



Pension Investment  
Association of Canada

Association canadienne des  
gestionnaires de caisses de retraite

March 24, 2009

Toronto Stock Exchange  
The Exchange Tower  
130 King Street West  
Toronto, ON M5X 1J2

Attention: Mr. Tom Kloet  
Chief Executive Officer

Dear Mr. Kloet:

**Re: TSX Security Holder Approval Requirements for Acquisitions**

Given the recent decision of the Ontario Securities Commission (the "OSC") in respect of the proposed acquisition by HudBay Minerals Inc. ("HudBay") of Lundin Mining Corporation (the "HudBay/Lundin Transaction") and the fact that Toronto Stock Exchange ("TSX") has not taken any action on its request for comments published October 12, 2007 on its security holder approval requirements for acquisitions, the Pension Investment Association of Canada ("PIAC") is writing to reiterate its view that the exemption in section 611(d) of the TSX Company Manual (the "Manual") be removed.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$940 billion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

As noted in our letter of December 12, 2007, our Corporate Governance Principles and Guidelines provide that we believe that Boards should submit substantial changes to the business of a corporation or proposals that may erode or dilute the rights of existing shareholders, such as a dilutive issuance of shares, equity-based compensation plans or material revisions thereto, to shareholders for approval. With respect to issuances of shares in connection with an acquisition, we believe that requiring shareholder approval in

these circumstances is an important governance process as it provides fairness for shareholders of the acquiror as well as the target, and enhances confidence in capital markets. The exemption from obtaining security holder approval for dilutive issuances in connection with acquisitions of public companies in section 611(d) of the Manual reduces confidence in the Canadian market, as illustrated most recently by the HudBay/Lundin Transaction.

PIAC was extremely pleased that the OSC, in setting aside TSX's decision to approve the listing of the common shares of HudBay to be issued in connection with the HudBay Transaction, recognized the importance of a requirement for a shareholder vote on dilutive acquisitions in protecting the quality and integrity of the marketplace. The OSC also specifically noted that the fair treatment of HudBay shareholders outweighed any possible prejudice to HudBay of requiring HudBay shareholder approval.

Given the OSC's decision in connection with the HudBay/Lundin Transaction, we believe it is an appropriate time for TSX to remove the exemption in section 611(d) to require security holder approval for all issuances exceeding 25% of the outstanding securities of the issuer. Doing so would certainly bring TSX in line with other major markets such as the New York Stock Exchange ("NYSE"), American Stock Exchange ("AMEX"), NASDAQ National Market ("NASDAQ"), London Stock Exchange ("LSE"), Johannesburg Stock Exchange ("JSE") and Stock Exchange of Hong Kong ("HKSE"), each of which requires security holder approval for all issuances of shares in connection with an acquisition that would result in dilution in excess of 20-50%, and would instil in investors the same confidence in the Canadian market that they have in other markets.

We do not believe that requiring shareholder approval of dilutive issuances would make transactions significantly more difficult to complete. Transactions that are fair and reasonable to an acquiror's shareholders will proceed as proposed. As noted above, NYSE, AMEX, NASDAQ, LSE, JSE and HKSE do not contain exemptions from security holder approval requirements for acquisitions of public companies and issuers do not voice concerns in those markets about deal certainty. Since a meeting of the target company's shareholders is required to be held, obtaining approval of the acquiror's shareholders would not pose additional constraints on transactions from a timing perspective. Although we acknowledge that there would be additional marginal costs involved in holding a meeting to obtain approval of the acquiror's shareholders, as owners of the company we support the company incurring these expenses on our behalf.

We urge TSX to propose an amendment to the Manual and remove the security holder approval exemption in subsection 611(d).

Please don't hesitate to contact me or Eleanor Farrell, the Chair of PIAC's Corporate Governance Committee, at (416) 868-6377 if you would like to discuss any aspect of this letter in further detail.

Yours truly,

A handwritten signature in black ink, appearing to read "G. McDade".

Gayle McDade  
Chair

c.c. Cindy Petlock, Manager, Market Regulation  
Ontario Securities Commission