

CLEVELAND CLIFFS INC

Form DEFC14A

September 08, 2008

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**SCHEDULE 14A
(RULE 14A-101)
INFORMATION REQUIRED IN PROXY STATEMENT**

SCHEDULE 14A INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES
EXCHANGE ACT OF 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check appropriate box:

- Preliminary Proxy Statement
- Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under Rule 14a-12

CLEVELAND-CLIFFS INC
(Name Of Registrant As Specified In Its Charter)

Not Applicable

(Name Of Person(s) Filing Proxy Statement, If Other Than The Registrant)

Payment of filing fee (check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1. Title of each class of securities to which transaction applies:
2. Aggregate number of securities to which transaction applies:
3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
4. Proposed maximum aggregate value of transaction:
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- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-II(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

1. Amount previously paid:

2. Form, schedule or Registration Statement No.:

3. Filing party:

4. Date Filed:

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS
TO BE HELD ON OCTOBER 3, 2008**

TO THE SHAREHOLDERS OF CLEVELAND-CLIFFS:

On August 14, 2008, Harbinger Capital Partners Master Fund I, Ltd. (the Master Fund) and Harbinger Capital Partners Special Situations Fund, L.P. (the Special Fund), and together with the Master Fund, Harbinger) delivered an acquiring person statement (the Acquiring Person Statement) to Cleveland-Cliffs Inc (Cleveland-Cliffs). Based on the delivery of the Acquiring Person Statement, Cleveland-Cliffs is required under Ohio law to convene a special meeting of shareholders to consider the proposal contained in the Acquiring Person Statement.

NOTICE IS HEREBY GIVEN that a special meeting of shareholders (the Special Meeting) of Cleveland-Cliffs will be held at The Mayfield Sand Ridge Club located at 1545 Sheridan Road, South Euclid, Ohio 44121 on Friday, October 3, 2008, at 10:00 a.m. local time for the sole purpose of considering, and voting on whether to authorize pursuant to Section 1701.831 of the Ohio Revised Code, the acquisition (the Control Share Acquisition) of Cleveland-Cliffs common shares by Harbinger pursuant to the Acquiring Person Statement.

THE BOARD OF DIRECTORS OF CLEVELAND-CLIFFS HAS DETERMINED THAT THE CONTROL SHARE ACQUISITION IS NOT IN THE BEST INTERESTS OF CLEVELAND-CLIFFS SHAREHOLDERS AND UNANIMOUSLY RECOMMENDS THAT CLEVELAND-CLIFFS SHAREHOLDERS VOTE AGAINST THE AUTHORIZATION OF THE CONTROL SHARE ACQUISITION.

Only shareholders of record at the close of business on September 2, 2008 (the Record Date), are entitled to notice of, and to vote at, the Cleveland-Cliffs Special Meeting. Authorization of the Control Share Acquisition at the Special Meeting requires the affirmative vote of (1) the holders of a majority of the voting power entitled to vote in the election of Cleveland-Cliffs directors represented at the Special Meeting in person or by proxy, and (2) the holders of a majority of the voting power entitled to vote in the election of Cleveland-Cliffs directors represented at the Special Meeting in person or by proxy, excluding any shares which are Interested Shares as defined in the Ohio Revised Code. Under the Ohio Revised Code, Interested Shares with respect to Cleveland-Cliffs voting shares include, among other things, shares held by Harbinger, by any officer of Cleveland-Cliffs elected or appointed by Cleveland-Cliffs board of directors, or by any employee of Cleveland-Cliffs who is a director of Cleveland-Cliffs, and shares acquired between the date of the public disclosure of the proposed acquisition on August 14, 2008 and the Record Date if the aggregate purchase prices of such Cleveland-Cliffs voting shares exceeds \$250,000 or one-half of one percent of the outstanding shares of Cleveland-Cliffs entitled to vote in the election of directors.

The accompanying Proxy Statement contains information relating to the Special Meeting and provides you with a summary of the sections of the Ohio Revised Code relating to shareholder approval of the Control Share Acquisition, as well as additional information about the parties involved. Harbinger s Acquiring Person Statement is attached as Exhibit A to the Proxy Statement.

By order of the board of directors,

George W. Hawk, Jr.
General Counsel and Secretary

September 8, 2008

To assure your representation at the Special Meeting, please complete, sign, and promptly return the enclosed **WHITE** proxy card in the envelope provided TODAY, whether or not you expect to be present at the Special Meeting. **As explained in the attached Proxy Statement, Cleveland-Cliffs shareholders should also complete the certification set forth on the WHITE proxy card for each proxy card you return. Cleveland-Cliffs shares represented by a proxy card without a completed certification will be presumed to be Interested Shares (as defined in the attached Proxy Statement) that are ineligible to vote in connection with the Second Majority Approval as described in the attached Proxy Statement.** If you attend the Special Meeting and are a record holder or hold your shares in street name and have a legal proxy from your bank, broker or other nominee, you may vote your shares in person.

The Cleveland-Cliffs board of directors urges you **NOT** to sign or return any proxy card sent to you by Harbinger. Even if you have previously signed a proxy card sent by Harbinger, you have every right to change your vote by signing, dating and returning the enclosed **WHITE** proxy card in the postage-paid envelope provided. Shareholders should also complete the certification for any later-dated proxy card returned. Only the latest dated proxy card you vote will be counted. We urge you to simply disregard any proxy card sent to you by Harbinger or its affiliates.

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**PROXY STATEMENT
OF
CLEVELAND-CLIFFS INC**

**For the Special Meeting of Shareholders
Under Section 1701.831 of the Ohio Revised Code**

To Be Held on October 3, 2008

This Proxy Statement is being furnished by Cleveland-Cliffs Inc, a corporation organized and existing under the laws of Ohio (Cleveland-Cliffs), in connection with the solicitation by Cleveland-Cliffs of proxies for the purposes described in this Proxy Statement at the Special Meeting of shareholders to be held on October 3, 2008, and at any and all adjournments or postponements thereof (the Special Meeting). This Proxy Statement and the accompanying **WHITE** proxy card are expected to be mailed to Cleveland-Cliffs shareholders on or about September 9, 2008.

The Special Meeting will be held at The Mayfield Sand Ridge Club located at 1545 Sheridan Road, South Euclid, Ohio 44121 on, Friday, October 3, 2008, at 10:00 a.m. local time. The Cleveland-Cliffs board of directors has fixed the close of business on September 2, 2008 as the record date for determining shareholders entitled to notice of and to vote at the meeting (the Record Date).

PURPOSE OF SPECIAL MEETING

The sole purpose of the Special Meeting is to consider and vote on whether to authorize, pursuant to the Control Share Acquisition Statute set forth in Section 1701.831 of the Ohio Revised Code (the Ohio Control Share Acquisition Statute), the acquisition of more than one-fifth but less than one-third of the outstanding common shares of Cleveland-Cliffs by Harbinger Capital Partners Master Fund I, Ltd. (the Master Fund) and Harbinger Capital Partners Special Situations Fund, L.P. (the Special Fund), and together with the Master Fund, Harbinger) pursuant to the Acquiring Person Statement (the Control Share Acquisition). Harbinger s Acquiring Person Statement is attached as Exhibit A to this Proxy Statement (the Acquiring Person Statement). As more fully described below in the section entitled Ohio Control Share Acquisition Statute, shareholder authorization must be obtained before Harbinger may acquire Cleveland-Cliffs shares that would entitle it directly or indirectly to control 20% or more of the voting power of Cleveland-Cliffs in the election of its directors.

IMPORTANT

ANY PROXIES THAT ARE RETURNED WITHOUT A CERTIFICATION SPECIFYING THAT SUCH CLEVELAND-CLIFFS SHARES ARE NOT INTERESTED SHARES WILL BE PRESUMED TO BE INTERESTED SHARES . SEE CERTAIN VOTING PROCEDURES AT THE SPECIAL MEETING .

If you have any questions concerning Cleveland-Cliffs solicitation of **WHITE** proxy cards or need assistance in determining whether you are a holder of Interested Shares (as defined below), please contact our proxy solicitor:

Innisfree M&A Incorporated
Shareholders call (toll free): (877) 456-3507
Banks and Brokers call collect: (212) 750-5833

THE BOARD OF DIRECTORS OF CLEVELAND-CLIFFS HAS DETERMINED THAT THE CONTROL SHARE ACQUISITION IS NOT IN THE BEST INTERESTS OF SHAREHOLDERS AND UNANIMOUSLY

RECOMMENDS THAT SHAREHOLDERS VOTE **AGAINST** THE AUTHORIZATION OF THE CONTROL SHARE ACQUISITION.

The date of this Proxy Statement is September 8, 2008. This Proxy Statement and the accompanying **WHITE** proxy card are expected to be mailed to shareholders on or about September 9, 2008.

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VOTING AT THE SPECIAL MEETING

Any Cleveland-Cliffs shares subject to proxies that are returned without a certification specifying that such Cleveland-Cliffs shares are not Interested Shares will be presumed to be Interested Shares . See Certain Voting Procedures at the Special Meeting .

At the Special Meeting, Cleveland-Cliffs shareholders will be asked to approve a resolution authorizing the Control Share Acquisition.

Authorization for the Control Share Acquisition requires:

the affirmative vote of the holders of a majority of the voting power entitled to vote in the election of Cleveland-Cliffs directors represented at the Special Meeting in person or by proxy (the First Majority Approval); and

the affirmative vote of the holders of a majority of the portion of the voting power entitled to vote in the election of Cleveland-Cliffs directors, excluding the voting power of Interested Shares as defined in the section entitled Ohio Control Share Acquisition Statute represented at the Special Meeting in person or by proxy (the Second Majority Approval).

The Cleveland-Cliffs board of directors has authorized, and Cleveland-Cliffs will institute, presumptions and procedures to implement the legislative mandate to exclude the voting power of Interested Shares, including a requirement that each shareholder certify to Cleveland-Cliffs the number of such shareholder's Cleveland-Cliffs shares being voted that are eligible to vote in respect of the Second Majority Approval. These presumptions and procedures are set forth in Exhibit D to this Proxy Statement. In the event that some but not all of such shareholder's Cleveland-Cliffs shares are Interested Shares, the shareholder should indicate the number of such shareholder's Cleveland-Cliffs shares being voted that are eligible to vote in respect of the Second Majority Approval.

It is Cleveland-Cliffs position that all Cleveland-Cliffs shares that are voted without a certification will be presumed to be Interested Shares and therefore ineligible to vote in respect of the Second Majority Approval.

If the Control Share Acquisition is not authorized by both of the majority votes required, Harbinger may not proceed further with the Control Share Acquisition. If both the required majorities authorize the acquisition under the Ohio Control Share Acquisition Statute, Harbinger would be permitted by the Ohio Control Share Acquisition Statute to complete the acquisition. Notwithstanding shareholder approval of the Control Share Acquisition, Harbinger is prohibited from engaging in certain transactions under Chapter 1704 of the Ohio Revised Code because Harbinger owns more than 10% of the outstanding shares of Cleveland-Cliffs.

A quorum will be deemed present at the Special Meeting if at least a majority of the voting power entitled to vote in the election of Cleveland-Cliffs directors is represented at the Special Meeting in person or by proxy. In accordance with Ohio law, the holders of a majority of the voting power entitled to vote in the election of Cleveland-Cliffs directors represented at the Special Meeting in person or by proxy, whether or not a quorum is present, may adjourn the Special Meeting from time to time, but not to a date later than October 3, 2008. Pursuant to the Ohio Control Acquisition Statute, unless Harbinger and Cleveland-Cliffs agree in writing to another date, the Special Meeting shall be held within fifty days after receipt by Cleveland-Cliffs of the Acquiring Person Statement. Since the Acquiring Person Statement was received by Cleveland-Cliffs on August 14, 2008, the Special Meeting must be held no later than October 3, 2008. Cleveland-Cliffs currently has no plans to request that Harbinger agree to postpone or adjourn

the Special Meeting past October 3, 2008 and Cleveland-Cliffs has not received any request from Harbinger to postpone or adjourn this Special Meeting past October 3, 2008. In the event that the Special Meeting is not held because of the absence of a quorum, the Control Share Acquisition would not be authorized.

As of the Record Date, there were 106,720,355 Cleveland-Cliffs common shares issued and outstanding. As of the Record Date, there were 205 shares of Cleveland-Cliffs Series A-2 Preferred Stock outstanding. Each share of Cleveland-Cliffs Series A-2 Preferred Stock is convertible, at the election of the holder thereof, into 133.0646 Cleveland-Cliffs common shares. Each common share and each share of Series A-2 Preferred Stock entitles the holder thereof to one vote on the proposal to authorize the Control Share Acquisition (provided that, as described herein, Interested Shares will be excluded for purposes of determining the Second Majority Approval).

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Whether or not a Cleveland-Cliffs shareholder plans to attend the Special Meeting, the Cleveland-Cliffs board of directors urges all Cleveland-Cliffs shareholders to vote **AGAINST** authorization of the Control Share Acquisition on the accompanying **WHITE** proxy card, complete the accompanying certification and return it in the enclosed postage-paid envelope **TODAY**. Each Cleveland-Cliffs shareholder may revoke its proxy at any time before it is voted at the Special Meeting by delivering a written notice of revocation or a later dated proxy for the Special Meeting to Cleveland-Cliffs Inc, c/o Innisfree M&A Incorporated, 501 Madison Avenue, 20th Floor, New York, New York 10022.

Proxies for the Special Meeting may also be revoked by voting in person at the Special Meeting, although attendance at the Special Meeting will not in and of itself revoke a proxy. Unless revoked in the manner set forth above, proxies received by Cleveland-Cliffs on the accompanying form will be voted at the Special Meeting only in accordance with the written instructions set forth on the proxy card. In the absence of written instructions, proxies in the form accompanying this Proxy Statement will be voted **AGAINST** the Control Share Acquisition.

Any abstention from voting on a proxy which has not been revoked will be included in computing the number of Cleveland-Cliffs shares present for purposes of determining whether a quorum is present at the Special Meeting and will have the same effect as an **AGAINST** vote. When brokers do not receive voting instructions from a customer, they are permitted to, and generally do, exercise discretionary voting authority with respect to the customer's shares on routine matters being voted on at a meeting. If there are non-routine matters also being voted upon at the same meeting, the broker is not permitted to exercise discretionary voting authority on such matters, and the shares voted by the broker in its discretion on routine matters are considered broker non-votes with respect to the non-routine matters. The Control Share Acquisition proposal is a non-routine matter and the brokers may not exercise discretionary voting authority. Since there are no other matters expected to be voted upon at the Special Meeting, Cleveland-Cliffs does not believe there will be any broker non-votes. If, however, there are any broker non-votes, such broker non-votes will be included in the quorum and have the same effect as a vote **AGAINST** the proposal.

SHARES OUTSTANDING AND ELIGIBLE TO BE VOTED IN FIRST MAJORITY APPROVAL AND SECOND MAJORITY APPROVAL

Cleveland-Cliffs shares are the only shares entitled to be voted at the Special Meeting. The Cleveland-Cliffs common shares and shares of Series A-2 Preferred Stock are entitled to one vote per share and vote together as a single class. As of the Record Date, there were 106,720,355 common shares, and 205 shares of Series A-2 Preferred Stock issued and outstanding, all of which are eligible to be voted in determining whether the Control Share Acquisition will be approved by the First Majority Approval required under the Ohio Control Share Acquisition Statute.

The number of Cleveland-Cliffs shares eligible to be voted in determining whether the Control Share Acquisition has been approved by the Second Majority Approval under the Ohio Control Share Acquisition Statute, consisting of the voting power of all the outstanding Cleveland-Cliffs shares excluding the voting power of Interested Shares, will be determined as of the time of the Special Meeting in the manner described in this Proxy Statement. The categories of Interested Shares that will not be eligible to be voted in determining the Second Majority Approval are as follows:

1. Cleveland-Cliffs shares owned by Harbinger. Based on Harbinger's Schedule 13D, filed with the SEC on July 17, 2008 and Amendment No. 1 thereto, filed with the SEC on August 14, 2008, Harbinger beneficially owns 16,616,472 common shares of Cleveland-Cliffs (which as of the Record Date represented 15.57% of Cleveland-Cliffs' outstanding common shares). For purposes of the Second Majority Approval, such shares are Interested Shares. As such, the Cleveland-Cliffs shares owned by Harbinger will not be eligible to be voted in determining the Second Majority Approval.

2. Cleveland-Cliffs shares owned by officers of Cleveland-Cliffs elected or appointed by its board of directors or owned by any employee of Cleveland-Cliffs who is also a director of Cleveland-Cliffs. As of the Record Date, these individuals own, in the aggregate, 402,462 Cleveland-Cliffs shares, which are, for this purpose, Interested Shares. As such, these shares will not be eligible to be voted in determining the Second Majority Approval.

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3. Cleveland-Cliffs shares acquired by any person for valuable consideration during the period beginning August 14, 2008, the date of the first public disclosure of Harbinger's proposed acquisition, and ending on the Record Date (such period being referred to herein as the Restricted Period), if (A) the aggregate consideration paid by such person for such Cleveland-Cliffs shares exceeds \$250,000 (based on the closing price for Cleveland-Cliffs on September 3, 2008, as reported on the New York Stock Exchange, the purchase of 2,810 Cleveland-Cliffs shares would exceed this threshold amount) or (B) the number of shares so acquired exceeds one-half of one percent of the Cleveland-Cliffs shares outstanding.

4. Cleveland-Cliffs shares owned by any person that transfers such shares for valuable consideration after the Record Date, if the shares are accompanied by the voting power of such transferred shares in the form of a blank proxy, an agreement to vote as instructed by the transferee, or otherwise.

For purposes of the foregoing, the term owned means shares as to which a person may exercise or direct the exercise of the voting power entitled to vote in the election of directors. Shareholders who acquire, prior to the commencement of the Restricted Period, Cleveland-Cliffs shares that are not Interested Shares and who acquire additional Cleveland-Cliffs shares during the Restricted Period for an aggregate consideration in excess of \$250,000 will be entitled to have their Cleveland-Cliffs shares voted in determining whether the Second Majority Approval has been obtained if an appropriate certification of eligibility, as described above, is provided.

Under Ohio law, all Cleveland-Cliffs voting shares, including the first \$250,000 worth of such shares, acquired during the Restricted Period for an aggregate purchase price of more than \$250,000 will be considered Interested Shares.

Furthermore, shares that are considered Interested Shares because they were purchased during the Restricted Period as part of an aggregate purchase of \$250,000 or more of shares will remain Interested Shares if owned by such purchaser as of the Record Date even if the purchaser of such shares at some point during that period disposes of some of such shares. For example, in the case of a person who buys \$1,000,000 worth of shares during the Restricted Period, then sells \$800,000 worth of common shares during that period, all of such person's shares acquired during that period and still owned as of the Record Date are Interested Shares.

The Ohio Control Share Acquisition Statute requires that Cleveland-Cliffs shares acquired by persons acting in concert be aggregated for the purpose of calculating the \$250,000 threshold for determination of Interested Share status. In the event that Cleveland-Cliffs shares are entitled to be voted by more than one person all of such Cleveland-Cliffs shares will be considered to be owned by each such person for purposes of determining whether such shares are Interested Shares.

Each investment advisor or other person who holds Cleveland-Cliffs shares for different beneficial owners, based on its own circumstances and arrangements with its clients, will need to make its own determination as to whether any of the Cleveland-Cliffs shares held in its accounts for the benefit of such beneficial owners are Interested Shares.

Under the Ohio Control Share Acquisition Statute, Cleveland-Cliffs shares owned by directors who are not employees of Cleveland-Cliffs, and who do not fall into any other category described in subparagraph (1), (2), (3) or (4) above, would not be Interested Shares. Cleveland-Cliffs non-employee directors owned an aggregate of 1,264,864 Cleveland-Cliffs shares as of the Record Date and, to the best of Cleveland-Cliffs knowledge, none of these Cleveland-Cliffs shares are Interested Shares. To the best of Cleveland-Cliffs knowledge, these directors intend to vote their Cleveland-Cliffs shares **AGAINST** approval of the Control Share Acquisition in determining the First Majority Approval and the Second Majority Approval.

All Cleveland-Cliffs shares as to which a signed certification of eligibility, as described above, has been provided on the proxy card relating to such Cleveland-Cliffs shares will be presumed by Cleveland-Cliffs to be eligible to be voted

in determining whether the Control Share Acquisition is approved by the Second Majority Approval. This presumption may be rebutted if a shareholder signing the proxy card provides subsequent information indicating that some or all of the Cleveland-Cliffs shares represented by the original proxy card are, or have become, Interested Shares or a successful challenge is made to such certification on the basis of information available to the challenging party. It is Cleveland-Cliffs' position that Cleveland-Cliffs shares subject to a proxy card without a certification of eligibility completed by the shareholder shall be presumed to be Interested

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Shares and, therefore, not eligible to be voted in determining whether the Control Share Acquisition has been approved by the Second Majority Approval.

IT IS ALSO CLEVELAND-CLIFFS POSITION THAT ALL CLEVELAND-CLIFFS SHARES WHICH ARE VOTED ON ANY PROXY CARD THAT MAY BE DISTRIBUTED BY, OR ON BEHALF OF, HARBINGER, WHICH DO NOT CONTAIN A CERTIFICATION OF ELIGIBILITY SIMILAR TO THE ONE AUTHORIZED ON CLEVELAND-CLIFFS PROXY CARD, AS DESCRIBED ABOVE, SHALL ALSO BE PRESUMED TO BE INTERESTED SHARES, UNLESS THE SHAREHOLDER SIGNING THE PROXY CARD SIGNS AND PRESENTS EITHER (1) A PROXY CARD BEARING A LATER DATE WITH A SIGNED CERTIFICATION OF ELIGIBILITY OR (2) A SEPARATE CERTIFICATION OF ELIGIBILITY IN SUBSTANTIALLY THE FORM PROVIDED TO SHAREHOLDERS BY CLEVELAND-CLIFFS.

Innisfree M&A Incorporated (Innisfree) will upon telephone request furnish Cleveland-Cliffs shareholders of record with additional **WHITE** proxy cards that contain a certification of eligibility or separate certificates of eligibility. Please call toll-free at 1-877-456-3507. Banks and Brokers may call collect at 212-750-5833.

CERTAIN VOTING PROCEDURES AT THE SPECIAL MEETING

The Cleveland-Cliffs board of directors has authorized, and Cleveland-Cliffs will institute, presumptions and procedures to govern the conduct of the meeting as well as to implement the Ohio legislative mandate to exclude the voting power of Interested Shares from the determination of the Second Majority Approval. The material presumptions and procedures are described below and are qualified by reference to Exhibit D hereto which sets forth the presumptions and procedures authorized by the Cleveland-Cliffs board of directors with respect to the Special Meeting.

The required votes needed to pass the Control Share Acquisition proposal are both the First Majority Approval and the Second Majority Approval. All shareholders will be asked on the proxy card to certify whether or not they hold Interested Shares which are not eligible to be voted in the Second Majority Approval.

As described herein, each shareholder must certify to Cleveland-Cliffs on the **WHITE** proxy card the number of Cleveland-Cliffs shares being voted that are eligible to vote in respect of the Second Majority Approval. Cleveland-Cliffs shareholders who own both (i) shares that are not Interested Shares and (ii) shares that are Interested Shares because (x) they were acquired for an aggregate purchase price of more than \$250,000 during the Restricted Period or (y) the number of shares so acquired during the Restricted Period exceeds one-half of one percent of the outstanding number of Cleveland-Cliffs shares, will be able to certify the number of shares acquired prior to August 14, 2008 and therefore eligible to be voted in the Second Majority Approval. It is presumed that every share that is certified as eligible to vote in the Second Majority Approval is eligible to vote in the Second Majority Approval. It is presumed that every share that is not certified as eligible to vote in the Second Majority Approval, or every share as to which there is no certification of eligibility, is not eligible to vote in the Second Majority Approval.

Cleveland-Cliffs notes that Harbinger objects to certain presumptions and may challenge the presumptions as they relate to shareholder certification. Ohio law specifically vests Cleveland-Cliffs board of directors with the authority to develop presumptions and the form of proxy to be used at the Special Meeting, and similar presumptions have been announced by other Ohio companies. Accordingly, Cleveland-Cliffs believes that the presumptions it has announced are appropriate and in compliance with Ohio law.

UNDER THE ADOPTED PROCEDURES FOR THE SPECIAL MEETING, ALL SHARES THAT ARE VOTED WITHOUT SUCH A CERTIFICATION, OR THAT ARE OWNED BY A SHAREHOLDER THAT HOLDS BOTH INTERESTED SHARES AND NON-INTERESTED SHARES BUT FAILS TO INDICATE HOW MANY SHARES

ARE NOT INTERESTED SHARES, SHALL BE PRESUMED TO BE INELIGIBLE TO VOTE IN RESPECT OF THE SECOND MAJORITY APPROVAL.

Banks, brokerage houses, other institutions, nominees, and fiduciaries holding shares beneficially owned by other parties will be requested to include this certification on all materials distributed to such beneficial owners seeking instructions from the beneficial owners as to how to vote such Cleveland-Cliffs shares.

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If you are a bank, broker or other nominee who holds Cleveland-Cliffs shares for a beneficial owner of the Cleveland-Cliffs shares, you should look through to the person who has the power to exercise or direct the exercise of the vote with respect to Cleveland-Cliffs shares at the Special Meeting in determining whether any such shares acquired during the Restricted Period are Interested Shares.

The Cleveland-Cliffs board has appointed IVS Associates, Inc. as the inspector of election (the Inspector of Election). The board may, if it deems it appropriate, appoint a presiding inspector to oversee the Inspector of Election. The Inspector of Election will among other things, determine whether a quorum is present, tabulate votes at the Special Meeting and resolve disputes, including disputes as to whether shares are Interested Shares. Cleveland-Cliffs will submit, and Harbinger may also submit, to the Inspector of Election information that may assist in identifying which Cleveland-Cliffs shares are Interested Shares for purposes of challenging any certification of eligibility or lack thereof made on a proxy card that Cleveland-Cliffs or Harbinger, on the basis of such information, may believe to be incorrect or invalid. Under procedures approved by Cleveland-Cliffs board of directors, such challenges are to be made on a timely basis prior to the certification of the vote at the Special Meeting. All such challenges will be resolved by the Inspector of Election. The Inspector of Election will be instructed to conduct its review and tabulation of proxies as expeditiously as possible.

All Cleveland-Cliffs shares as to which a signed certification of eligibility, as described above, has been provided on the proxy card relating to such shares will be presumed by the Inspector of Election to be eligible to be voted in determining whether the Control Share Acquisition has obtained the Second Majority Approval.

If the Inspector of Election cannot definitively determine whether a quorum is present, the business of the Special Meeting will go forward, even though the final determination as to whether the quorum is present may not be completed for a number of days. If the quorum requirement is not met, the Control Share Acquisition shall not be considered to have been approved. No other business may be conducted, or proposed to be conducted, at the Special Meeting.

In addition to the presumptions and procedures described above, the following customary presumptions, among others, will be applicable in connection with the Special Meeting: (i) proxies regular on their face are valid, (ii) undated but otherwise regular proxies are valid, (iii) ambiguities shall be resolved in favor of enfranchising shareholders and affirming the eligibility of their shares, (iv) signatures are valid, and that signatures on behalf of entities or made by mechanical device, are authorized, (v) in the case of shareholders who submit more than one proxy, the most recent one is valid, (vi) a legibly signed proxy is valid, notwithstanding discrepancies or incorrect information, (vii) a proxy is intended to vote all shares of the record owner, unless expressly stated to the contrary and (viii) nominees will comply with all applicable laws.

BACKGROUND

As part of the continuous evaluation of its business, Cleveland-Cliffs board of directors and management have regularly evaluated Cleveland-Cliffs business strategy and prospects for growth and considered opportunities to improve Cleveland-Cliffs operations and financial performance in order to create value for Cleveland-Cliffs shareholders. As part of this process Cleveland-Cliffs management has evaluated various opportunities to expand and diversify its business through acquisitions, and has discussed such opportunities with Cleveland-Cliffs board of directors. In early 2007, Cleveland-Cliffs began articulating its strategy of diversification to a broad group of investors. This communication included an evaluation of various minerals throughout the periodic table and a discussion on various geographies. During the first half of 2007, Cleveland-Cliffs acquired 30% of MMX Amapá Mineração Ltda., a Brazilian iron ore project, and a 45% economic interest in the Sonoma Coal Project, an Australian coal operation. Sonoma was Cleveland-Cliffs first acquisition of coal assets. On June 14, 2007, Cleveland-Cliffs announced the acquisition of metallurgical coal producer PinnOak Resources, LLC. In addition to the PinnOak

transaction, Cleveland-Cliffs has evaluated other coal mining opportunities from time to time, including the acquisition of Alpha Natural Resources, Inc. (Alpha).

Based on a Schedule 13G filing with the Securities and Exchange Commission (the SEC) on December 21, 2007, Harbinger and its affiliates first reported beneficial ownership of 4,081,193 Cleveland-Cliffs shares. Harbinger increased its ownership stake in Cleveland-Cliffs in January and March 2008, reporting beneficial ownership of 5,735,600 shares on a Form 4 filed on March 25, 2008. On May 27, 2008, Harbinger filed Amendment

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No. 2 to Schedule 13G originally filed December 21, 2007, indicating beneficial ownership of 13,879,472 Cleveland-Cliffs shares.

Prior to, and following, the execution of the merger agreement with Alpha on July 15, 2008, representatives of Cleveland-Cliffs had several conversations with representatives of Harbinger, as discussed below. For further information on the discussions between Cleveland-Cliffs and Alpha and other background prior to August 12, 2008 in relation to the merger agreement, see *The Merger Background of the Merger* in the joint proxy statement/prospectus on Form S-4 filed by Cleveland-Cliffs and Alpha with the SEC on August 12, 2008.

On June 26, 2008, Joseph A. Carrabba, Cleveland-Cliffs Chairman, President, and Chief Executive Officer, Laurie Brlas, Cleveland-Cliffs Executive Vice President and Chief Financial Officer, and Steve Baisden, Cleveland-Cliffs Director of Investor Relations, met with Lawrence W. Clark, Jr. of Harbinger as part of a customary road show with one of Cleveland-Cliffs sell-side analysts. Cleveland-Cliffs did not provide Harbinger with any non-public information. The parties discussed general industry dynamics and Cleveland-Cliffs strategy to diversify and further expand into coal. Cleveland-Cliffs noted that Appalachian coal was ripe for consolidation. Mr. Clark expressed strong support for Cleveland-Cliffs acquisition of PinnOak. Based on filings with the SEC, Harbinger increased its ownership stake in Cleveland-Cliffs shortly after the June 26, 2008 meeting.

During the afternoon of July 8, 2008, Mr. Clark called Mr. Carrabba and Ms. Brlas to consult generally about factors to consider when contemplating an acquisition of Appalachian coal assets or coal assets in Alabama. The parties discussed generally those factors that Cleveland-Cliffs typically focuses on in connection with such acquisitions. Mr. Clark thanked them for the information and concluded the call.

On July 9, 2008, in connection with its consideration of a proposed transaction with Cleveland-Cliffs, Alpha held a special meeting of its board of directors at which the directors, in consultation with management, and its financial and legal advisors, analyzed and discussed Cleveland-Cliffs most recent proposal and the alternatives available to Alpha. Representatives of Alpha's legal and financial advisors informed the board that, under Ohio law, the transaction would require the approval of two-thirds of Cleveland-Cliffs outstanding shares and that Harbinger would therefore play a very important role in determining whether shareholder approval would be obtained. As of July 9, 2008, Harbinger owned shared voting and dispositive power with respect to 16,616,472 shares (based upon information contained in a Schedule 13D filed by Harbinger with the SEC on July 17, 2008) which constituted 15.57%, of Cleveland-Cliffs outstanding common shares as of August 21, 2008. The board of directors instructed Alpha's management and advisors to continue negotiations with Cleveland-Cliffs on the terms of the proposed transaction as set forth in the draft merger agreement and to communicate to Cleveland-Cliffs that the board strongly believed that Cleveland-Cliffs should discuss the proposed transaction with Harbinger prior to the execution of a definitive merger agreement.

Representatives of Jones Day, legal counsel to Cleveland-Cliffs, and Cleary Gottlieb Steen & Hamilton, LLP, legal counsel to Alpha, had a brief discussion regarding the merger agreement on July 11, 2008. The representatives of Cleary Gottlieb indicated that, given the size of Harbinger's equity interest in Cleveland-Cliffs and the required Cleveland-Cliffs shareholder approval necessary to complete the proposed transaction, Alpha's board of directors believed very strongly that Cleveland-Cliffs should discuss the proposed transaction with Harbinger prior to the execution of a definitive merger agreement. On July 14, 2008, representatives from Cleary Gottlieb and Alpha reiterated the view that Alpha's board of directors believed very strongly that Cleveland-Cliffs should discuss the proposed transaction with Harbinger prior to the execution of a definitive merger agreement.

During the afternoon of July 14, 2008, Michael J. Quillen, Alpha's Chairman and Chief Executive Officer, called Mr. Carrabba to reiterate the Alpha's board of directors desire to have Cleveland-Cliffs obtain from Harbinger some indication that Harbinger was not opposed to the transaction.

Later on July 14, 2008, after consultation with certain members of the Cleveland-Cliffs board of directors, Cleveland-Cliffs financial advisor and Ms. Brlas, Mr. Carrabba called Mr. Quillen to inform him of Cleveland-Cliffs revised offer. Mr. Quillen advised Mr. Carrabba that he would recommend this revised proposal to the board of Alpha, but first Alpha needed assurance that Cleveland-Cliffs would reach out to Harbinger before Alpha's board meeting. Executives of and advisors to Cleveland-Cliffs indicated to executives of and advisors to Alpha that, while Cleveland-Cliffs believed that Harbinger would approve of the proposed transaction based on

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recent discussions Harbinger had had with Cleveland-Cliffs about Cleveland-Cliffs' strategy to expand further into coal, Cleveland-Cliffs would accommodate Alpha's request that Cleveland-Cliffs speak directly to Harbinger about this transaction to obtain its reaction.

Immediately following the conclusion of the July 15, 2008 Cleveland-Cliffs board meeting, at which the board adopted resolutions approving the merger agreement with Alpha, Mr. Carrabba called Mr. Clark. Prior to engaging in any discussions with Mr. Clark, Mr. Carrabba obtained an agreement from him to keep the information to be discussed confidential and not to engage in any trading so as to ensure compliance with Cleveland-Cliffs' obligations under the federal securities laws. Having obtained the senior representative's agreement with respect to confidentiality, Mr. Carrabba informed him that Cleveland-Cliffs was about to execute an agreement to acquire Alpha in a cash and stock transaction and described the terms of the transaction. During this conversation, Mr. Clark indicated that he would be looking for more information about the transaction but gave no indication that Harbinger would oppose the transaction. After this conversation, Mr. Carrabba informed Mr. Quillen that Cleveland-Cliffs had presented the proposed transaction with Alpha to a senior representative of Harbinger in a confidential telephone call after the market closed on July 15, 2008. Mr. Carrabba stated that he believed Harbinger would support the transaction.

On July 16, 2008, prior to the commencement of trading on the NYSE, Cleveland-Cliffs and Alpha issued a joint press release announcing the signing of the merger agreement.

On July 17, 2008, as part of a series of meetings with various Cleveland-Cliffs and Alpha shareholders to discuss the proposed merger, Mr. Carrabba, Ms. Brlas and Mr. Quillen met with Mr. Clark of Harbinger. Immediately following the meeting, a Schedule 13D filed by Harbinger with the SEC became publicly available, asserting that the announced merger between Cleveland-Cliffs and Alpha was not in the best interests of shareholders. According to the Schedule 13D, Harbinger made the filing in order to reserve the right to be in contact with members of Cleveland-Cliffs' management and members of the Cleveland-Cliffs board of directors.

On August 12, 2008, Mr. Carrabba received a call from Mr. Clark of Harbinger. Mr. Clark informed Mr. Carrabba that Cleveland-Cliffs should expect to receive a letter from Harbinger indicating Harbinger's intention to effectuate certain block trades of Cleveland-Cliffs shares in the near future. Cleveland-Cliffs and Alpha filed the joint proxy statement/prospectus on Form S-4 with the SEC on August 12, 2008.

On August 14, 2008 Harbinger delivered to Cleveland-Cliffs an acquiring person statement pursuant to the Ohio Control Share Acquisition Statute. Harbinger indicated in the Acquiring Person Statement that it intended to acquire a number of Cleveland-Cliffs shares that, when added to Harbinger's current holdings in Cleveland-Cliffs common shares, would increase Harbinger's voting power in the election of Cleveland-Cliffs' directors to greater than one-fifth, but less than one-third, of the combined voting power of Cleveland-Cliffs common shares. Such an acquisition, a control share acquisition as defined under Chapter 1701 of the Ohio Revised Code, requires approval of the shareholders.

On August 15, 2008, the Cleveland-Cliffs board of directors held a special meeting at which it discussed with senior management and Cleveland-Cliffs' independent legal and financial advisors, among other matters, Harbinger's Acquiring Person Statement.

On August 18, 2008, Mr. Carrabba called Mr. Clark to request a meeting to discuss Harbinger's Acquiring Person Statement and Harbinger's Schedule 13D.

On August 20, 2008, Mr. Carrabba and Ms. Brlas met with Philip Falcone, Senior Managing Director of Harbinger, and Mr. Clark. Cleveland-Cliffs did not provide Harbinger with any non-public information. The parties discussed industry trends within iron ore and coal and also discussed the transaction with Alpha. Neither Mr. Falcone nor

Mr. Clark presented any demands or proposals to Cleveland-Cliffs on behalf of Harbinger and Cleveland-Cliffs did not make any proposals to Harbinger.

On August 21, 2008, the Cleveland-Cliffs board of directors held a special meeting at which it discussed with senior management and Cleveland-Cliffs independent legal and financial advisors, among other matters, Harbinger's Acquiring Person Statement. After an extensive discussion with Cleveland-Cliffs management

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and its independent legal and financial advisors, the Cleveland-Cliffs board of directors unanimously determined that the Control Share Acquisition was not in the best interests of Cleveland-Cliffs shareholders.

Based on Harbinger's filings with the SEC, Harbinger's holdings of Cleveland-Cliffs common shares exceeds 10% of the voting power in the election of directors of Cleveland-Cliffs. Under Chapter 1704 of the Ohio Revised Code, Harbinger is an interested shareholder and, based on that status as an interested shareholder, Harbinger is prohibited from engaging in certain transactions (a Chapter 1704 transaction) with Cleveland-Cliffs during the three year period following the date of acquiring more than 10% of the voting power in the election of directors of Cleveland-Cliffs. Subject to certain exceptions, Chapter 1704 transactions include mergers, dispositions and sales of assets. See Exhibit B of this proxy statement for the full text of Chapter 1704 of the Ohio Revised Code.

RECOMMENDATION BY CLEVELAND-CLIFFS BOARD OF DIRECTORS

After careful consideration, including a thorough review of the Control Share Acquisition with Cleveland-Cliffs independent financial and legal advisors, and consultation with Cleveland-Cliffs management, the Cleveland-Cliffs board of directors have unanimously determined that the Control Share Acquisition is not in the best interests of Cleveland-Cliffs shareholders. Accordingly, the Cleveland-Cliffs board of directors unanimously recommends that Cleveland-Cliffs shareholders vote **AGAINST** the authorization of the Control Share Acquisition.

The Cleveland-Cliffs board of directors considered a variety of factors in reaching its recommendation that Cleveland-Cliffs shareholders vote **AGAINST** the authorization of the Control Share Acquisition, including, but not limited to, the following:

Disproportional Influence over Corporate Policy and the Cleveland-Cliffs Strategic Plan. If the authorization of the Control Share Acquisition is obtained, Harbinger would have the right, but not the obligation, to acquire in the aggregate more than one-fifth but less than one-third of the outstanding Cleveland-Cliffs voting securities. The Cleveland-Cliffs board of directors believes that this level of ownership by Harbinger would provide the firm with disproportional influence and control over corporate policy and Cleveland-Cliffs strategic plan. Cleveland-Cliffs board of directors has a responsibility to set corporate policy and the Cleveland-Cliffs strategic plan in a manner that is to the benefit of all shareholders. A significant, yet minority, shareholder, such as Harbinger, influencing corporate policy and the Cleveland-Cliffs strategic plan to meet its own objectives may only benefit that individual shareholder.

Effective Control/Blocking Position with no Change in Control Premium. Under Ohio law and the Amended Articles of Incorporation of Cleveland-Cliffs, a sale of Cleveland-Cliffs or a business combination involving the issuance of Cleveland-Cliffs shares entitling the holders to exercise one-sixth or more of the voting power of Cleveland-Cliffs in the election of directors, requires the approval of two-thirds of Cleveland-Cliffs outstanding shares. If the authorization of the Control Share Acquisition is obtained, Harbinger would have the ability under the Ohio Control Share Acquisition Statute to essentially gain a level of control without paying all shareholders a customary change-in-control premium. Should Harbinger acquire more than one-fifth but less than one-third of Cleveland-Cliffs outstanding voting securities, Harbinger could obtain effective control over any prospective change of control, acquisition, or other strategic transactions involving Cleveland-Cliffs.

Potential Consequences to Proposed Transaction with Alpha. On July 15, 2008, Cleveland-Cliffs entered into an agreement and plan of merger to acquire Alpha. Cleveland-Cliffs board of directors has approved the merger agreement and determined that the transactions contemplated by the merger agreement are advisable and in the best interests of Cleveland-Cliffs and its shareholders. On July 17, 2008, Harbinger filed a Schedule 13D with the SEC in which it stated its belief that the merger is not in the best interests of

Cleveland-Cliffs shareholders. Consummation of the merger requires, among other things, the approval of two-thirds of Cleveland-Cliffs' outstanding shares. Accordingly, authorization of the Control Share Acquisition would permit Harbinger to increase its ownership interest in Cleveland-Cliffs under the Ohio Control Share Acquisition Statute, thereby increasing Harbinger's ability to influence the outcome of the vote on the merger with Alpha.

Possible Impact on Future Strategic Transactions. Cleveland-Cliffs board of directors considered that shareholders could be prevented from participating in any future strategic transactions involving Cleveland-Cliffs,

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including a sale of Cleveland-Cliffs or a significant part of its assets or capital stock, as well as acquisitions or mergers requiring shareholder approval, if Harbinger opposes such a transaction. Although no such transaction, other than the proposed merger with Alpha, is pending or contemplated at this time, Cleveland-Cliffs cannot predict if or when any such transaction may result in the future.

Chapter 1704 Transactions. Cleveland-Cliffs board of directors considered that, under Chapter 1704 of the Ohio Revised Code, a shareholder who controls more than 10% of the voting power entitled to vote in the election of directors for an issuing public corporation, defined as an interested shareholder, is prohibited from engaging in certain transactions, such as mergers, dispositions and sales of assets, i.e. a Chapter 1704 transaction, with the issuing public corporation for three years following the date the 10% threshold was crossed. Based on a Schedule 13D filed with the SEC on July 17, 2008, as amended on August 14, 2008, and based on the Acquiring Person Statement, Harbinger owns 15.57% of the outstanding shares of Cleveland-Cliffs. Under Chapter 1704 of the Ohio Revised Code, the three-year prohibition is irrevocable unless the interested shareholder obtained approval from the board of directors before becoming an interested shareholder. Harbinger did not seek or obtain any such approval from the Cleveland-Cliffs board of directors before becoming an interested shareholder. Because Harbinger is an interested shareholder, it is prohibited from engaging in any Chapter 1704 transaction. Accordingly, a Control Share Acquisition would not facilitate any potential value-creating transaction for Cleveland-Cliffs shareholders between Cleveland-Cliffs and Harbinger because Harbinger is prohibited from engaging in any Chapter 1704 transaction for three years. Moreover, Harbinger has given no indication that it intends to propose such a transaction with Cleveland-Cliffs.

The foregoing discussion of the information and factors considered by the Cleveland-Cliffs board of directors is not intended to be exhaustive but addresses all of the material information and factors considered by the Cleveland-Cliffs board of directors in its consideration of the Control Share Acquisition. In view of the variety of factors and the amount of information considered, the Cleveland-Cliffs board of directors did not find it practicable to provide specific assessments of, quantify or otherwise assign any relative weights to, the specific factors considered in determining to recommend that shareholders vote **AGAINST** the authorization of the Control Share Acquisition. Such determination was made after consideration of all the factors taken as a whole. In addition, individual members of the Cleveland-Cliffs board of directors may have given differing weights to different factors.

IN LIGHT OF THE CONCLUSIONS OF THE CLEVELAND-CLIFFS BOARD OF DIRECTORS THAT THE CONTROL SHARE ACQUISITION IS NOT IN THE BEST INTERESTS OF THE COMPANY AND ITS SHAREHOLDERS, THE CLEVELAND-CLIFFS BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE AGAINST AUTHORIZATION OF THE CONTROL SHARE ACQUISITION. THE CLEVELAND-CLIFFS BOARD OF DIRECTORS RECOMMENDS THAT YOU RETURN THE ENCLOSED WHITE PROXY WITH A VOTE AGAINST AUTHORIZATION OF THE CONTROL SHARE ACQUISITION.

PLEASE MARK, SIGN AND DATE THE ENCLOSED **WHITE** PROXY CARD AND RETURN IT IN THE ENCLOSED POSTAGE-PAID ENVELOPE. EXECUTION AND RETURN OF THE **WHITE** PROXY CARD WILL NOT PRECLUDE YOU FROM ATTENDING THE SPECIAL MEETING OR FROM VOTING IN PERSON.

SUPPORT YOUR BOARD OF DIRECTORS AND ENSURE THAT YOUR BEST INTERESTS, NOT HARBINGER'S, ARE SERVED. WE URGE YOU TO VOTE **AGAINST** AUTHORIZATION OF THE CONTROL SHARE ACQUISITION.

The Cleveland-Cliffs board of Directors urges you not to sign or return any proxy card sent to you by Harbinger. Even if you have previously signed a proxy card sent by Harbinger, you have every right to change

your vote by signing, dating and returning the enclosed WHITE proxy card in the postage-paid envelope provided. Only the latest-dated proxy card you vote will be counted. We urge you to disregard any proxy card sent to you by Harbinger or its affiliates.

OHIO CONTROL SHARE ACQUISITION STATUTE

The Ohio Control Share Acquisition Statute provides that, unless the articles of incorporation or the regulations of an issuing public corporation provide otherwise, any control share acquisition of such corporation shall be made only

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with the prior authorization of the shareholders. An issuing public corporation is defined in the Ohio Revised Code as a corporation, such as Cleveland-Cliffs, organized for profit under the laws of Ohio, with 50 or more shareholders, that has its principal place of business, principal executive offices or substantial assets in Ohio, and as to which there is no close corporation agreement in existence. See Exhibit C for other definitions under the Control Acquisition Statute.

A control share acquisition is defined in the Ohio Revised Code as the acquisition, directly or indirectly, by any person of shares of an issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which such person may exercise or direct the exercise of voting power, would entitle such acquiring person, immediately after such acquisition, directly or indirectly, alone or with others, to control any of the following ranges of voting power of such issuing public corporation in the election of directors:

- one-fifth or more but less than one-third of such voting power;
- one-third or more but less than a majority of such voting power; or
- a majority or more of such voting power.

Any person who proposes to make a control share acquisition must deliver an acquiring person statement to the issuing public corporation, which statement must include:

- the identity of the acquiring person;
- a statement that the acquiring person statement is being given pursuant to section 1701.831 of the Ohio Revised Code;
- the number of shares of the issuing public corporation owned, directly or indirectly, by such acquiring person;
- the range of voting power in the election of directors under which the proposed acquisition would, if consummated, fall (i.e., in excess of 20 percent, 33 1/3 percent or 50 percent);
- a description of the terms of the proposed acquisition; and
- representations of the acquiring person that the acquisition will not be contrary to law, and that such acquiring person has the financial capacity to make the proposed acquisition (including the facts upon which such representations are based).

Harbinger delivered an acquiring person statement to Cleveland-Cliffs on August 14, 2008.

Within 10 days of receipt of a qualifying acquiring person statement, the directors of the issuing public corporation must call a special shareholders meeting to vote on the proposed acquisition. The special shareholders meeting must be held within 50 days of receipt of the acquiring person statement, unless the acquiring person otherwise agrees. The issuing public corporation is required to send a notice of the special meeting as promptly as reasonably practicable to all shareholders of record as of the Record Date set for such meeting, together with a copy of the acquiring person statement and a statement of the issuing public corporation, authorized by its directors, of the issuing public corporation's position or recommendation, or that it is taking no position, with respect to the proposed control share acquisition.

The acquiring person may make the proposed control share acquisition only if:

at a meeting at which a quorum is present, the control share acquisition is authorized by holders of a majority of the voting power entitled to vote in the election of directors represented in person or by proxy at such meeting and the control share acquisition is authorized by a majority of the portion of the voting power represented at the meeting in person or by proxy, excluding Interested Shares; and

such acquisition is consummated, in accordance with the terms so authorized, within 360 days following such authorization.

Interested Shares are defined in the Ohio Revised Code as shares as to which any of the following persons may exercise or direct the exercise of voting power in the election of directors:

an acquiring person;

an officer of the issuing public corporation elected or appointed by its directors;

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any employee of the issuing public corporation who is also a director of such corporation;

any person who acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposed control share acquisition of the issuing public corporation or any proposed merger, consolidation or other transaction that would result in a change in control of the corporation or all or substantially all of its assets and ending on the Record Date, if either of the following apply:

the aggregate consideration paid or otherwise given by the person who acquired the shares and any other persons acting in concert with such person exceeds \$250,000; or

the number of shares acquired by the person who acquired the shares and any other persons acting in concert with such person exceeds one half of one percent of the outstanding shares of the issuing public corporation entitled to vote in the election of directors; or

any person that transfers such shares for valuable consideration after the Record Date as to shares so transferred if accompanied by an instrument (such as a proxy or voting agreement) that gives the transferee the power to vote those shares.

Dissenters' rights are not available to shareholders of an issuing public corporation in connection with the authorization of a Control Share Acquisition.

The foregoing summary does not purport to be a complete statement of the provisions of the Ohio Control Share Acquisition Statute. The foregoing summary is qualified in its entirety by reference to the Ohio Control Share Acquisition Statute (a copy of which is attached as Exhibit C to this Proxy Statement, along with Section 1701.01 of the Ohio Revised Code, which defines certain terms used therein) and the Ohio Revised Code.

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Chairman of the Board of Directors

Thomas D. Champion

*

Director

William M. Barnum, Jr.

*

Director

David DeMattei

*

Director

Matthew L. Hyde

*

Director

James M. Weber

*

Director

Gerald F. Ryles

* */s/ Richard M. Brooks*
Richard M. Brooks

Attorney-in-fact

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INDEX TO EXHIBITS

Exhibit Number	Description
4.1	Form of Common Stock Certificate of Zumiez Inc. [Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (File No. 333-122865)]
5.1*	Opinion of Kirkpatrick & Lockhart Preston Gates Ellis LLP
23.1	Consent of Moss Adams, LLP, Independent Registered Public Accounting Firm
23.2	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
23.3*	Consent of Kirkpatrick & Lockhart Preston Gates Ellis LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included as part of the signature page to this Registration Statement)

* Previously filed.

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