DECISION OF THE ONTARIO SECURITIES COMMISSION

IN THE MATTER OF HUDBAY MINERALS INC.

AND

IN THE MATTER OF A DECISION OF THE TORONTO STOCK EXCHANGE

[1] This is the decision of the Ontario Securities Commission (the "Commission") in connection with the application brought by Jaguar Financial Corporation ("Jaguar") related to the transaction under which HudBay Minerals Inc. ("HudBay") proposes to acquire all of the outstanding common shares of Lundin Mining Corporation ("Lundin").

[2] The issue of this decision is a matter of some urgency given that the transaction at issue in this matter will be voted on by Lundin shareholders on January 26, 2009 and, if approved, the Transaction will be completed on January 28, 2009. Accordingly, we are issuing this decision now on an expedited basis with full reasons to follow. We will set out briefly in this document the approach we have taken to this matter and the issues we have considered. This is an important matter for participants in our capital markets.

[3] This document does not constitute the Commission's reasons for our decision in this matter. Full reasons will follow in due course for purposes of subsection 9(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

A. The Application

[4] This matter arises out of an application, the Fresh as Amended Request for Hearing and Review, dated January 6, 2009 (the "Application") made to the Commission by Jaguar pursuant to sections 8(3) and 21.7 of the Act.

[5] The Application is a request by Jaguar for the Commission to review a decision of the Toronto Stock Exchange (the "TSX") made on December 10, 2008. The decision of the TSX approved the listing of the additional common shares of HudBay to be issued in connection with the acquisition of the common shares of Lundin pursuant to the plan of arrangement between HudBay and Lundin (the "Transaction"). The TSX did not impose a condition requiring that the Transaction be approved by HudBay shareholders. The foregoing decision of the TSX is referred to as the "TSX Decision".

[6] Jaguar seeks an order of the Commission setting aside the TSX Decision and requiring, as a condition of the TSX's approval of the listing of the additional HudBay common shares, that HudBay obtain shareholder approval of the Transaction.

[7] Pursuant to sections 603 and 604 of the TSX Company Manual (the "TSX Manual"), the TSX has the discretion to impose conditions on a transaction, including requiring a vote of the shareholders of the listed issuer.

[8] On January 19 and 21, 2009, a hearing of the Commission was held with respect to the Application at which we considered the evidence submitted and the submissions made by Jaguar, HudBay, Lundin, the TSX and the Staff of the Commission ("Staff").

B. The Transaction

[9] On November 21, 2008, HudBay and Lundin announced the Transaction in a joint news release (the "Joint Release"). Pursuant to the Transaction, HudBay would acquire all of the outstanding common shares of Lundin on the basis of 0.3919 HudBay common shares for each Lundin common share. As a result, HudBay would issue an aggregate of 157,596,192 common shares to Lundin shareholders. As of November 14, 2008, there were 153,020,124 common shares of HudBay outstanding.

[10] The number of HudBay shares to be issued in connection with the Transaction will result in the existing shareholders of HudBay being diluted by just over 100%. Upon completion of the Transaction, existing shareholders of HudBay and Lundin will (as a group) each hold approximately 50% of the common shares of the merged entity.

[11] The imputed price that HudBay agreed to pay pursuant to the Transaction was $2.05 for each Lundin common share, which represents a 103% premium to Lundin's closing price of $1.01 on the day before the Transaction was publicly announced (November 20, 2008) and a 32% premium based on the 30-day volume weighted average trading prices on the TSX of the shares of Lundin and HudBay prior to November 21, 2008.

[12] Following the public announcement of the Transaction on November 21, 2008, HudBay's share price on the TSX dropped by approximately 40%, while the price of the Lundin common shares remained approximately the same.

[13] The Transaction will be put to a vote of Lundin shareholders at a special meeting of shareholders scheduled to be held on January 26, 2009.

[14] The Joint Release stated that the Transaction was expected to close prior to May 30, 2009. Subsequently, Lundin announced in a news release dated December 22, 2008, that the Transaction is scheduled to close on January 28, 2009.

[15] On December 11, 2008, HudBay subscribed for and acquired pursuant to a private placement, 96,997,492 Lundin common shares, representing approximately 19.9% of the outstanding common shares of Lundin after giving effect to the transaction. HudBay paid $1.40 for each Lundin common share, for aggregate gross proceeds to Lundin of approximately $135.8 million.

C. The Relief Sought by Jaguar

[16] Jaguar submits that the TSX Decision should be set aside and that HudBay shareholder approval should be required in connection with the Transaction because: (i) the public interest and, in particular, protection of the quality and integrity of the marketplace and investor confidence requires such a vote, (ii) the TSX erred in failing to require that a vote be held, (iii) the TSX overlooked material evidence, and (iv) there is new and compelling evidence before the Commission.

[17] Jaguar also submitted that the Transaction will have a material effect on the control of HudBay.

[18] Jaguar requests that the Commission issue:

1. an order pursuant to subsection 8(3) and section 21.7 of the Act setting aside the TSX Decision;

2. an order pursuant to subsection 8(3) of the Act requiring HudBay to call and hold a meeting of its shareholders to obtain their approval of the Transaction;

3. an order prohibiting HudBay from closing the Transaction without the approval by a simple majority of the votes cast by HudBay shareholders entitled to vote at a duly convened special meeting of its shareholders;

4. an order pursuant to subsection 8(4) of the Act staying the TSX Decision pending final disposition of this matter by the Commission and by any Court to which an appeal of a decision made by the Commission may be taken; and

5. such other relief as counsel may advise and the Commission may deem just.

D. Analysis and Decision

[19] This matter involves the interpretation of the TSX Company Manual (the "TSX Manual").

[20] Section 604 of the TSX Manual requires security holder approval of a transaction if, among other things, in the opinion of the TSX the transaction materially affects the control of the listed issuer.

[21] Section 603 of the TSX Manual gives the TSX discretion to impose conditions on a transaction, such as shareholder approval of the transaction.

[22] In this case, the TSX concluded under section 604 of the TSX Manual that the completion of the Transaction would not materially affect the control of HudBay, and the TSX did not exercise its discretion under section 603 to require HudBay shareholder approval of the Transaction.

[23] The Commission generally defers to the judgment of the TSX, particularly in the areas of the TSX's expertise. We recognize the important role that the TSX plays within our regulatory framework. The Commission's authority under subsection 8(3) and section 21.7 of the Act should not be used as a means to second-guess decisions made on a reasonable basis by the TSX. The Commission will not substitute its own view for that of the TSX simply because the Commission might have reached a different decision in the circumstances. Only in very rare circumstances will the Commission do so.

[24] In this case, the TSX concluded under section 604 of the TSX Manual that the completion of the Transaction would not materially affect the control of HudBay. Based on the materials before us, that conclusion is reasonable. We have also concluded that in making the TSX Decision the TSX understood that it had the discretion under section 603 of the TSX Manual to require HudBay shareholder approval as a condition of its approval of the listing of the additional common shares of HudBay.

[25] That is not, however, the end of the analysis. Section 603 of the TSX Manual requires the TSX in exercising its discretion under that section to consider the effect that the Transaction may have on the "quality of the marketplace".

[26] In our view, the "quality of the marketplace" is a broad concept of market integrity that requires a careful consideration of all the relevant factors in the particular circumstances. Among those factors (that are particularly relevant to this matter) are the issuer's corporate governance practices and the size of the transaction relative to the liquidity of the issuer. The factors the TSX must consider in exercising its discretion include, but are not limited to, the factors set out in section 603. In our view, the factors to be considered in this matter should include, in particular, the fair treatment of the shareholders of HudBay.

[27] Section 603 of the TSX Manual requires the TSX to exercise a discretion. Accordingly, as a matter of principle, there must be circumstances that can arise in which the TSX would, in exercising that discretion, impose a requirement for shareholder approval. Otherwise, section 603 of the TSX Manual would be meaningless.

[28] In considering the TSX Decision, we have taken that decision to include the minutes of the Listing Committee meeting held on December 10, 2008 which conclude that "in this circumstance the rules would not require the transaction to be approved by HudBay shareholders".

[29] The decision of the TSX under section 603 provides no guidance as to the factors or circumstances the TSX considered in reviewing and assessing the effect that the Transaction may have on the quality of the marketplace or why the TSX came to the decision it did. We do not need extensive reasons or analysis for the TSX Decision. However, in the circumstances we have no basis upon which to determine whether the TSX's conclusion not to require HudBay shareholder approval was within a range of reasonableness and whether it is appropriate for us to defer to the TSX's judgment. The TSX did not provide any affidavit evidence to assist us in establishing the basis for its decision.

[30] Accordingly, in the circumstances, we have concluded that we cannot defer to the decision of the TSX under section 603. We must determine on the Application whether the completion of the Transaction without HudBay shareholder approval would adversely affect the quality of the marketplace or be contrary to the public interest. In doing so, we have an obligation to consider the provisions of the TSX Manual and any other relevant factors.

[31] Pursuant to subsections 21.7(2) and 8(3) of the Act, the Commission exercises original jurisdiction. We are entitled to consider not only the information and documents before the TSX in making its decision but also the additional information and evidence before us on the Application. It is important to recognize that we have before us in this matter more extensive documents, information and evidence with respect to HudBay, Lundin and the Transaction than the TSX had before it in making the TSX Decision.

[32] In considering this matter, we recognize, as submitted by HudBay and Lundin, the importance of "deal certainty" to the parties to a merger transaction (such as the Transaction). There is nothing wrong with the parties to a merger transaction attempting, to the extent possible, to obtain certainty that the transaction will be completed. We also recognize that this issue may be the subject of significant negotiation and can affect the willingness of a party to agree to a transaction. We note, however, that the exercise of discretion is an inherent part of section 603 of the TSX Manual and we cannot read that discretion out of the section simply because the parties to a merger transaction want certainty. Our assessment of the effect of the Transaction on the quality of the marketplace and the public interest must govern the exercise of our discretion under that section.

[33] We emphasize that we are interpreting and applying section 603, an existing provision contained in the TSX Manual. We are not rewriting or changing the provisions of the TSX Manual. The TSX is currently considering, as part of a policy review, whether there should be a specified maximum dilution above which shareholder approval would automatically be required. The fact that policy review is underway should not affect our interpretation of section 603, other than to cause us to recognize that a specific level of dilution is not determinative in applying section 603.

[34] We note that the central issue before us (whether the TSX should have required HudBay shareholder approval under section 603 of the TSX Manual) is a matter of first instance for the Commission in terms of the policy considerations that should be applied.

[35] HudBay and Lundin are highly sophisticated parties who must be taken to have known the regulatory context in which the Transaction is taking place. In fact, section 6.2(f) of the arrangement agreement entered into by HudBay and Lundin contemplates the possibility that HudBay shareholder approval of the Transaction could be required by regulatory authorities.

[36] The interpretation and application of the provisions of the TSX Manual are not just matters affecting the relevant issuer and the TSX. Those provisions form part of the fabric of securities regulation and involve broader market integrity, investor protection and public interest considerations.

[37] It is not the role of the TSX or the Commission to assess the relative business or financial merits of the Transaction. Clearly, there are shareholders of HudBay who are adamantly opposed to the Transaction and who have raised troubling concerns. At the same time, HudBay and its board of directors have concluded that the Transaction is in the best interests of HudBay. It was not the role of the TSX in its original review, or the role of the Commission now, to assess the business merits of the Transaction or to resolve these conflicting positions. In the matter before us, these are not issues for determination by the Commission and, in any event, they cannot be resolved in an expedited administrative hearing based on limited affidavit evidence.

[38] Our decision in this matter should not be taken to suggest that the TSX has any obligation to conduct an investigation or carry out due diligence when it is considering the exercise of its discretion under section 603 of the TSX Manual. The TSX was entitled in this matter to exercise its discretion under that section based on the documents, information and representations that were before it. The process followed by the TSX in responding to HudBay's listing application and the complaints from Jaguar and other shareholders of HudBay was appropriate.

[39] In our view, the principal considerations in the exercise of our discretion under section 603 of the TSX Manual are discussed below. There are additional related issues and concerns that we will fully discuss in our reasons for decision, to be issued in due course.

(i) The Impact of the Transaction on Shareholders of HudBay

[40] The Transaction has clearly had an enormous impact on the rights and economic interests of the shareholders of HudBay. There is clear evidence before us that the Transaction was viewed by insiders of HudBay as transformational in business terms. While it is not our role to assess the business merits of the Transaction, we must not be blind to the obvious impact of the Transaction on HudBay and its shareholders. It is common ground that the share price of HudBay fell by approximately 40% immediately following the public announcement of the Transaction. That far exceeds the market reaction one would expect to the announcement of a merger transaction such as the Transaction.

(ii) Dilution

[41] The Transaction will result in the issue of additional HudBay common shares representing just over 100% of the number of HudBay shares currently outstanding. That means that the former shareholders of Lundin will own approximately 50% of the shares of the merged entity following completion of the Transaction. That level of dilution is extreme. It is at the very outer end of the range of dilutions in prior transactions before the TSX (where the TSX has not required shareholder approval). While the level of dilution is not determinative, it is an extremely important consideration. The level of dilution inherent in the Transaction leads us to conclude that the Transaction is a "merger of equals", not an acquisition by HudBay of Lundin. One must fairly ask, if the Transaction is a merger of equals, why are the shareholders of one party (Lundin) entitled to a vote when the shareholders of the other party (HudBay) are not.

[42] In this case dilution is also relevant because it fundamentally changes the shareholder voting, distribution and residual rights of the current HudBay shareholders.

(iii) Board of Merged Entity

[43] It appears that, upon the completion of the Transaction, five of the nine directors of the merged entity will be former directors of Lundin. HudBay argues that two of those individuals are already directors of HudBay. We note, however, that those two directors were appointed relatively recently to the HudBay board, in April and August, 2008, respectively. In any event, it is clear that the board of HudBay will be substantially reconfigured as a result of the Transaction. The right of shareholders to vote on and determine the make-up of the board is a fundamental governance right. The shareholders of HudBay are being subjected to a radical change in the composition of the board without their consent or concurrence. We recognize that not every change in the composition of a board requires shareholder approval; such a fundamental change, in these circumstances, does. The proposed reconfiguration of the board further underscores that the Transaction constitutes, in effect, a merger of equals.

(iv) Timing of Shareholder Votes

[44] In the Joint Release, HudBay and Lundin initially indicated that a shareholder proxy circular for the special meeting of Lundin shareholders to vote on the Transaction would be mailed during the first quarter of 2009 and that the Transaction was expected to close prior to May 30, 2009. For whatever reason, the Lundin shareholders' meeting was accelerated by the mailing of its proxy circular on or about December 22, 2008 for a meeting to be held on January 26, 2009. That is uncommon haste, over the holiday season, that must be attributed at least in part to the controversy over the Transaction. The HudBay shareholders meeting requisitioned for the purpose of removing the HudBay board was scheduled by HudBay to be held on March 31, 2009. These decisions as to the scheduling of the two shareholder meetings were made at approximately the same time. On December 22, 2008, Lundin announced the date of its shareholders meeting. On December 30, 2008, HudBay announced the date of the requisitioned shareholders meeting. While HudBay and Lundin may have the legal right to make these decisions, they appear to us to be actions taken for the purpose of frustrating the legitimate exercise by HudBay shareholders of their right to require a shareholders meeting to consider the replacement of the HudBay board. If the Transaction is completed before the requisitioned shareholders meeting, the purpose of the HudBay shareholders meeting will be frustrated. That is fundamentally unfair to the shareholders of HudBay.

[45] It appears that the TSX knew, when it made its decision, that a shareholder of HudBay had filed a requisition for a meeting of HudBay shareholders to remove the board. The TSX may well have concluded that there was sufficient time before the completion of the Transaction in order to permit the holding of the requisitioned HudBay shareholders meeting. We do not know whether that was the case. We do know that the change to the date of the Lundin shareholders meeting occurred after the TSX Decision, as did the fixing of the date of the requisitioned HudBay shareholders meeting.

[46] These considerations raise serious concerns as to the appropriateness of HudBay's governance practices and the fair treatment of HudBay shareholders.

E. Conclusion

[47] The economic consequences of the Transaction on the shareholders of HudBay are extreme. The considerations discussed above raise serious concerns as to the appropriateness of HudBay's governance practices and the fair treatment of HudBay shareholders. In this case, fair treatment of shareholders is fundamentally more important than any consideration as to "deal certainty" in assessing the impact of the Transaction on the quality of the market place. We are satisfied that the public interest in ensuring the fair treatment of HudBay shareholders far outweighs any possible prejudice to HudBay or Lundin of requiring HudBay shareholder approval of the Transaction.

[48] We have concluded, based on the cumulative effect of the foregoing considerations, that the quality of the marketplace (within the meaning of section 603 of the TSX Manual) would be significantly undermined by permitting the Transaction to proceed without the approval of the shareholders of HudBay. Fair treatment of shareholders is a key consideration going to the integrity and quality of our capital markets. We have also concluded that permitting the Transaction to proceed without the approval of the shareholders of HudBay would be contrary to the public interest. We have given effect to this decision through the issue of our Order dated January 23, 2008.

F. Additional Comment: HudBay Voting of Lundin Common Shares

[49] As an additional comment, we note that HudBay has agreed to vote the 19.9% of the common shares of Lundin acquired by it pursuant to the private placement, in favour of the Transaction. In our view, HudBay has a different, and potentially conflicting, interest in the outcome of that vote, relative to the other Lundin shareholders. In our view, having acquired those shares as part of a private placement connected to the Transaction, HudBay should not, as a matter of principle, be permitted to vote them in favour of the Transaction.

[50] We recognize in expressing this view that it is probably a foregone conclusion that the Lundin shareholders will approve the Transaction regardless of whether HudBay votes those shares. This issue was not raised in the Application and, accordingly, was not addressed by any of the parties in their submissions. We are not making any order or determination based on this matter; we are simply expressing our view.

January 23, 2009.