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

AND IN THE MATTER OF HUDBAY MINERALS INC.

AND IN THE MATTER OF A DECISION OF
THE TORONTO STOCK EXCHANGE

FRESH AS AMENDED REQUEST FOR HEARING AND REVIEW

January 6, 2009

DAVIES WARD PHILLIPS & VINEBERG LLP
Barristers & Solicitors
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Kent E. Thomson (LSUC #24264J)
Andrea L. Burke (LSUC #37761L)
James D. Bunting (LSUC #48244K)

Tel.: 416.863.0900
Fax: 416.863.0871

Lawyers for Jaguar Financial Corporation

TO: **THE ONTARIO SECURITIES COMMISSION**
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto, ON M5H 3S8

Attention: Katie Daniels

AND TO: **THE TORONTO STOCK EXCHANGE**
The Exchange Tower, 3rd Floor
130 King Street West
Toronto, ON M5X 1J2

Attention: Linda Plumpton

Lawyers for the TSX

AND TO: **CASSELS BROCK & BLACKWELL LLP**
Scotia Plaza, Suite 2100
40 King Street West
Toronto, ON M5H 3C2

Attention: Lorne Silver

Lawyers for HudBay Minerals Inc.

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JAGUAR FINANCIAL CORPORATION ("Jaguar") REQUESTS A HEARING AND REVIEW by the Ontario Securities Commission (the "Commission"), pursuant to section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") of a decision made by the Listed Issuer Services Committee of the Toronto Stock Exchange (the "TSX") on December 10, 2008 approving the issuance of common shares of HudBay Minerals Inc. ("HudBay") in consideration for the acquisition of the common shares of Lundin Mining Corporation ("Lundin") without imposing a condition requiring the Transaction (as defined below) to be approved by the shareholders of HudBay (the "Decision"), at such time as the Commission may advise, at the 17th Floor Hearing Room, 20 Queen Street West, Toronto, Ontario.

JAGUAR, a shareholder of HudBay, is directly affected by the Decision.

JAGUAR REQUESTS:

1. An Order pursuant to ss. 8(3) and 21.7 of the Act setting aside the Decision;

2. An Order pursuant to ss. 8(3) of the Act requiring HudBay to call and hold a meeting of its shareholders in order to obtain their approval of the Plan of Arrangement under s. 192 of the *Canada Business Corporations Act*, made pursuant to the Arrangement Agreement between HudBay and Lundin Mining Corporation ("Lundin") dated November 21, 2008, pursuant to which HudBay will acquire all of the outstanding common shares of Lundin on the basis of 0.3919 HudBay common shares per Lundin common share (the "Transaction");

3. An Order prohibiting HudBay from closing the Transaction absent the approval of a simple majority of the votes cast by HudBay shareholders entitled to vote at a

duly convened special meeting of its shareholders as referenced in paragraph 2, above;

4. An Order pursuant to ss. 8(4) of the Act staying the Decision of the TSX 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.

THE GROUNDS FOR REVIEW ARE AS FOLLOWS:

Overview

6. In connection with the Transaction, HudBay was required to obtain TSX approval to issue its common shares in consideration for the acquisition by HudBay of the shares of Lundin. The TSX generally requires shareholder approval of acquisitions that involve the issuance of securities as full or partial consideration where the security issuance exceeds 25% of the issued and outstanding securities of the acquiror. However, section 611(d) of the TSX Company Manual (the "TSX Manual") provides an exemption for acquisitions of reporting issuers (such as Lundin) that, in certain circumstances, displaces the requirement for a shareholder vote.

7. The TSX is one of the only exchanges in North America that has such an exemption. Virtually all other exchanges require automatically a shareholder vote in circumstances such as these. Importantly, the exemption provided for in the TSX Manual is subject to an exercise of the TSX's discretion pursuant to sections 603 and 604 of the TSX Manual to require a shareholder vote in order to protect the quality of the marketplace.

8. Jaguar (and three other HudBay shareholders) requested that the TSX exercise its discretion and require that the Transaction be subject to a requirement for approval from the Company's shareholders.

9. The TSX decided that "the rules would not require that the transaction be approved by HudBay shareholders" and approved the issuance of HudBay shares in respect of the Transaction.

10. The TSX erred in making the Decision, which was reached through a flawed process that was manifestly unfair to Jaguar.

11. The policy bases for the exemption provided for in section 611(d) of the TSX Manual are articulated in the TSX's "Request for Comments: Security Holder Approval Requirements for Acquisitions" dated October 12, 2007. None of those bases is relevant or applicable to this Transaction. By contrast, there are significant factors surrounding the Transaction (all of which the TSX should have considered) that require a shareholder vote in these circumstances in order to protect the quality and integrity of the marketplace and investor confidence generally. These factors include the following:

    (a) the transformative nature of the Transaction on HudBay;

    (b) the dilutive effect of the Transaction, which dilutes HudBay's shareholders by approximately 100 percent;

    (c) the excessive and unreasonable premium provided to Lundin shareholders;

    (d) the market's negative reaction to the Transaction, including the fact that the price of HudBay shares dropped by approximately 40 percent immediately following the announcement of the Transaction and the significant shareholder opposition to the Transaction;

    (e) issues related to the corporate governance of HudBay in connection with the Transaction; and

    (f) the material effect the Transaction will inevitably have on the control of HudBay.

12. By failing to require a shareholder vote in these circumstances, the TSX has sent a message to the marketplace that its residual discretion to require a shareholder vote is effectively meaningless and transactions between public companies can proceed in Ontario without shareholder approval regardless of the level of dilution

those transactions will give rise to, even if the owners of the acquirer adamantly oppose the transaction in question.

13. It is in the public interest and critically important to the protection of the quality and integrity of the marketplace that HudBay's shareholders be provided with a right to vote on the Transaction. If completed, the Transaction will have a dramatic transformative and irreversible impact on HudBay. The Transaction has been described by HudBay as a "merger of equals" that will result in each shareholder group receiving roughly half of the shares of the merged company, with a new board of directors being imposed on HudBay's shareholders. Despite this, because the Transaction has been structured as a Plan of Arrangement of Lundin, rather than of HudBay, only Lundin's shareholders will have an opportunity to vote on the Transaction unless the Commission orders HudBay to provide the same opportunity to its shareholders. Given that the Transaction is unduly favourably to Lundin, it would be remarkable if its shareholders did not vote in favour of the Plan of Arrangement. Their vote, therefore, provides no protection whatsoever for the shareholders of HudBay.

14. The Decision is subject to review by the Commission under section 21.7 of the Act and the Commission can and should exercise its power under ss. 8(3) of the Act to set aside the Decision and order a vote by the shareholders of HudBay. Moreover, an order should be made pursuant to ss. 8(4) of the Act staying the Decision of the TSX until the matters raised herein have been heard and finally disposed of. The Commission must take all necessary steps to ensure that the hearing and review provided for in ss. 21.7(1) of the Act (and all appeals that may be taken from a decision by the Commission) are meaningful and effective and not rendered nugatory.

15. If the Commission does not require that the Transaction be approved by HudBay's shareholders, the Transaction will proceed in the face of significant shareholder opposition. One of the only remaining options for HudBay shareholders opposed to the Transaction will be to sell their shareholdings at a

significant loss given the precipitous drop in price of the shares of HudBay that the announcement of the Transaction gave rise to.

The Parties

16. HudBay is an integrated base minerals mining company with assets in North and Central America, and a focus on the discovery and production of nickel, zinc and copper metal. HudBay is a member of the S&P/TSX Composite Index ("HBM") and the S&P/TSX Global Mining Index.

17. Before November 21, 2008, HudBay was well-positioned in spite of the troubled global economy because of its cash reserves of $844 million (all currency in Canadian dollars unless otherwise specified), absence of debt, world class, productive, profitable mines in Northern Manitoba, cash flow positive status, and lack of exposure to volatile or high risk jurisdictions (with the exception of a shelved mining project in Guatemala).

18. Lundin is a base metals mining and exploration company with assets in the Democratic Republic of Congo, Russia, Portugal, Spain, Sweden and Ireland. Lundin's shares are listed on the Toronto Stock Exchange ("LUN") and the NYSE ("LMC"), and its Swedish Depository Receipts are listed on the OMX Nordic Exchange ("LUMI"). Many of the mining assets of Lundin are under care and maintenance, are closed, under rehabilitation or up for sale. Its largest project is a passive 27.5% interest in the Tenke Fungurume Mine in the Democratic Republic of Congo, a volatile, high risk jurisdiction engulfed in a devastating and ongoing war that has claimed an estimated three million lives.

19. Before November 21, 2008, Lundin was in perilous financial circumstances, with US$45 million in cash, US$240 million in debt, and limited or no ability to raise additional capital either by way of securities offerings or access to further credit. Lundin was losing money and was widely perceived to need immediate cash in order to avoid insolvency.

20. Jaguar is a small Canadian merchant bank which invests primarily in the mining industry. Jaguar holds approximately 1% of the outstanding shares of HudBay.

The Transaction

21. On November 21, 2008, HudBay and Lundin publicly announced, for the first time, their entry into the Arrangement Agreement in respect of the Transaction.

22. The imputed price that HudBay agreed to pay under the Arrangement Agreement was $2.05 per share, which represented a 103% premium to Lundin's closing price of $1.01 per share on the day before the Transaction was announced. A premium of this nature is virtually unprecedented, particularly when paid by a solvent, profitable cash rich company for a nearly insolvent company. If HudBay had simply agreed to pay the prevailing trading price of the shares of Lundin based on market values the day before the transaction was announced, the HudBay shareholders would have received 67% of the combined equity and the Lundin shareholders 33%. In fact, HudBay shareholders should have received more than 67% of the combined equity given the precarious financial position of Lundin at the time the Transaction was entered into. It is at best questionable whether HudBay should ever have considered acquiring or merging with Lundin. Moreover, the serious mispricing of the Lundin transaction turned what should have been an acquisition by HudBay of a smaller company into an acquisition of effective control of HudBay by Lundin insiders.

23. At the same time the Transaction was announced, HudBay and Lundin announced that they had entered into a subscription agreement by which Lundin would issue to HudBay approximately 97 million of Lundin's common shares at a price of $1.40 per share, for total proceeds to Lundin of approximately $136 million. This private placement closed on December 11, as a result of which HudBay now owns 19.9% of Lundin's common shares. Typically private placements are done at a discount to the market price and sometimes at market; in this case the $1.40 price represented a 39% premium to the $1.01 Lundin

share price on November 20, the day before the announcement of the Transaction.

24. The market reacted quickly and highly adversely to the announcement of the Transaction. On November 21, immediately after the Transaction was announced, HudBay's share price dropped by approximately 40% from $5.23 to $3.16. HudBay's shares continue to trade well below $4.

25. Giving *pro forma* effect to the Transaction at the date of the Arrangement Agreement, the shareholders of Lundin would hold slightly more than 50% of the outstanding HudBay shares.

26. The Transaction has been structured as a Plan of Arrangement of Lundin. Even though HudBay's and Lundin's shareholders would (as a group) each receive roughly half of the shares of the merged company, only Lundin's shareholders have been given the opportunity to vote on the Transaction. HudBay's shareholders will not have the same opportunity unless HudBay is ordered by the Commission to seek and obtain the approval of its shareholders. In the absence of such an order, the owners of HudBay will be disenfranchised even though the Company that they own will be transformed irreversibly in a manner that is highly adverse to them. This would have a long-standing and deleterious impact on the capital markets of this Province, and is manifestly contrary to the public interest.

Corporate Governance Considerations

27. HudBay and Lundin previously discussed a potential transaction beginning in November 2006, when Colin Benner was the Chief Executive Officer of Lundin, but had no affiliation with HudBay. Benner played an active role in the discussions and negotiations between the parties, which occurred intermittently between November, 2006 and November, 2008. Benner became a director of HudBay in August, 2008, at a point in time when he was also a director of Lundin. Benner played a role in these discussions and negotiations in the period after August, 2008.

28. HudBay and Lundin signed a Confidentiality Agreement on November 6, 2008, meaning HudBay only had access to Lundin's updated confidential information for approximately two weeks prior to entering into the Arrangement Agreement.

29. HudBay's Special Committee was formed to consider the Transaction and was composed of Norman Anderson, Ronald Gagel and Peter Gillin. All are independent directors of HudBay.

30. The only external financial advice on the Transaction received by HudBay was from GMP Securities L.P. GMP has in the past acted for Lundin, and HudBay has not disclosed whether GMP is entitled to a success fee in respect of the Transaction.

31. The Special Committee only met twice, for an undisclosed period of time, on November 18, 2008 (only three days before the Transaction was announced) and on November 21, 2008, the day the Transaction was announced.

32. In the circumstances, HudBay (and in particular its Special Committee) had insufficient time between November 6 and November 20, 2008 in which to evaluate Lundin's diverse and geographically far-flung assets, its serious liquidity problems, and the very serious risks associated with Lundin's most significant investment in the Congo.

Discretion to Require Shareholder Vote

33. Section 611(c) of the TSX Company Manual requires a shareholder vote for an acquisition by share issuance that involves dilution of more than 25%. The Transaction gives rise to very serious dilution of approximately 100%. While s. 611(d) exempts listed issuers from this requirement in certain circumstances, the exemption is expressly subject to the TSX's discretion to require a shareholder vote under ss. 603 or 604 in order to protect the quality of the marketplace.

34. Various key factors relevant to the quality of the marketplace under s. 603 render it essential that a vote of the shareholders of HudBay be taken in respect of a transformative transaction of this nature:

(a) The size of the transaction relative to the liquidity of the issuer: The Transaction represents 100% dilution of the shareholders of HudBay, four times the 25% threshold provided for under s. 611(c). The sheer scale of the dilution in this case warrants an exercise of the discretion to require a vote of the shareholders of HudBay.

(b) Shareholder Opposition and the Negative Market Reaction: The market reaction to the Transaction has been extremely negative. On the same day that the Transaction was announced (November 21, 2008) HudBay's shares dropped in value by approximately 40%, which confirms that the Transaction is ill-conceived, badly mispriced and unfair to HudBay. Numerous HudBay shareholders have criticized the Transaction and numerous analysts with independent perspectives who follow HudBay have also reacted negatively to the proposed Transaction.

In the wake of HudBay's announcement of the Transaction, a number of HudBay shareholders have also requisitioned or attempted to requisition shareholders meetings to replace the HudBay Board of Directors. Instead of conferring an immediate and effective right to vote upon its shareholders, the Board of HudBay has schemed to avoid such a note and on December 30, 2008 announced that it would only permit a vote to be held on March 31, 2009, well after the scheduled closing date of the Transaction. Indeed, HudBay has publicly referred to a HudBay shareholder vote as a risk to the Transaction that needs to be managed.

(c) The material effect on control of the listed issuer: The Estate of Adolf Lundin (the father of Lukas Lundin, a director of Lundin) holds 16.19% of the outstanding Lundin shares. At historical participation rates for HudBay and Lundin shareholder meetings, the Estate would represent approximately 19% of participating HudBay shareholders at future meetings, enabling it to influence the outcome of shareholder votes at HudBay.

Moreover, Lundin and HudBay have announced that following the Transaction, the HudBay Board will be comprised of three former Lundin directors (one of whom is Lukas Lundin, referred to above), four former HudBay directors, and two directors previously common to both boards. In other words, five of nine directors will be former Lundin directors. The combination of board representation and voting position will have a material effect on control of HudBay, warranting the exercise of the TSX's discretion under ss. 603 and 604.

Moreover, it is believed that Lukas Lundin will ultimately become Chairman of the merged entity.

(d) The listed issuer's corporate governance practices: HudBay's Special Committee formed to evaluate the Transaction met only twice, it may not have received disinterested financial advice, and did not have the benefit of a proper and sufficiently rigorous due diligence process. It is impossible to properly evaluate a transformative transaction of this nature in a period of approximately two weeks.

There also remain a number of significant and troubling unanswered questions about the process followed by HudBay's Board and Special Committee. This includes questions about whether HudBay's Board or management were motivated to complete the Transaction by factors dependant of and contrary to the interests of HudBay and its shareholders such as (i) the ability of HudBay's Board and management to entrench themselves in the company by converting HudBay from an attractive acquisition target to a riskier company far less attractive to any potential suitor; and (ii) any bonuses or special compensation packages that will be received by HudBay management or members of the HudBay Board following the completion of the Transaction.

The Decision

35. On November 26, 2008, counsel for HudBay wrote to the TSX requesting approval of the issuance of HudBay shares to the shareholders of Lundin in connection with the Transaction. The TSX Listed Issuer Services Committee (the "Committee") is the body within the TSX that decides requests for approval to issue in this context.

36. In early December 2008, the TSX received requests from three HudBay shareholders that the TSX require HudBay to obtain the approval of its shareholders for the Transaction on various grounds. Specifically, the TSX received the following:

(a) a letter from the British Columbia Investment Management Corporation dated December 3, 2008;

(b) a letter from counsel to SRM Advisers (Monaco) S.A.M. ("SRM") dated December 5, 2008; and

(c) an email from the portfolio manager of Goodman and Co. (for Dynamic Mutual Funds) dated December 5, 2008.

37. The TSX provided this correspondence to counsel for HudBay and on December 8, 2008, counsel for HudBay sent a letter to the TSX responding to the requests of these three shareholders. The TSX also received a letter from counsel to Lundin supporting HudBay's response to the TSX.

38. On December 8, 2008 Ms Orlee Wertheim, the TSX's Manager of Listed Services, provided a memorandum to the Committee in respect of HudBay's request for approval to issue shares in which she made the following recommendation:

> "Based on the definition of 'materially affects control' in both the Securities Act (Ontario) and the TSX Company Manual this transaction does not materially affect control as this transaction will not create a new control person. While TSX does have the authority to use its discretion as prescribed under Section 603 of the Company Manual, it is my view that applying such discretion would not be appropriate in this circumstance."

39. Also on December 8, 2008, counsel for Jaguar spoke with Ms Wertheim and requested an oral hearing in which to make submissions about the need for the TSX to exercise its discretion to require the approval of HudBay's shareholders for the Transaction. That same day Jaguar's counsel was advised by Ms Wertheim that the TSX would not hold an oral hearing and that Jaguar had until the end of the day on December 9, 2008 to file written submissions with the TSX. She did not provide Jaguar or its counsel with any of: HudBay's November 26, 2008 letter; the three letters written by other shareholders of HudBay referred to above; the December 8, 2008 letter from counsel to HudBay setting out HudBay's response to the requests of the other three HudBay shareholders; the letter to the TSX from Lundin's counsel; or the memorandum of Ms Wertheim dated December 8, 2008.

40. Having received none of these materials from the TSX, or from anyone else for that matter, on December 9, 2008, counsel to Jaguar wrote to the TSX and requested that the TSX exercise its discretion to require a vote by HudBay's

shareholders concerning the Transaction. Jaguars counsel made extensive submissions in a detailed eight page letter concerning the applicable provisions of the TSX Manual and why a vote of the shareholders of HudBay was imperative in circumstances such as these.

41. The four shareholders who wrote separately to the TSX in December, 2008 requesting that the Transaction be subject to HudBay shareholder approval held, at the time of their requests, a total of approximately 16% of the issued and outstanding HudBay shares.

42. At 11 a.m. on December 10, 2008, unknown members of the Committee met to consider HudBay's request for approval to issue shares as payment for the acquisition of Lundin shares. The Committee appears to have relied entirely upon Ms Wertheim's Memorandum of December 8, 2008, **written the day before** counsel for Jaguar made submissions to the TSX in respect of this matter. Moreover, the Minutes of the Meeting of the Committee held on December 10, 2008 simply repeat verbatim Ms Wertheim's memorandum of December 8, 2008, together with a one sentence "Decision" which states, in its entirety, the following:

> "The filing committee was in agreement that in this circumstance the rules would not require that the transaction be approved by HudBay shareholders."

43. There is no indication in the Minutes of the Committee, or in its one sentence Decision, that the unnamed members of the Committee who made the Decision in question ever saw the submissions of Jaguar's counsel, or considered a number of the issues raised in those submissions that are not referred to in Ms Wertheim's memorandum of December 8, 2008. As stated above, that memorandum is dated **the day before** the submissions of Jaguar were made.

The Decision is Flawed

44. The Committee erred in making the Decision. Among other reasons:

(a) Protecting the quality of the marketplace and investor confidence requires a shareholder vote having regard to the circumstances surrounding the Transaction, as described above.

(b) The Committee only decided whether HudBay was required to hold a shareholder vote pursuant to the TSX Manual and did not consider whether it could or should exercise its discretion to require a shareholder vote having regard to the specific factors relevant to the Transaction.

(c) The Committee was not apprised of, and did not consider, a number of significant factors relevant to whether it should exercise its discretion to require a shareholder vote, including:

(i) The transformative nature of the transaction;

(ii) The extent of the dilution of HudBay shareholders resulting from the Transaction;

(iii) The excessive and unreasonable premium provided to Lundin shareholders; and

(iv) The market's negative reaction to the Transaction, including the fact that HudBay shares dropped by an amount of approximately 40% immediately following the announcement of the acquisition and significant concerns expressed about the Transaction by sophisticated institutional shareholders.

The Decision should be Set Aside

45. The Decision is a "direction, decision, order or ruling" made by a "recognized stock exchange" pursuant to s. 21.7(1) of the Act and subject to review by the Commission.

46. Under ss. 21.7(2) and 8(3) the Commission has the power to set aside the Decision.

47. The Committee erred in failing to require HudBay, as a condition of the TSX's approval of the issuance of HudBay shares in connection with the Transaction, to call and hold a meeting of its shareholders in order to obtain their approval of the Plan of Arrangement.

48. The OSC should set aside the Decision and impose a condition that shareholder approval be obtained because: (i) the public interest, and in particular the

protection of the quality and integrity of the marketplace and investor confidence, requires 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 OSC.

49. The OSC should also set aside the Decision and order a shareholder vote because the Transaction will have a material effect on the control of HudBay pursuant to section 604 of the TSX Company Manual.

50. Jaguar also relies on such further or other grounds as counsel may advise and the Commission may allow.

JAGUAR INTENDS TO RELY ON, among other things, the evidence of Victor Alboini, to be filed before the hearing of this matter.

January 6, 2009

DAVIES WARD PHILLIPS & VINEBERG LLP
Barristers & Solicitors
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Kent E. Thomson (LSUC #24264J)
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TO: **THE ONTARIO SECURITIES COMMISSION**
P.O. Box 55, 19th Floor
20 Queen Street West
Toronto, ON M5H 3S8

Attention: Katie Daniels

AND TO: **THE TORONTO STOCK EXCHANGE**
The Exchange Tower, 3rd Floor
130 King Street West
Toronto, ON M5X 1J2

Attention: Orlee Wertheim, Manager

AND TO: **CASSELS BROCK & BLACKWELL LLP**
Scotia Plaza, Suite 2100
40 King Street West
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Attention: Lorne Silver

Lawyers for HudBay Minerals Inc.