Tire Corp.* (1987), 10 OSCB 857 at para. 130, and *Patheon Inc.* (2009), 32 OSCB 6445 at para. 114).

[25] However, a private party cannot bring an application as a matter of right under section 127 of the Act (*MI Developments Inc.* (2009), 32 OSCB 126 at para. 248 (“**MI Developments**”)). Rather, in the extraordinary circumstance in which a private party chooses to bring an application under section 127 of the Act, the Commission has the discretion whether or not to permit it to do so (*MI Developments, supra* at paras. 108 and 127).

[26] In *MI Developments*, the Commission considered the following factors when deciding whether to exercise its discretion in favour of permitting an application by a private party, and these factors were considered and applied most recently in *Central GoldTrust* (*Central GoldTrust (Trustees of)* 2015, 38 OSCB 10768 (“**Central GoldTrust**”)):

- (i) the applications related to both past and future conduct regulated by Ontario securities law;
- (ii) the applications were not, at their core, enforcement in nature;
- (iii) the relief sought is future looking;
- (iv) the Commission has the authority to grant an appropriate remedy;
- (v) the applicants were directly affected by the conduct (past and future); and
- (vi) the Commission concluded it was in the public interest to hear the applications.

(*MI Developments, supra* at paras. 109-110 and *Central GoldTrust, supra* at para. 16).

[27] In *Asbestos*, the Court also identified limits on the public interest jurisdiction of the Commission stating that:

...the public interest jurisdiction of the [Commission] is not unlimited. Its precise nature and scope should be assessed by considering s. 127 in context...Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.

(*Asbestos*, *supra* at para. 41)

...

In exercising its discretion, the [Commission] should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally.

(*Asbestos*, *supra* at para. 45)

[28] The Commission has similarly considered its discretion to hold a hearing on the merits of an application under section 104 of the Act, and has declined to hear such an application. Notwithstanding that section 104 has a more limited application (i.e. invoked when an application is made by an 'interested person') and that such section does not directly apply to the Application at issue in this matter, it should be noted that even on an application made pursuant to section 104, the Commission has exercised its discretion to decline hearing an application in the exercise of its authority to govern its own processes. As explained at paragraphs 46 and 47 of *Western Wind Energy Corp.* (2013), 36 OSCB 6749 ("**Western Wind**"):

In our view, the Commission may decline to hear an application brought under section 104 of the Act. As stated in *Fibretek* (at paragraph 49):

In our view, the Commission is not required to hold a hearing on the merits simply because an interested person has made an application under subsection 104(1) of the Act. We are required to consider that application and to give an applicant an opportunity to be heard. However, our inherent authority to govern our own processes allows us to dismiss an application on any appropriate grounds, including a decision not to assert our jurisdiction. An opportunity to be heard on the Application has been given to Mercer in this matter.

Accordingly, the Commission can decline to hold a hearing on the merits in respect of an application brought under section 104 for any appropriate reason, including because the application is *prima facie* without merit, because no useful purpose would be served by the hearing or because holding such a hearing is not in the public interest.  
[Emphasis Added.]

[29] Further, in paragraph 38 of *Western Wind*, the Commission stated:

An important part of the Commission's mandate is to provide protection to investors from unfair, improper or fraudulent practices. The Commission's mandate also requires it to foster fair and efficient capital markets and confidence in capital markets. The Commission will intervene in situations where [a transaction] is abusive, contravenes Ontario securities law or an animating principle underlying that law, or brings the integrity of the capital markets into disrepute.

[30] Finally, in paragraph 44 of *Western Wind*, the Panel noted that the applicant "has the onus of establishing that it is in the public interest to grant such an extraordinary remedy" and must tender "sufficient *prima facie* evidence to satisfy that onus." While the Application before us is brought under section 127 of the Act, we find the principles cited in *Western Wind* to be instructive in the present circumstances.

## **IV. ANALYSIS**

### **A. History of the Acquisition**

[31] Before applying the legal test, it is helpful to review the chronology of events leading to the Application.

[32] On January 13, 2016, Corus announced that it had entered into a share purchase agreement to purchase all of the shares of Shaw Media from Shaw Communications for \$2.65 billion. Corus would satisfy the purchase price for this Acquisition in cash and by the issuance of shares.

[33] This Acquisition is a related party transaction pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("MI 61-101") as Shaw Communications and Corus are each controlled by a common security holder, the Shaw Family Living Trust. Pursuant to MI 61-101, related party transactions generally require a formal valuation (section 5.4 of MI 61-101) and minority approval (section 5.6 of MI 61-101). This related party transaction required a formal valuation and minority approval.

[34] On January 29, 2016, Corus filed a notice to hold the Meeting on March 9, 2016, seeking minority approval of the Acquisition.

[35] On February 5, 2016, the Applicant contacted Corus and spoke with the Chair of the Special Committee of Corus. The Applicant expressed concerns about the financial reporting and the process leading to the transaction.

[36] Corus issued the Management Circular dated February 9, 2016 in respect of the Meeting. The formal valuation was included in the Management Circular.

[37] On February 19, 2016, the Applicant sent a letter of complaint to Staff seeking Staff intervention. The letter alleged various deficiencies in Corus's disclosures in respect of the Acquisition.

[38] On February 22, 2016, Corus issued a press release indicating that Institutional Investor Services ("ISS"), a proxy advisory research firm, recommended that shareholders of Corus vote in favour of the Acquisition.

[39] On February 26, 2016, the Applicant published a presentation providing further analysis and details of its concerns regarding the Acquisition. It set up a

website and held conference calls for the purpose of providing information and concerns relating to the Acquisition from the perspective of minority shareholders.

[40] On February 26, 2016, Corus issued a press release indicating that Glass Lewis, a proxy advisory research firm, recommended that shareholders of Corus vote in favour of the Acquisition.

[41] On March 1, 2016, the Applicant sent a Dissident Proxy Circular to Corus's shareholders opposing the Acquisition and soliciting proxies by and on behalf of the Applicant for the Meeting.

[42] On March 2, 2016, ISS reaffirmed its original recommendation that shareholders of Corus vote in favour of the Acquisition.

[43] On March 4, 2016, the Applicant filed its Application with the Commission.

## **B. Decision to Bifurcate the Hearing**

[44] On March 4, 2016, Corus brought a motion to deny Catalyst's standing to bring the Application. As noted above, we decided to bifurcate the hearing of Catalyst's standing from a hearing on the merits of Catalyst's Application and to address the standing issue first on March 7, 2016. We allotted time for the hearing of this issue and then time for hearing on the merits to follow, if required. Given the timing of the Meeting, this process was expected to be concluded on March 7, 2016. Submissions on this issue and on the merits were filed by the evening of March 5, 2016.

[45] We acknowledge that in some instances, because of the possible interrelationship of the evidence and considerations relating to standing and the merits or because of a very compressed hearing schedule, it may be appropriate to hear all the evidence before deciding the issue of standing. In other cases, the evidence and submissions concerning standing, and particularly the public interest factors involved, will be sufficiently distinct that the possibility of an expeditious outcome, should the issue of standing conclude the matter, will favour bifurcating the hearing. In this case, we decided to bifurcate the standing issue and a hearing on the merits since there were sufficient public interest considerations arising from the evidence and submissions on the issue of standing to make a sequential process preferable.

## **C. Application of the Legal Test to the Facts**

[46] We reviewed the factors which we set out in paragraph [26] above and we determined, in the exercise of our discretion, to deny the Applicant standing to bring a section 127 application.

[47] As we have noted, the Application concerns a proposed related party transaction regulated under MI 61-101. The Application relates to past conduct in that it alleges material misstatements in the Management Circular and other public disclosures of Corus. The relief seeking corrective disclosure is forward-looking.

While it is within the authority of the Commission to grant the relief sought pursuant to the powers granted to the Commission under section 127 of the Act, this alone does not determine whether standing to bring the Application should be granted.

[48] Although a number of the factors identified in *MI Developments* would not necessarily preclude Catalyst from bringing an Application, we determined that, in this case, the question of whether it is in the public interest to hear the Application was determinative.

(a) **The basis for the complaint**

[49] We are of the view that the Application before us raises no novel issues. Although we agree that the protection of minority shareholders in related party transactions is central to the Commission's mandate, in this particular case we are not persuaded that the relief requested by the Applicant would better serve the minority shareholders than proceeding to the scheduled vote.

[50] The Management Circular was issued on February 9, 2016 in relation to the Meeting. This period of time complies with applicable corporate law. In accordance with MI 61-101, the votes of certain related persons of the company, consisting of shareholders aligned with Shaw family interests are to be excluded in seeking minority approval. Corus sought to comply with the elements of this Instrument, including the review of the transaction by a Special Committee composed of independent directors, the preparation of a fairness opinion, the securing of an independent valuation, and obtaining minority approval.

[51] Catalyst conducted a very active campaign opposing the Acquisition and proposing alternative courses of action both before and after the issuance of the Management Circular. Shortly after the Management Circular was issued, Catalyst began questioning the process that resulted in the Acquisition and certain financial metrics set out in the Management Circular. The complaints concerning financial disclosures focused on (i) alleged material overstatements of EBITDA of Shaw Media and the combined EBITDA of the resulting enterprise, (ii) alleged misstatements regarding the ratio of Enterprise Value to EBITDA, and (iii) alleged misstatements regarding whether the Acquisition would be immediately accretive.

[52] At the hearing, Catalyst's arguments were based upon these alleged deficient financial disclosures and not the process leading to the negotiated Acquisition. On the basis of these allegations, Catalyst was seeking corrective disclosures and a delay of the Meeting through the exercise of our authority to cease trade a transaction under section 127.

[53] These matters were the subject of continuing discussions between representatives of Catalyst and Corus, correspondence with Staff, public pronouncements and media reports. Each item involved judgments concerning the value of the transaction based upon information contained in the Management Circular and the public record. The Acquisition was also reviewed and assessed by

numerous financial analysts and by proxy advisory firms who made their own assessments of these financial disclosures.

[54] Catalyst issued the Dissident Proxy Circular and at pages 2-4 specifically addressed these financial disclosure issues. There was a very active public debate between Corus and Catalyst, and within the financial community, concerning these financial disclosures. Staff also received complaints, asked questions and assessed responses from Corus and Catalyst.

[55] The disclosure obligations in related party transactions are set out in section 5.3(3) of MI 61-101 and they fall on the issuer. In this case, we find that there was no *prima facie* case of inadequate or materially misleading disclosure. In fact, as described above, there was detailed information and analysis available to investors included in the Management Circular, the Dissident Proxy Circular, analyst, proxy advisory firm and other reports to enable shareholders to make informed investment decisions. We accept Corus's submission that this case is really a "debate about the meaning and significance of disclosed financial ratios and data, which is drawn from the Management Circular and sliced and diced by Catalyst" (Transcript of March 7, 2016, page 27, lines 4-9).

[56] The ability of a private party to bring an application under section 127 is intended to be an extraordinary circumstance. We would not shy away from granting standing where an application may reasonably prevent unfair, improper or fraudulent practices or offer redress for minority shareholders involving disclosure or otherwise. In our view, this case does not involve issues rising to this level. Unlike *Central GoldTrust*, this case did not present fundamental issues related to the requirements for implementing M&A transactions, such as the "identical consideration" requirement or novel issues such as the application of bid processes to business trusts. Instead, the Applicant's concerns were limited to complaints about disclosure that had already been widely considered in an active public debate. Further, the disputed items primarily arose from an analysis of information disclosed in the Management Circular. In our view, the range of issues raised by the Application do not require invoking the full machinery of a public interest hearing when the information complained of was otherwise known, analyzed and disseminated.

[57] In making this determination, the Commission is not concluding that it will never take action on matters involving disclosure of financial metrics, and may well do so late in a corporate process if we find that there is material confusion about or misunderstanding of the circumstances prevailing in the market. However, in this particular case, the nature of the alleged deficiencies in disclosure and the relief sought does not, in our view, warrant invoking the public interest.

[58] While inadequate disclosure is not cured by information disseminated by persons other than the issuer, it is appropriate for us to consider the information available in the marketplace in considering whether to take action in the public interest. This is a separate matter from whether an issuer is in full compliance with its disclosure responsibilities. The quality of disclosure is certainly the responsibility

of the issuer in accordance with its processes. A panel hearing a section 127 application should not generally act as examiners late in the implementation of a corporate transaction where there is no convincing *prima facie* case of material inadequacies.

[59] For us to entertain the Application seeking to have the Meeting delayed so that Catalyst's views could be incorporated in the Management Circular after they had been so completely described in Catalyst's own Dissident Proxy Circular and other communications would not be of sufficient benefit to minority shareholders to justify our intervention.

**(b) Timing of the Application**

[60] To permit the Application at this late stage would interfere unduly with the justified expectations of participants in our marketplace, including minority shareholders, regarding the timetable for implementing corporate transactions. Such a late intervention could affect fairness, efficiency and confidence in our capital markets. Consistent with our holding in *Western Wind*, the Applicant did not satisfy its onus of demonstrating that such a hearing is in the public interest.

[61] The Commission is prepared to intervene in situations where an offer is abusive, contravenes Ontario securities law or an animating principle underlying that law, or brings the integrity of the capital markets into disrepute including, involving disclosure or otherwise (see reference to *Western Wind* cited above in these reasons at paragraph [29]). However, when an application is brought late in the process without new information or without critical issues being raised relating to the transaction in question, we will need more convincing evidence showing that the public interest is at stake than was offered by the Applicant.

[62] During the hearing, submissions were made regarding the nature of Catalyst as an "activist investor". An activist investor may bring forward concerns implicating the public interest as readily as any other investor and we are not influenced by this designation. We are also not influenced in this case by the relatively small size of Catalyst's holdings in relation to its aggregate holdings or the fact that Catalyst was not apparently a long-term holder. The significance of the size of a shareholding or timing of a share acquisition, if it bears any significance, will vary from case to case and cannot be stated as a general principle.

[63] As stated above, the disclosures sought by the Applicant primarily involve analysis of previously disclosed information. In our view, the information sought by the Applicant has already been disseminated to Corus's shareholders through a variety of means. Therefore, no purpose would be achieved by holding a hearing on the merits of the Application. Rather, we are of the view that Corus's shareholders should be permitted to vote on the Acquisition in accordance with the established schedule.

**D. Comment on Staff's Role with Respect to an Application by a Private Party**

[64] The Panel notes that submissions were made at the hearing with respect to the role of Staff in the context of an application brought by a private party. We accept the submission of Staff that a third party should not expect Staff to inform them as to their conclusions in relation to their reviews. Further, we acknowledge that Staff are not gatekeepers with respect to a party's decision whether or not to bring an application before the Commission. The decision whether to bring an application and on what basis, including the timing of the application, must be the private party's own decision. The consequences of this decision are then appropriately weighed by the Commission in relation to the issues raised by the applicant, and the need for, and availability of, remedies that will afford appropriate redress to affected investors and other affected persons.

**V. CONCLUSION**

[65] Therefore, in the circumstances of this case, we decline to grant standing to the Applicant, a private party, to bring a section 127 application.

Dated at Toronto this 25<sup>th</sup> day of April, 2016.

*"D. Grant Vingoe"*

---

D. Grant Vingoe

*"Mary Condon"*

---

Mary G. Condon

*"Judith Robertson"*

---

Judith N. Robertson