



Special Committee of the HBC Board of Directors Comments on ISS Report

Dec 09, 2019

ISS Analysis Fundamentally Flawed on Multiple Points

Special Committee Recommends Shareholders Vote "FOR" the Arrangement Resolution

Deadline to Vote by Proxy is Friday, December 13, 2019

TORONTO & NEW YORK--(BUSINESS WIRE)--Dec. 9, 2019-- The Special Committee of the Board of Directors of Hudson's Bay Company (TSX: HBC) ("HBC" or the "Company") today commented on the flawed report from Institutional Shareholder Services ("ISS") regarding the proposed transaction in which HBC will become a private company owned by certain continuing shareholders (the "Continuing Shareholders") and the Company's other Shareholders (the "Minority Shareholders") will receive \$10.30 per share in cash.

David Leith, Chair of the Special Committee, said, "We are disappointed by the ISS recommendation and the errors and flawed rationale of ISS. The \$10.30 per share cash offer is in the best interests of HBC and fair to Minority Shareholders."

"The \$10.30 per share offer is the only offer available to Minority Shareholders and provides immediate and certain value at a significant market premium. ISS acknowledges there is meaningful downside risk if shareholders do not approve this transaction. We continue to strongly recommend that HBC shareholders vote FOR the take-private transaction."

There are two primary flaws in ISS' report:

One - ISS misunderstands the significance of the Special Committee's determination to waive the standstill obligation of one of the Continuing Shareholders. The waiver of the standstill had no impact on the Special Committee's negotiating leverage with the Continuing Shareholders as the other Continuing Shareholders already had sufficient voting power to block any alternative transaction.

Two - ISS misunderstands the effect of the superior proposal construct, which requires that any alternative transaction proposal must be reasonably capable of completion in order to be a superior proposal. No board of directors, having concluded that an arrangement is in the best interests of the company, would terminate an arrangement agreement in order to enter into an alternative transaction which is not reasonably capable of completion. As the proposed privatization transaction is subject to majority of the minority approval, if holders of a majority of the shares held by minority shareholders oppose the transaction, it will not proceed.

These and other flaws in the ISS report are discussed in detail below.

The Fabric Standstill Waiver Had No Impact on the Special Committee's Negotiating Leverage

In its report, ISS places great emphasis on a waiver by the Special Committee provided in respect of a standstill obligation to which Fabric Luxembourg Holdings S.a.r.l. ("Fabric") was subject pursuant to its investor rights agreement with HBC (the "Fabric Standstill"). The Fabric Standstill was waived by HBC, with the authorization of the Special Committee, to permit Fabric to participate as a Continuing Shareholder in the proposed transaction.

ISS states that "By waiving the standstill and allowing Baker to form a group controlling 57 percent of the voting power, the board appears to have sacrificed negotiating leverage in exchange for a proposal that, in its own words, was inadequate." The statement reflects a fundamental misunderstanding of the transaction. The waiver of the Fabric standstill had no impact on the Special Committee's negotiating leverage.

- The argument that the Special Committee "sacrificed negotiating leverage" suggests that an alternative transaction to that proposed by the Continuing Shareholders might have had a possibility of succeeding had Fabric not been permitted to be one of the Continuing Shareholders. This is not the case.
- A privatization transaction in respect of HBC requires the approval by at least three-quarters of the votes cast at a meeting of HBC shareholders, not 50% as implied by ISS' reasoning. The Continuing Shareholders other than Fabric own shares representing 34.7% of all votes.
- As a result, if a privatization transaction had been proposed by the group of Continuing Shareholders other than Fabric, no alternative transaction to that transaction could be completed so long as that group of Continuing Shareholders opposed it.
- The waiver facilitated the proposal that was made by the Continuing Shareholders, which, in the absence of the consent of the Special Committee, would not otherwise have been forthcoming. The Special Committee believed that, in the context of HBC's shareholder composition, declining stock price and the ongoing challenges and risks facing the Company, a proposal that would provide liquidity to minority shareholders could be in the best interests of the Company, and that the Special Committee should have the ability to consider, negotiate, and, if thought advisable, recommend such a proposal to shareholders. The Special Committee knew that any such transaction it might recommend would be subject to minority shareholder approval and other protections under applicable corporate and securities laws, affording minority shareholders the ultimate choice as to whether to accept or reject such a proposal.
- While the initial proposal of \$9.45 per common share from the Continuing Shareholders was determined by the Special

Committee to be inadequate, the Special Committee's negotiations with the Continuing Shareholders resulted in a final offer of \$10.30 per common share, which the Special Committee concluded was in the best interests of the Company and fair to minority shareholders.

ISS' Misunderstanding of the Superior Proposal Provision of the Arrangement Agreement

Under the terms of the Arrangement Agreement between HBC and Rupert Acquisition LLC dated October 20, 2019 (the "Arrangement Agreement"), HBC can terminate the Arrangement Agreement in circumstances where it receives a "Superior Proposal" and certain other requirements are satisfied. ISS places significant focus on this provision, and correctly notes that, in order for a proposal with respect to an alternative transaction to be a Superior Proposal for this purpose, it must be "reasonably capable of being consummated."

ISS then recounts that the Special Committee responded to Catalyst's November 27, 2019 offer to acquire HBC shares at \$11.00 per share by noting that the transaction proposed by Catalyst was not reasonably capable of being completed, due to the opposition by the Continuing Shareholders to the transaction. ISS then concludes in its report that "It appears that the special committee handcuffed itself by recommending an agreement that defines a superior proposal as something that could never happen." ISS' suggestion that the Special Committee may have "tied its own hands" in this respect in the Arrangement Agreement is unfounded.

- The purpose of a "superior proposal" construct in an arrangement agreement is to permit the acquired company (in this case, HBC) to terminate the arrangement agreement (subject to certain other requirements) if it receives a superior proposal, so that it may then enter into an agreement to complete the transaction contemplated by the superior proposal.
- Clearly, an acquired company would wish to terminate an existing agreement in order to pursue another transaction only if the other transaction was reasonably capable of being completed. To terminate the existing agreement otherwise would leave shareholders without the ability to vote on the transaction contemplated by the existing agreement, and with no prospect of having their shares acquired in another transaction.
- Canadian arrangement agreements that permit an acquired company to terminate the agreement to accept a superior proposal almost invariably require that an alternative transaction must be reasonably capable of being consummated in order to be a superior proposal. This includes not only transactions in which the acquiring party does not have a significant shareholding in the target, but also all 11 of the arrangements completed by Canadian public entities in the last five years identified by HBC¹ in which the acquiring party or parties held 30% or more of the voting shares of the acquired company and the acquired company had the ability to terminate the arrangement agreement to accept a superior proposal. In all of these cases, an alternative proposal would not have been reasonably capable of being consummated in the face of opposition by the initial acquiror. In four public company arrangements completed in Canada in the last five years in which the acquiring party or parties held 30% or more of the voting shares of the acquired company, the acquired company had no ability at all to terminate the arrangement agreement to accept a superior proposal.
- Even if the Arrangement Agreement had permitted the Special Committee to terminate the agreement at any time in its sole discretion, the transaction proposed by Catalyst (which would require approval of at least three-quarters of votes cast) is not capable of being completed in the absence of approval by the Continuing Shareholders (and, as noted above, this would have been the case regardless of whether Fabric was one of the Continuing Shareholders). The superior proposal construct in the Arrangement Agreement simply reflects this fact. It does not create it.

Other Flaws in ISS' Report

The ISS report contains others flaws and inaccuracies.

- The ISS report refers to "the possible conflict of interest between [Richard] Baker as executive chairman voting on an asset sale [being the SIGNA Transactions, as defined in the Arrangement Agreement] and Baker as unsolicited acquirer". Mr. Baker and the other directors of HBC who are Participating Insiders recused themselves from the approval of the SIGNA Transactions.
- The report states: "In light of the special committee's Oct. 10 interest in using or working with Catalyst to improve its negotiating position, the Oct. 20 decision to approve [the superior proposal] definition appears counterproductive." This statement makes no sense. The Special Committee's interest in possibly working with Catalyst in its negotiations with the Continuing Shareholders reflected the fact that any transaction with the Continuing Shareholders would require majority of the minority approval, and that Catalyst's shares represent a significant portion of those held by the minority. It had nothing to do with the possibility that Catalyst might propose an alternative transaction in which it would, without any reasonable expectation of succeeding, seek to acquire HBC.
- The report states that the Special Committee should have "identified the circumstances, if any, under which a proposal could be deemed superior." The HBC management information circular dated November 14, 2019 clearly states that a transaction must be reasonably capable of being consummated in order to be a superior proposal. It also states that the Continuing Shareholders had publicly announced that none of them were, in their capacity as shareholders, interested in an alternative transaction, and that an alternative transaction could not be effected without the support of the Continuing Shareholders.
- The report states that "It bears mentioning that the only defect identified [in the November 27, 2019 Catalyst proposal] by the special committee was the Baker consortium's opposition; the committee did not question the Catalyst proposal's

financing or ability to win regulatory approval.” While the Special Committee did not comment on the Catalyst proposal’s financing in its December 2, 2019 press release, there should be no inference drawn that the Special Committee was satisfied with the financing or did not have concerns about Catalyst’s ability to finance the transaction it was proposing.

Recommendation of the Board of HBC

The Board of HBC (excluding conflicted directors) recommends that all shareholders vote **FOR** the transaction based on the comprehensive evaluation of the independent Special Committee and its advisors, and emphasizes the following:

- After an extensive review process, the Special Committee did not identify any alternatives that were more attractive than the proposed transaction
- Despite pursuing several strategic initiatives over the past two years, HBC still faces a challenging, deteriorating retail environment
- HBC has significant cash obligations, which constrain the Company’s ability to return capital to shareholders
- The value of the HBC’s real estate portfolio has declined, and there are challenges in realizing the Company’s real estate value
- Any potential redevelopment of HBC’s real estate portfolio will require significant capital, as well as an extended multi-year time horizon
- \$10.30 per share provides a compelling value proposition and is within the fair value range determined by the independent valuation of TD Securities Inc.
- The Special Committee engaged in extensive negotiations with the Continuing Shareholders, which resulted in raising the offer from \$9.45 to \$10.30 per share, a 9% increase.
- The all-cash offer of \$10.30 per share delivers immediate and certain value at a 62% premium to the unaffected closing stock price on June 7, 2019, the day before the Continuing Shareholders made the Initial Proposal

Special Meeting of Shareholders on December 17, 2019

The Special Committee and the Board (excluding conflicted directors) recommend that Minority Shareholders vote in favour of the transaction in advance of the proxy voting deadline of 10:00 a.m. ET on Friday, December 13, 2019 or at the special meeting of shareholders on Tuesday, December 17, 2019 at 10:00 a.m. ET. Shareholders who have questions or need assistance voting their proxy should contact Kingsdale Advisors, HBC’s proxy solicitation agent, by telephone toll-free at 1-866-581-0512, collect at 1-416-867-2272 or via email at contactus@kingsdaleadvisors.com.

Materials related to the Special Meeting, will be available under HBC’s profile on SEDAR at www.sedar.com and on HBC’s website at www.investor.hbc.com. Shareholders can access additional information about the transaction, including the Management Information Circular, by visiting www.HBCGoPrivate.com.

About HBC

HBC is a diversified retailer focused on driving the performance of high-quality stores and their omni-channel platforms and unlocking the value of real estate holdings. Founded in 1670, HBC is the oldest company in North America. HBC’s portfolio today includes formats ranging from luxury to premium department stores to off price fashion shopping destinations, with nearly 250 stores and approximately 30,000 employees around the world. HBC’s leading businesses across North America include Saks Fifth Avenue, Hudson’s Bay, and Saks OFF 5TH. HBC also has significant investments in real estate joint ventures. It has partnered with Simon Property Group Inc. in the HBS Joint Venture, which owns properties in the United States. In Canada, it has partnered with RioCan Real Estate Investment Trust in the RioCan-HBC Joint Venture.

Forward-Looking Statements

Certain statements made in this news release are forward-looking statements within the meaning of applicable securities laws, including, but not limited to, statements with respect to the rationale of the Special Committee and the Board of Directors for entering into the Arrangement Agreement, the terms and conditions of the Arrangement Agreement, the timing of various steps to be completed in connection with the transaction, and other statements that are not material facts. Often but not always, forward-looking statements can be identified by the use of forward-looking terminology such as “may”, “will”, “expect”, “believe”, “estimate”, “plan”, “could”, “should”, “would”, “outlook”, “forecast”, “anticipate”, “foresee”, “continue” or the negative of these terms or variations of them or similar terminology.

Although HBC believes that the forward-looking statements in this news release are based on information and assumptions that are current, reasonable and complete, these statements are by their nature subject to a number of factors that could cause actual results to differ materially from management’s expectations and plans as set forth in such forward-looking statements, including, without limitation, the following factors, many of which are beyond HBC’s control and the effects of which can be difficult to predict: (a) the possibility that the transaction will not be completed on the terms and conditions, or on the timing, currently contemplated, and that it may not be completed at all, due to a failure to obtain or satisfy, in a timely manner or otherwise, required shareholder and regulatory approvals and other conditions of closing necessary to complete the transaction or for other reasons; (b) risks related to tax matters; (c) the possibility of adverse reactions or changes in business relationships resulting from the announcement or completion of the transaction; (d) risks relating to HBC’s ability to retain and attract key personnel during the interim period; (e) the possibility of litigation relating to the transaction; (f) credit, market, currency, operational, real estate, liquidity and funding risks generally and relating specifically to the transaction, including changes in economic conditions, interest rates or tax rates; (g) risks and uncertainties relating to information management, technology, supply chain, product safety, changes in law, competition, seasonality, commodity price and business; and (h) other risks inherent to the Company’s business and/or factors beyond its control which could have a material adverse effect on the Company or the ability to consummate the transaction.

HBC cautions that the foregoing list of important factors and assumptions is not exhaustive and other factors could also adversely affect its results. For more information on the risks, uncertainties and assumptions that could cause HBC’s actual results to differ from current expectations, please refer to

the "Risk Factors" sections of HBC's Annual Information Form dated May 3, 2019 and Management Information Circular dated November 14, 2019, as well as HBC's other public filings, available at www.sedar.com and at www.hbc.com.

The forward-looking statements contained in this news release describe HBC's expectations at the date of this news release and, accordingly, are subject to change after such date. Except as may be required by applicable Canadian securities laws, HBC does not undertake any obligation to update or revise any forward-looking statements contained in this news release, whether as a result of new information, future events or otherwise. Readers are cautioned not to place undue reliance on these forward-looking statements.

¹ Based on a review of over 250 of the largest target-supported acquisitions of Canadian public entities announced since June 1, 2013.

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