



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 CATALYST CAPITAL GROUP INC.**

-and-

**IN THE MATTER OF
HUDSON'S BAY COMPANY, RICHARD A. BAKER, LISA BAKER, LISA AND RICHARD
BAKER ENTERPRISES, LLC, RED TRUST, YELLOW TRUST, BLUE TRUST,
ROBERT BAKER, CHRISTINA BAKER, A TRUST FOR BETTINA JANE RICHMAN,
A TRUST FOR EMMA RICHMAN, A TRUST FOR FRANCESCA RICHMAN,
ASHLEY S. BAKER 3/15/84 TRUST, LION TRUST, MR. AND MRS. ROBERT BAKER
FAMILY FOUNDATION, CHRISTINA BAKER TRUST FOR GRANDCHILDREN,
ROBERT C. BAKER TRUST FOR GRANDCHILDREN, WILLIAM MACK, THE WILLIAM
AND PHYLLIS MACK FAMILY FOUNDATION, INC., MACK 2010 FAMILY TRUST I,
RICHARD MACK, WRS ADVISORS III, LLC, WRS ADVISORS IV, LLC, LEE NEIBART,
LEE S. NEIBART 2010 GRAT, HANOVER INVESTMENTS (LUXEMBOURG) S.A.,
ABRAMS CAPITAL PARTNERS I, L.P., ABRAMS CAPITAL PARTNERS II, L.P.,
WHITECREST PARTNERS, LP, FABRIC LUXEMBOURG HOLDINGS S.À.R.L,
L&T B (CAYMAN) INC. and RUPERT ACQUISITION LLC**

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Timothy Moseley, Vice-Chair
Lawrence Haber, Commissioner

File No. 2019-41

December 18, 2019

ORDER

(Section 127 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on December 13, 2019 the Ontario Securities Commission issued an interim order, following a hearing on December 11, 12 and 13, 2019, held at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Application brought by The Catalyst Capital Group Inc. (**Catalyst**) in respect of the proposed acquisition of securities of Hudson's Bay Company (**HBC**) by Rupert Acquisition LLC (**Rupert LLC**), in connection with the plan of arrangement (the **Transaction**) contemplated under an arrangement agreement dated October 20, 2019 between Rupert LLC and HBC (the **Arrangement Agreement**);

ON READING the Amended Application and the materials filed and on hearing the submissions of the representatives for Catalyst, HBC, Rupert LLC, the remaining respondents (the **Continuing Shareholders**) and Staff of the Commission (**Staff**) and considering the undertaking of HBC to postpone the shareholders' meeting previously scheduled for December 17, 2019, until compliance with this Order;

IT IS ORDERED, with reasons to follow, that:

1. If HBC wishes to proceed with a vote for shareholder approval of the Transaction or any similar modified transaction, HBC must:
 - (a) amend HBC's Management Information Circular dated November 14, 2019 (the **Circular**) in accordance with this Order and send such amended Circular to shareholders, appending this Order and a blacklined version of the Circular showing the tracked changes, at least 14 days before the scheduled vote;
 - (b) deliver a copy of the amended Circular to Staff at least five days before it is sent to shareholders; and
 - (c) promptly provide to Staff any of the records that HBC is required to keep pursuant to s. 19(1) of the *Securities Act*, RSO 1990, c S.5, and that are necessary in the opinion of Staff to facilitate Staff's review of the amended Circular;

2. If HBC wishes to proceed with a vote for shareholder approval of the Transaction or any similar modified transaction, HBC shall amend the Circular to provide full and accurate disclosure of the following information and, in each case, a meaningful discussion and analysis of the implications of that information for purposes of the Transaction and the shareholder vote:
 - (a) A description of any limitation on the scope of the review of the appraisal of the value of Saks Fifth Avenue's main flagship property (the **Saks Flagship**) prepared by CBRE, Inc. as at July 15, 2019 and dated October 15, 2019, and whether CBRE, Inc., in its professional judgment, considered such appraisal to be based on scenarios constituting the highest and best use of the Saks Flagship;
 - (b) The effect, if any, of the disclosures made pursuant to section 2(a) of this Order on the contents of the valuation and fairness opinion of TD Securities Inc. included in the Circular;
 - (c) The direct or indirect benefits to be obtained by the persons specified in Item 11 of Form 62-104F2 *Issuer Bid Circular* in connection with the Transaction, including, without limitation:
 - i. those to be obtained by directors and officers of HBC and involving treatment of restricted share units and options; and
 - ii. those to be obtained by the Continuing Shareholders arising from the tax structure proposed to implement the Transaction;
 - (d) The analysis of David Leith, Chairman of the Special Committee of the HBC Board (**Leith**), leading to his decision on or about March 25, 2019 to consent to Richard Baker, HBC's Governor and Executive Chairman (**Baker**), sharing certain financial information with the Continuing Shareholders on a confidential basis, in the context of exploring a potential privatization transaction, including:
 - i. his consideration of the effects of such decision on the confidentiality obligations of each of the Continuing Shareholders at that time; and
 - ii. his consideration of the effects of such decision on the standstill provision in the Investor Rights Agreement with Fabric Luxembourg Holdings S.à.r.l. (**Fabric**);

- (e) Leith's analysis leading to his decision on or about March 25, 2019 to consent to Baker's use of HBC's historical transaction counsel in connection with the initial evaluation of Baker's contemplated privatization proposal;
- (f) Leith's analysis concerning whether he did make, and if so was authorized to make, and should have made, the decisions described in sections 2(d) and (e) of this Order on his sole authority and without the benefit of a Special Committee authorized to consider the privatization proposal and/or without the advice of counsel;
- (g) The HBC Board's reasons for deciding that a Special Committee was not required to address the conflicts of interest arising from the contemplated privatization proposal until June 9, 2019;
- (h) The HBC Board's analysis of the effect of the potential use of the proceeds of the sale of HBC's joint venture interests to SIGNA Retail Holdings (the **SIGNA Transaction**) to partially fund the privatization proposal on the HBC Board's decision not to enlarge the mandate of the Special Committee, which included consideration of the SIGNA Transaction, to also consider the contemplated privatization proposal, until June 9, 2019;
- (i) The Special Committee's reasons for granting a waiver of the standstill provision in Fabric's Investor Rights Agreement and the effect of such waiver on whether alternative transactions to the privatization proposal could emerge, both with and without regard to the Continuing Shareholders' assertion that they would not be sellers under any circumstances;
- (j) The factors involved in any negotiation by the Special Committee with the Continuing Shareholders of the terms of the "Superior Proposal" definition and related provisions in the Arrangement Agreement and the effect of such provisions on the practicality of alternative transactions emerging;
- (k) The Special Committee's discussions and decisions regarding the timing of the two press releases issued on June 10, 2019 (regarding the SIGNA Transaction and the privatization proposal) and the implications of the timing of those press releases, including, without limitation:
 - i. on the ability of the market to absorb the significance of the SIGNA Transaction in advance of the announcement of the privatization proposal; and
 - ii. on the magnitude of the premium to market reflected in the initial privatization proposal;
- (l) Reconciliation of the disclosures made in HBC's press release issued on December 6, 2019 and the evidence contained in Leith's Affidavit sworn December 9, 2019, marked as Exhibit 3 in this proceeding, together with his evidence given on direct and cross-examination on December 12, 2019; and
- (m) Whether the Special Committee continues to view the Transaction as fair and reasonable in accordance with the applicable corporate law standard;

3. If any issue arises with the interpretation of, or compliance with, the terms of this Order, any party may apply to the Commission for directions or further relief, with notice to all other parties.

"D. Grant Vingo"

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"Timothy Moseley"

Timothy Moseley

"Lawrence Haber"

Lawrence Haber