

**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**

**AMENDED APPLICATION
OF THE CATALYST CAPITAL GROUP INC.**

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

A. ORDER SOUGHT

The Applicant, The Catalyst Capital Group Inc., requests that the Ontario Securities Commission make the following orders:

1. an order for documentary discovery of Hudson's Bay Company ("**HBC**" or the "**Company**");
2. an interim order, pursuant to section 127(1)2.1 of the Act, the acquisition of securities of the Company by Rupert Acquisition LLC ("**Baker Corp.**") or any affiliate or associate thereof (including any Continuing Shareholder (as defined below)), in connection with the plan of arrangement (the "**Transaction**") contemplated under the definitive arrangement agreement (the "**Arrangement Agreement**") dated October 20, 2019 between Baker Corp. and the Company or any similar transaction, be prohibited until such time as the final hearing of this matter by the Commission and no later than January 7, 2020;
3. an order for an expedited hearing;

4. an order, if required, granting standing to the Applicant to bring this application pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S.5 (the "**Securities Act**");
5. an order,
 - a. pursuant to subsection 127(1)(2.1) of the *Securities Act* that, the acquisition of securities of the Company by Baker Corp. or any affiliate or associate thereof (including any Continuing Shareholder (as defined below)), in connection with the Transaction between Baker Corp. and the Company or any similar transaction, be prohibited permanently;
 - b. or, in the alternative,
 - i. an order pursuant to subsection 127(1)(5) of the *Securities Act* requiring HBC to amend its Management Information Circular dated November 14, 2019 (the "**Circular**") to address the issues herein, and to provide Staff with a copy of the Circular so amended (the "**Amended Circular**") at least five business days before it is sent to shareholders of the Company;
 - ii. an interim order requiring HBC to postpone the special meeting of shareholders to be held on December 17, 2019 to consider the Transaction (the "**Meeting**") to a date not earlier than twenty one (21) calendar days after the date the Amended Circular is sent to shareholders of HBC; and
 - iii. an interim order pursuant to section 127(1)(2) of the *Securities Act* cease trading the securities of the Company in connection with the Transaction until such time that the Company complies with clauses (b)(i) and (b)(ii) above; and
6. such further and other relief as counsel may advise and the Commission may deem appropriate.

B. GROUNDS

The grounds for the request are:

Overview

7. This is an application whereby a minority shareholder, the Applicant, requires the Commission's assistance seeking redress for inadequate and inaccurate disclosure, and coercive and unfair practices.
8. HBC announced on October 21, 2019 that it entered into the Arrangement Agreement to give effect to the Transaction pursuant to which HBC would acquire all the equity shares of the Company other than those held by the insiders listed in Schedule "A" hereto (the "**Continuing Shareholders**") holding approximately 57.7% of the common shares in the capital of the Company ("**Common Shares**"), assuming conversion of the preferred shares of the Company. The Continuing Shareholders are comprised of 29 persons, with four principal shareholders exercising control or direction over 23.5% (Fabric Luxembourg Holdings S.à.r.l. ("**Fabric**")), 13.4% (Hanover Investments (Luxembourg) S.A.), 11.9% (L&T B (Cayman) Inc.) and 9.4% (Abrams Capital Management, L.P.) of the Common Shares, assuming conversion of the preferred shares of the Company.
9. The Continuing Shareholders are led by the Governor and Executive Chairman of the Company, Mr. Richard Baker. Seven of the directors and officers of the Company (the "**Participating Insiders**"), including Mr. Richard Baker and Mr. Ian Putnam (President, Real Estate and Chief Corporate Development Officer), who are two of the most senior and highly paid members of the Company's management, are Continuing Shareholders or are working with the Continuing Shareholders to complete the Transaction.
10. The Transaction is the result of a deeply flawed process. The proposal announced by the Continuing Shareholders on June 10, 2019 to acquire the minority shares of the Company at \$9.45 per share (the "**Initial Proposal**"), and the negotiations among the Continuing Shareholders leading up to the making of the Initial Proposal, could only have been made based on material information that was not generally disclosed.

The Initial Proposal and related negotiations thus involved breaches of management and director fiduciary duties and related duties of confidence.

11. In addition, the Continuing Shareholders formed a group with the result of negating key aspects of the mandate of the special committee of the board of directors of the Company that reviewed the Transaction (the "**Special Committee**"), including the consideration of any alternative transactions available to the Company, and otherwise acted in a coercive manner to undermine the Special Committee.
12. When finally provided to HBC's shareholders, the Circular contained misrepresentations, both in terms of untrue statements of material facts and omissions of material information. The Company, in breach of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"), failed to provide summaries of certain key valuations and appraisals related to the Transaction, including the prior valuation (the "**CBRE Prior Valuation**") relating to its most material asset (its Saks Fifth Avenue flagship store on Fifth Avenue in New York City (the "**Saks Flagship**")). The Circular also failed to disclose certain benefits that would accrue to the Continuing Shareholders and falsely claimed that the Transaction was negotiated on an arm's length basis. The Circular has been and will be relied on by investors as a primary source of information for their decisions related to the Transaction and Arrangement Agreement.
13. The Applicant also challenges HBC's reliance on deficient valuations and appraisals in advancing the Transaction. It is believed that there are material deficiencies that must be addressed or corrected. Unless these deficiencies are remedied, it is not possible for shareholders to fully understand the Transaction.
14. The relief sought in this application is forward looking. It concerns past and future conduct. It is intended to prevent the completion or continuation of conduct that has led to the Transaction that is contrary to securities law and the public interest. The Applicant asks that the Transaction be prevented from proceeding and, at a minimum, that the level of disclosure made to the shareholders who are impacted by it be significantly enhanced.

The Companies

15. The Applicant, The Catalyst Capital Group Inc., exercises control or direction over 32,236,878 Common Shares. This represents approximately 17.48% of the issued and outstanding Common Shares. The Applicant is the third-largest individual holder of equity securities of HBC.
16. HBC is a corporation incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and is a reporting issuer under the *Securities Act* and in every other province and in the territories of Canada.

Timing of this Application

17. On June 10, 2019, the Continuing Shareholders made the Initial Proposal.
18. The Special Committee informed the Continuing Shareholders on July 15, 2019 that its preliminary view was that the offer price of \$9.45 per share in the Initial Proposal was inadequate, but did not announce this fact until August 2, 2019 notwithstanding it issued a press release in the interim commenting on the Initial Proposal.
19. The Applicant commenced an offer to purchase Common Shares in July 2019 at a superior price to that offered by the Continuing Shareholders in the Initial Proposal.
20. The Continuing Shareholders increased the price per share under their offer.
21. The Applicant first became aware of the Continuing Shareholders' \$10.30 per share offer contained in the Arrangement Agreement, under the terms of a confidentiality agreement, on the same date that the Arrangement Agreement was concluded, being October 20, 2019.
22. The first public disclosure of the Arrangement Agreement occurred on October 21, 2019.
23. The Circular related to the Arrangement Agreement was filed on SEDAR several weeks later, on November 15, 2019.
24. HBC did not immediately release all the valuations and appraisals required in connection with the Transaction. In fact, ninety (90) of them comprising over 10,000

pages, including the critical CBRE Prior Valuation, were not disclosed concurrently with the Circular but were posted on the Company's website days later, late in the night on November 18, 2019, without any summaries or guiding assistance.

25. After raising concerns with Commission Staff and HBC about most of the disclosure issues herein on November 18, 2019 and making a formal complaint to the Commission on November 27, 2019, the Applicant commenced this Application. Ultimately, it has done so within two weeks of receiving the real estate valuations, which relate to some of the issues discussed below.
26. The Applicant has made an unsolicited, superior offer of \$11.00 per share.
27. The Meeting whereby shareholders will be asked to vote on the Transaction is scheduled to occur on December 17, 2019.
28. The parties to the Arrangement Agreement agreed to initially schedule the Meeting no later than on or before January 7, 2020.
29. The outside date in the Arrangement Agreement following which the Transaction would be terminated is March 30, 2020. However, the Company and Baker Corp. have the right to extend this outside date.

Misrepresentations in the Circular and Related Breaches of Securities Law

30. The Circular contains false statements and significant omissions.

Failure to Provide Summaries of Prior Valuations – Breach of MI 61-101

31. The Circular contains a material omission, in breach of MI 61-101, by failing to provide summaries in the Circular of certain appraisals relied upon by the Special Committee, including the CBRE Prior Valuation.
32. MI 61-101 establishes a securities regulatory framework that mitigates risks to minority security holders when a related party of the issuer, who may have superior access to information or significant influence, is involved in a material conflict of interest transaction. A breach of MI 61-101 is a breach of securities law.

33. The value of HBC's real estate is fundamental to the value of the Company. HBC prided itself on creating value with real estate. Most saliently, the total real estate value of HBC's holdings was reported by the Company to be \$6.414 billion (\$35.24 per share) as of 2017. Among HBC's real estate assets is the Saks Flagship, which alone was reported to have an equity value of \$2.904 billion.
34. The Arrangement Agreement permits the Continuing Shareholders to acquire HBC at a price of \$10.30 per share. That is, the entire Company is being valued at \$1.9 billion.
35. HBC relied on appraisals by Cushman & Wakefield, Inc. and by CBRE, Inc. of its real estate in support of the Transaction. These prior valuations were not summarized in the Circular by the Company.
36. HBC also obtained reports considering hypothetical scenarios where HBC's real estate is repurposed. These reports were also not summarized in the Circular.
37. The real estate appraisals would reasonably be expected to affect the decision of a security holder to vote for or against the Transaction. Sufficient details of the appraisals or prior valuations must therefore be set out in the Circular to permit readers to understand them and their relevance.
38. Although there are summaries of certain of the prior valuations in a valuation attached to the Circular prepared by TD Securities, Inc. (the "**TD Valuation**"), those summaries do not comply with the disclosure required by MI 61-101. In any event, the Company's view of the key aspects of such prior valuations should be summarized and is required material disclosure, particularly in light of the concerns raised below with respect to the CBRE Prior Valuation.
39. The Circular must also state that a copy of each of the prior valuations will be sent to any shareholder upon request and without charge or for a nominal charge sufficient to cover printing and postage. It is important that shareholders be advised of this right as not all shareholders have access to the Company's website and the Commission has concluded that the right to obtain copies of prior valuations is important.

The Transaction Falsely Stated to Have Been Negotiated at Arm's Length

40. The Circular misrepresents the process leading to the Arrangement Agreement. The Circular asserts that the Arrangement Agreement is the result of a robust negotiation process that was undertaken at arm's length between the Special Committee and its advisors, on the one hand, and the Continuing Shareholders and their advisors, on the other hand. This statement is false.
41. The Continuing Shareholders retained legal counsel (Stikeman Elliott LLP and Willkie Farr & Gallagher LLP) and financial advisors (Bank of America and Royal Bank of Canada) to advise them in connection with the Initial Proposal and the Arrangement Agreement.
42. These same legal counsel and financial advisors have been retained by HBC on numerous transactions, including as recently as this year.

Failure to Properly Identify "Minority"

43. In breach of MI 61-101, the Circular does not identify the Common Shares held by Mr. Ian Putnam, a Participating Insider, as part of the "minority" for purposes of MI 61-101.

Failure to Properly Disclose Benefits of Continuing Shareholders/Participating Insiders

44. The Circular must disclose the direct or indirect benefits from the Transaction to be obtained by directors and officers of the Company and the Continuing Shareholders.
45. The Arrangement Agreement refers to an "Agreed Reorganization". Details about the Agreed Reorganization are not described in the Circular. All terms of the Agreed Reorganization and the potential benefits, if any, to the Continuing Shareholders from completion of the Agreed Reorganization should be disclosed in the Circular.
46. The Circular also does not outline the benefits that will be obtained by the Continuing Shareholders by proceeding with the Transaction by way of a share buyback as opposed to a more traditional third party purchase of the Common Shares held by minority shareholders. This is critically important in light of the fact that the structure used by HBC to give effect to the Transaction is unusual, allows the Continuing

Shareholders to acquire the Common Shares of the minority shareholders using only the assets of the Company, and is detrimental from a tax perspective to non-resident and Canadian individual shareholders.

Failure to Disclose Rollover of Payments – Selective Disclosure

47. Mr. Richard Baker has been quoted in a news report as indicating that he will be rolling over his payout along with his existing shares into Baker Corp. as part of an agreement reached with the Continuing Shareholders.
48. The “payout” presumably refers to the amount of \$14.6 million which would be payable to Mr. Richard Baker in respect of restricted share units (“**RSUs**”) and in-the-money options upon the closing of the Transaction.
49. HBC has not publicly disclosed this information about Mr. Richard Baker's "rollover" or whether other Participating Insiders have similar rollovers. The nature of these agreements is material information that should have been included in the Circular.

The Coercive and Flawed Process

50. The terms of the Transaction were reached through an egregious insider/non-arm’s length process. Insiders of the Company engaged in improper and coercive conduct that prevented the Special Committee from safeguarding the rights and interests of minority shareholders. This conduct was designed to prevent other potential bidders from coming forward and to ensure that insiders would privatize HBC at a cost they deemed to be their best offer.
51. As noted above, the Continuing Shareholders utilized key legal and financial advisors to HBC when negotiating the Transaction and its precursors with HBC.
52. The Continuing Shareholders, with the assistance of key directors and officers, manufactured an artificial control block under the terms of a cooperation agreement. This coercive arrangement established by the Continuing Shareholders allowed them to then use leverage to make a bid for the Company at a relatively low price and prevent the Company from pursuing a higher offer from another party.

53. The result of this conduct was that certain directors and insiders of the Company nullified the authority of the Special Committee. It is not apparent that any guidelines were imposed by the Company to ensure that directors and officers complied with their fiduciary duties and related duties of confidence and, as noted below, the Initial Proposal and the arrangement among the Continuing Shareholders could only have been made through the sharing of confidential and material information that was not generally disclosed.
54. Further, HBC's board of directors failed to protect the Company by permitting a breach of a standstill provision in furtherance of the Transaction. On October 24, 2017, HBC announced a series of transactions, which included the investment of US\$500 million into HBC. These transactions resulted in a publicly announced investor rights agreement between HBC and Fabric. Pursuant to the investor rights agreement, Fabric agreed not to acquire or propose to acquire securities of HBC. Despite this investor rights agreement, Fabric participated in the Initial Proposal.
55. The Continuing Shareholders and HBC have represented that the consideration under the Transaction of \$10.30 per share represents a premium of approximately 62% to the closing price of the Common Shares on the last trading day prior to the announcement of the Initial Proposal.
56. However, the Initial Proposal was announced by the Continuing Shareholders only 5 minutes after the Company's announcement of the sale of its key European operations for \$1.5 billion (the "**SIGNA Transactions**"), and only 10 minutes after that the Company announced that the Special Committee had been formed to review the Initial Proposal. The market was not provided with sufficient time to react to the announcement of the SIGNA Transactions prior to the making of the Initial Proposal. It is not possible to distinguish between the impact of the announcement of the SIGNA Transactions on the Company's share price on June 10, 2019 versus the impact of the announcement of the Initial Proposal. As such, the 62% premium cited is not a fair representation and may be misleading to shareholders.
57. It is believed that certain of the Continuing Shareholders assisted in the negotiations of the SIGNA Transactions, but in any event, the Continuing Shareholders must have known of the terms of the SIGNA Transactions prior to the announcement of the Initial

Proposal. The closing of the SIGNA Transactions was a condition of the Initial Proposal and the proceeds of the SIGNA Transactions would be used to finance the repurchase of shares contemplated by the Initial Proposal.

58. The Continuing Shareholders also announced that they would not support an alternative transaction to acquire the Company, the interests of the Continuing Shareholders in the Company or the Company's assets and that the Continuing Shareholders would not support a distribution of the SIGNA Transactions' proceeds to shareholders.
59. The Continuing Shareholders, with their manufactured control position, sought to prevent the Company from enhancing shareholder value through a proper arm's length sale of the Company or a dividend of the proceeds of the SIGNA Transactions.
60. As part of the Transaction, unvested RSUs are being cashed out notwithstanding that the Board could elect to rollover these RSUs. In addition, certain members of management will be provided with "new equity grants" following the closing of the Transaction. These new equity grants are being made irrespective of the fact that the RSUs are being cashed out and outstanding performance share units are to be terminated without consideration due to the failure to meet the performance metrics underlying such awards.
61. Notwithstanding the conflicts of the management team, it is clear that the Special Committee, its financial advisors, the independent valuator and the appraisers all relied heavily on the projections and analysis provided by management for various purposes, including the critical TD Valuation. At the very least, the Circular should outline if such projections and analysis varied materially from prior similar projections and analysis prepared by management. This is particularly important in light of the fact that, within a few months, management's view of the prospects for the Company have recently and conveniently turned dramatically negative.
62. The Company had been consistent in its optimistic view on the future prospects of the Company until the Arrangement Agreement was entered into, after which time the Company's messaging changed significantly and reflected a very pessimistic outlook on the industry.

63. Finally, with respect to the flawed process, the sharing and use of confidential information by the Continuing Shareholders and the timing of the announcement of the Initial Proposal raise concerns with respect to the whether the Continuing Shareholders complied with their respective early warning obligations under securities laws.

Valuations

Saks Flagship – Hypotheticals May Not Represent Highest and Best Use

64. The three hypotheticals considered in the CBRE Prior Valuation limited the leasing possibilities of the Saks Flagship.
65. The hypotheticals do not necessarily represent the highest and best use of the property. Consideration of the highest and best use is critical to the accurate determination of value of a property and would be a fairer representation of the true value of the Saks Flagship. The inclusion of a highest and best use analysis may have a materially positive impact on the valuation of the Saks Flagship. Notably, unlike the CBRE Prior Valuation, the prior valuations completed by Cushman & Wakefield, Inc., contain analysis of highest and best use of the appraised properties.

Saks Flagship – Dark Value is Understated

66. The Company placed atypical constraints on CBRE, Inc. in connection with the CBRE Prior Valuation, leading to a fundamentally flawed analysis of dark value and a dramatically understated valuation of US\$250 million for the Saks Flagship if it was vacant.
67. The hypothetical considered for the vacant value analysis in the CBRE Prior Valuation is limited to the vacant Saks Flagship being leased to a single tenant, which neglects to consider the potential realizable value if the property was leased to multiple tenants. This narrow constraint is unusual and does not allow for a fulsome analysis of the Saks Flagship. The Applicant notes that this constraint was not applied to the prior valuations completed by Cushman & Wakefield, Inc.

Saks Flagship – Redevelopment Value is Understated

68. The third scenario in the CBRE Prior Valuation assumes that the Saks Flagship is vacant and ready for conversion, and that the Saks Fifth Avenue will take the full retail space upon completion of renovation.
69. This scenario does not represent the highest and best use of the property. The assumption that Saks Fifth Avenue will occupy the full retail space neglects the higher value that could be obtained by redeveloping the property for mixed-use without Saks Fifth Avenue occupying the retail space. This restriction, imposed by the Company, leads to a flawed analysis and results in a dramatically understated potential value of the Saks Flagship if the property was converted into a mixed-use property.

TD Valuation – Concerns with Discounted Cash Flow Analysis

70. The TD Valuation contains questionable decision-making in its discounted cash flow (“**DCF**”) analysis of HBC’s retail businesses. The TD Valuation contains analysis of the Company’s continuing retail businesses as a going concern. Yet it mixes valuation methodologies by incorporating analysis related to a liquidation analysis and by failing to account for the value of certain assets.

TD Valuation – Lord & Taylor Cash Flow Analysis Flawed

71. The TD Valuation also contains flawed analysis with respect to the Lord & Taylor cash flow analysis as it:
 - a. fails to properly adjust cash flows to account for the sale to Le Tote, Inc.;
 - b. overstates releasing costs; and
 - c. contains problematic assumptions that ignore business realities.

Summary

72. In light of the numerous prior valuations and the complexity of the TD Valuation, and given the limited time the Applicant has been afforded to review such valuations, the Applicant has not yet completed its analysis of the valuations.

73. However, the above-noted issues with the TD Valuation and CBRE Prior Valuation already raise serious questions as to the validity and accuracy of the valuation range of \$10.00 to \$12.25 set out in the TD Valuation. In the aggregate, adjustments to the analyses and valuations contained in the TD Valuation and CBRE Prior Valuation to resolve the above-noted issues may have a material impact on the valuation range.

Conclusion

74. The Applicant has raised the disclosure issues with HBC and copied Commission Staff. HBC did not respond to the Applicant's inquiries.
75. Due to the upcoming Meeting to be held on December 17, 2019, the Applicant proceeded to commence this Application without delay.
76. The Commission has broad public interest jurisdiction to intervene and make orders required by the public interest. The Transaction is clearly abusive of the Applicant and other minority shareholders, as well as the capital markets more generally. As such, the public interest is squarely engaged. The concerns raised by the Applicant are focused on the protection of minority shareholders. If this type of transaction and conduct is condoned, it would serve to undermine confidence in the fairness and integrity of the capital markets overall.

C. EVIDENCE

The Applicant intends to rely on the following evidence at the hearing:

77. The Applicant intends to rely on affidavit evidence, to be sworn, to be delivered in advance of the hearing.

DATED this 2nd day of December, 2019.

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Lawyers for the Applicant,
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SCHEDULE A

List of Continuing Shareholders

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.