STIKEMAN ELLIOTT

FOREIGN INVESTMENT IN THE CANADIAN NATURAL RESOURCE SECTOR

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Overview

Part 1 - Introduction

Part 2 - Overview of the Acquisition Process

Part 3 – Regulatory Issues

Part 4 – Public Transaction Structures

Part 5 – Private Transaction Structures

Part 1 - Introduction

- Relevance of Canada to Resource Industry Transactions
- Update on current trends in Resource Industry Transactions

Introduction – Relevance of Canada

Mining Headquarters

- Home base for the world’s mining sector
- 57% of the world's public mining companies are listed on TSX or TSX-V (1,628 in October 2013)
- 137 new TSX/TSX-V mining listings in 2012 and 58 more to October 2013

Introduction – Relevance of Canada

Mining

- C$10.3 billion in equity capital raised by mining companies on TSX/TSX-V in 2012 (over $3 billion more raised to October 2013)

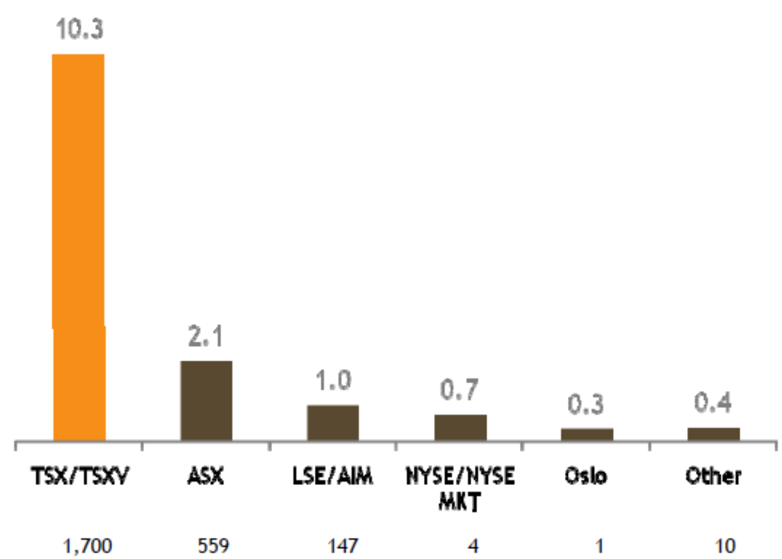
70%

of all global mining equity financings are done on TSX and TSXV

70%

of the equity capital raised globally for mining

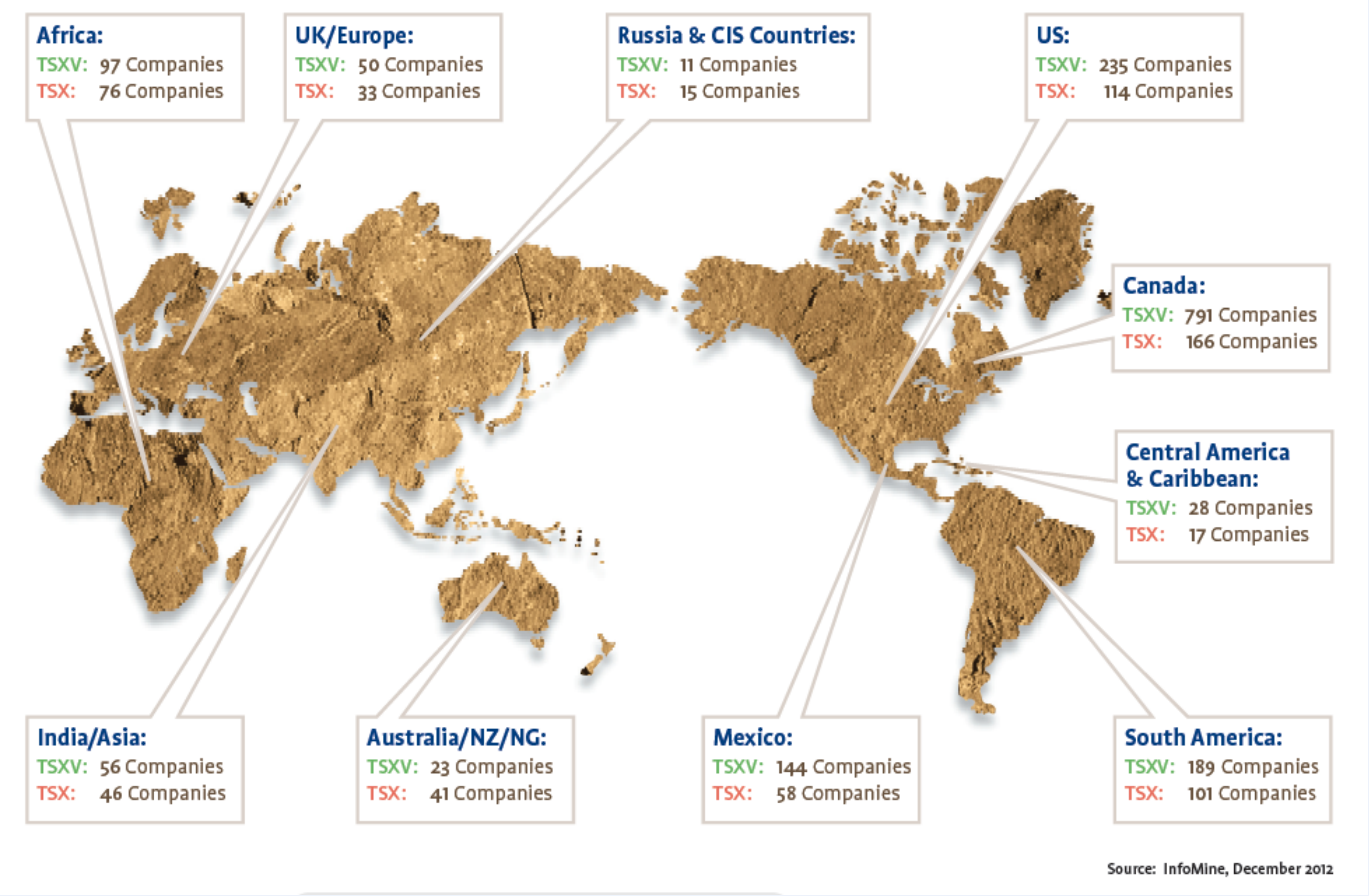
Global Mining Equity Financing Trend 2012 (C$ Billions)



Source: Gamah International, 2012 YTD December, compiled by Toronto Stock Exchange

Introduction – Relevance of Canada: Mining

Most TSX/TSXV companies hold properties outside of Canada



Introduction – Current Market Trends

Mining Sector M&A

- M&A activity in Canada has declined in comparison to previous years
- Market uncertainty and volatile commodity prices have made financing difficult
- Pockets of high risk capital available but valuation is an issue
- Traditional debt financing difficult to secure

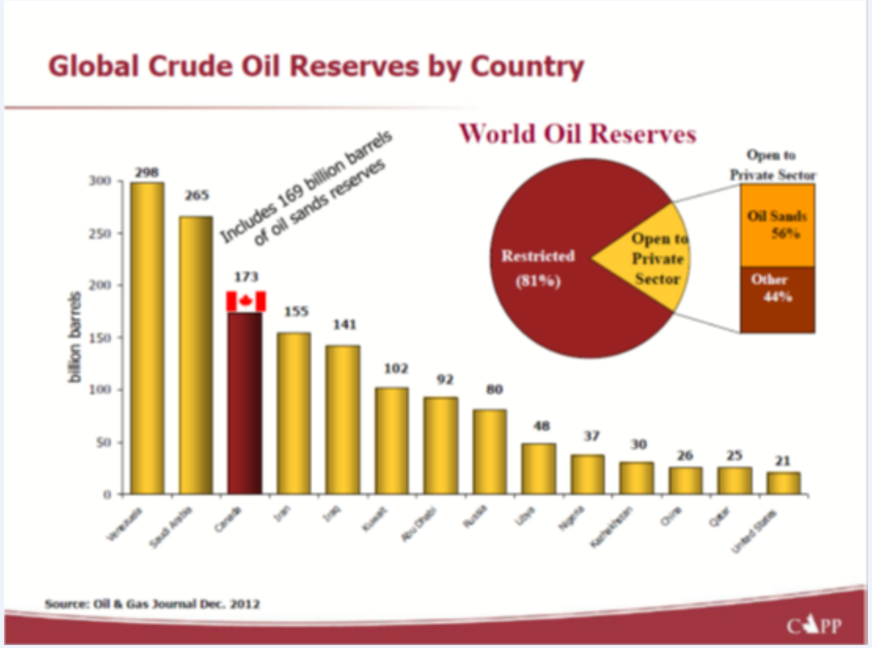
Introduction – Current Market Trends

Mining Sector M&A (continued)

- M&A activity is being driven by lack of financing opportunities - Companies with cash taking advantage of low valuations and difficult financial markets
- e.g. Goldcorp Inc. hostile takeover bid for Osisko Mining Corp.
- Expect increased M&A activity in 2014
- Other strategic transactions also becoming more common
  - Strategic investments
  - Streaming agreements

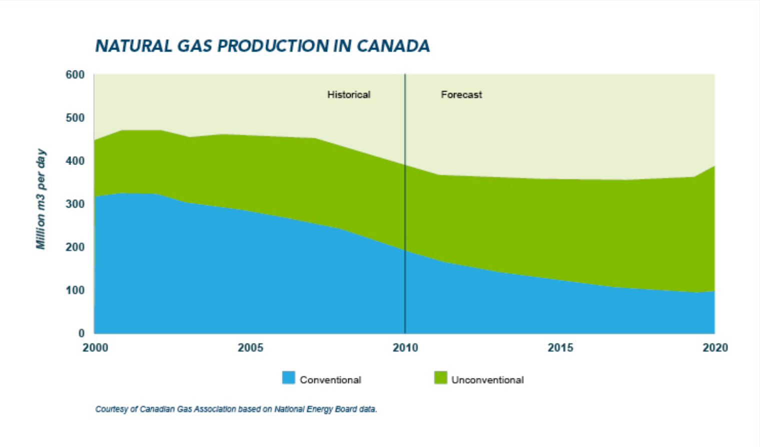
Crude Oil & Natural Gas

- Overall
  - Canada is world's 8th largest exporter/7th largest importer
- Canadian Crude Oil
  - 3rd largest proved reserves globally
  - Largest source of investible crude oil globally



Crude Oil & Natural Gas

- Natural Gas
  - Estimated 700 to 1,300 tcf (sufficient for >100 yrs at current rates)
  - Produced 5.3 tcf in 2011 (internally consumed ~2.8 tcf; remainder exported to U.S.)
  - 3rd largest natural gas producer globally



Crude Oil Market Dynamics

- Oil production increasing and projected to accelerate due to growth in heavy crude growth (oil sands)
- Western Canadian Crude remaining primarily in North America
  - domestic and US, limited export overseas
- Challenges to Canadian crude
  - Pipeline capacity
  - Limited refining capacity
  - U.S. production increases

Crude Oil Market Dynamics (Cont'd)

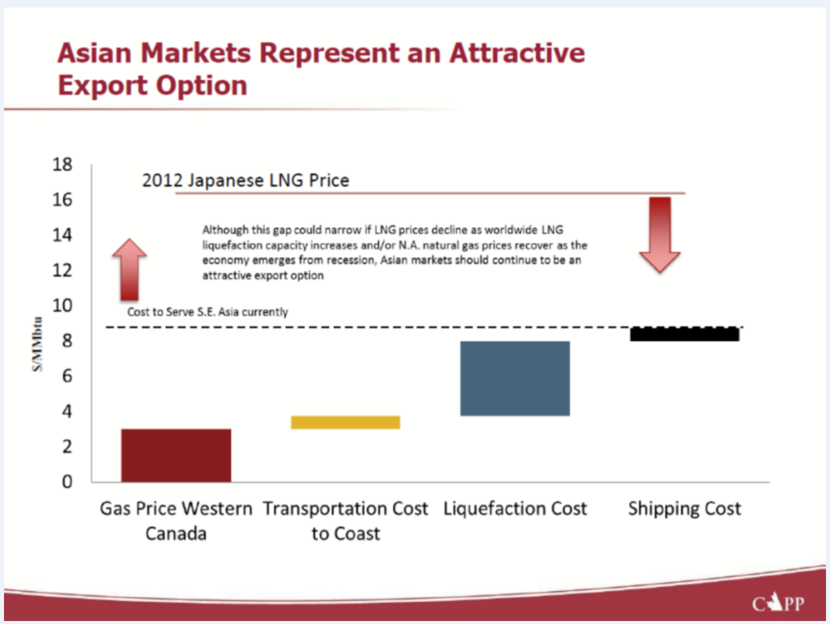
- Short Term Challenges; Long Term Solutions
  - Rail transport (capacity limited, higher cost, risk to public of derailments)
  - Greater pipeline capacity/de-bottlenecking
  - Increased exports

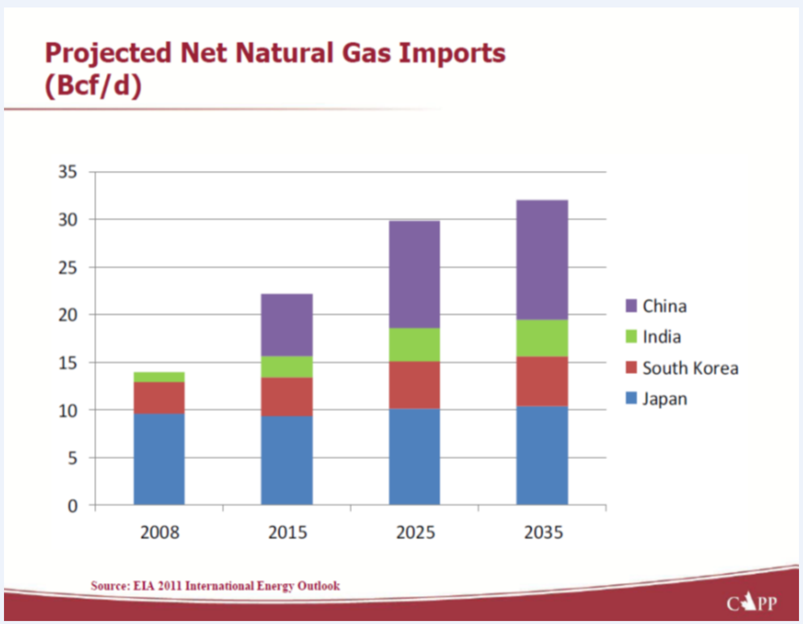
Natural Gas Market Dynamics

- Major shale gas basin discoveries
  - US basins closer to demand
- Technological innovations
  - Hydraulic fracturing/horizontal drilling
- Reduction in exports to US
- No LNG export capability
- Result: Significant Canadian over-supply

Natural Gas Market Dynamics

- International Exports to the Rescue
  - Anticipated Demand Growth
  - Price Differentials represent Opportunity





Natural Gas Market Dynamics

Canadian LNG Export Projects in Development

- **Kitimat LNG (Chevron, Apache)**
  - 1.4 Bcf/d
  - Permits received; awaiting investment decision
- **BC LNG Export Co-operative**
  - 0.125 Bcf/d
  - Permits received
- **LNG Canada (Shell, KOGAS, Mitsubishi, PetroChina)**
  - 1.8 Bcf/d
  - Feasibility stage; applied for some permits
- **Pacific Northwest LNG (Progress/Petronas)**
  - 2.0 Bcf/d (Merger approval granted)
  - Completed feasibility, progressing to pre-FEED
- **Nexen/Inpex**
  - Conducting feasibility
- **BG Group/Spectra Energy Corp.**
  - 4.2 Bcf/d
  - Advancing feasibility and engagement
- **AltaGas/Idemitsu Kosan**
  - 0.27 Bcf/d
  - Conducting feasibility

Total potential new demand ~ 9.0 Bcf/d

Interest expressed by Woodside Petroleum, Imperial Oil /ExxonMobil and Korea SK E&S. Details not available.

23 CAPP

Natural Gas Market Dynamics

- Competition for Asian import demand extends globally

Summary – Opportunity from Adversity

- Crude Oil
  - Abundant crude oil supply
  - Short term capacity constraints
  - Price differentials expected to diminish as infrastructure developed (but uncertainty about regulatory approval of new pipelines)

Summary – Opportunity from Adversity (continued)

- Natural Gas
  - Abundant natural gas supply; depressed prices as opportunity
  - Reorientation to international exports required
  - Numerous LNG projects underway/planned and progressing
    - Announcement in 2013 by Petronas confirming intention to invest up to $36 billion over 30 years ($5b for Progress; $5b for TransCanada LNG pipeline; $11b for LNG facility; remainder for wells and gas process)

Part 2 - Overview of the Acquisition Process – Transaction Structure

Public/Private

- Public stock exchange(listed company)
  - Generally done by way of plan of arrangement or takeover bid if goal is to acquire 100%
  - Investment through subscription or purchase if goal is to acquire less than 100%

Overview of the Acquisition Process – Transaction Structure

Public/Private (continued)

- Private (non-listed company, including a subsidiary of a listed company)
  - Share or asset sale to acquire all or part of a business or its assets
  - Option
  - Earn-in
  - Subscription for new shares to acquire an interest in a company
  - Off-take
  - Streaming

Part 3 - Regulatory Issues

- Foreign Investment Law (*Investment Canada Act*)
- Competition/Antitrust Approval (*Competition Act*)

Regulatory Issues - Foreign Investment Law

Investment Canada Act

- Background
- Economic Review
- State-Owned Enterprises

Regulatory Issues - Foreign Investment Law

Investment Canada Act (ICA)

Purpose: "to encourage investment in Canada by Canadians and non-Canadians that contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure such benefit to Canada"

Background - Application

- Applies to any acquisition of control of a Canadian business, whether already foreign-owned or not, by a non-Canadian
  - *Notification* – simple post-closing filing (within 30 days of closing)
  - *Review* (45 – 75 days (or longer) review period)
- Investor must demonstrate “**likely to be of net benefit to Canada**” to obtain Ministerial approval
- Undertakings (binding commitments) about future conduct of business are usually required

Regulatory Issues - Foreign Investment Law

Background - Thresholds

- Review threshold:
  - $344 million book value of assets of Target in the case of direct acquisition by WTO investors (indexed for inflation and anticipated to move to $354 in 2014)
  - $5 million for direct acquisitions in “sensitive sector” (i.e. cultural businesses); minimal sensitive sector activity “taints” whole transaction

Regulatory Issues - Foreign Investment Law

Background

- National security review
  - No definition
  - No review threshold
- History of limited rejections
  - MacDonald Dettwiler
  - BHP hostile acquisition of Potash ($38 billion)

Economic Review - Process

- 45 day review period, can be extended by the Minister by an additional 30 days
- Further (unlimited) extensions may be negotiated by the Minister and the investor

SOEs - History

- 2009 Initial SOE Guidelines released
  - "governance and commercial orientation of state-owned enterprises"
  - adherence to Canadian standards of governance
  - commercial orientation in prospective operation
- 2010 PetroChina acquisition of oilsands assets ($3 billion) (with options to purchase another $2 billion)
  - Government said it would issue more guidance

Regulatory Issues - Foreign Investment Law

SOEs - History

- 2011 - Sinopec acquires Daylight ($3 billion) and CNOOC acquires OPTI ($2 billion)
- 2012 - PETRONAS announces proposed acquisition of Progress ($6 billion) and CNOOC announces proposed acquisition of Nexen ($20 billion)
  - Canadian press reacts to “selling out of oilsands/Canada”
  - Government announces it will issue revised guidelines
  - PETRONAS application for ICA approval denied on 75th day but negotiations continued

SOEs - History

- December 8, 2012: Minister of Industry announces:
  - approval of CNOOC/Nexen and PETRONAS/Progress
  - revised SOE guidelines
  - proposed increase in thresholds
  - national security review timetable

SOEs - History

CNOOC/Nexen

- Minister of Industry announces:
  - satisfied that CNOOC/Nexen "likely to be of net benefit to Canada" and meets former SOE guidelines
  - CNOOC has made significant commitments to Canada in the areas of: governance, including commitments on transparency and disclosure, commercial orientation, employment, capital investments and listing on TSX

Regulatory Issues - Foreign Investment Law

New SOE Considerations

Revised SOE Guidelines:

- Acquisitions by SOEs of control of oilsands business will be found to be of net benefit on an exceptional basis only
- Definition of SOE to be expanded to include entities that government exerts influence over
- The Minister will carefully monitor SOE transactions throughout the Canadian economy in general and in particular, will closely examine:
  - the degree of control or influence a state-owned enterprise would likely exert on the Canadian business that is being acquired;
  - the degree of control or influence a state-owned enterprise would likely exert on the industry in which the Canadian business operates; and

Regulatory Issues - Foreign Investment Law

New SOE Considerations

- the extent to which a foreign state is likely to exercise control or influence over the state-owned enterprise acquiring the Canadian business

- Non-controlling minority interests in Canadian businesses proposed by foreign SOEs, including joint ventures, will continue to be welcome in the development of Canada's economy
- Free enterprise principles and industrial efficiency will be considered in reviews where the investor is owned, controlled or influenced – directly or indirectly – by a foreign state.

New Thresholds, etc.

- Minister announced
  - Thresholds for direct acquisitions by WTO investors may become $600 million of enterprise value (increasing to $1 billion over 4 years). New threshold would be based on “enterprise value” not “book value”
  - Thresholds will not apply to acquisitions by SOEs; current thresholds will continue for SOEs

New Thresholds, etc.

National Security

- The Minister will be afforded the flexibility to extend the timelines for national security reviews to give the Government the time it needs to conduct careful and thorough reviews of complex proposed investments that could be injurious to national security.
- New regulations have not been put forward by the Government.

Impact of National Security Criteria

- George Forrest acquisition of Forsys (uranium assets in Africa)
- Proposed Acquisition by Vimpelion (Russia) of control of wireless newcomer Wind Canada
  - Application withdrawn
- Rejection of bid by Accelero Capital Holdings (Egypt)

Regulatory Issues - Antitrust Approval

Competition Act

- Notifiable Transactions
- Merger Review
- Advanced Ruling Certificates
- Substantive Review

Regulatory Issues - Antitrust Approval

Notifiable Transactions

- Pre-merger notification regime requires notification to the Canadian Commissioner of Competition of transactions which exceed specified monetary and, where applicable, shareholding thresholds
- Applies to acquisition of assets and shares, amalgamations, combinations and or other acquisition of an interest in whole or part of a business

Regulatory Issues - Antitrust Approval

Notifiable Transactions (continued)

- If transaction is notifiable, must file pre-merger notification
- Cannot complete until expiry of the review period ("waiting period") (or earlier termination granted)
- Initial waiting period 30 days
- Waiting period reset if Commissioner issues request for further information

Notifiable Transactions - Threshold

- 3 aspects:
  - Size of parties
  - Size of transaction
  - Shareholding
- Thresholds determined by book values in most recently audited financial statements

Notifiable Transactions - Threshold (continued)

- Size of parties:

  Parties (and their affiliates) have assets in Canada in excess of $400 million or gross revenues from sales in, from or into Canada in excess of $400 million

Regulatory Issues - Antitrust Approval

Notifiable Transactions - Threshold (continued)

- Size of transaction:
  - Share acquisition: acquisition of voting shares which, together with all other corporations controlled by it, has assets in Canada, or annual gross revenues from sales in or from Canada generated from those assets, in excess of $80 million
  - Asset acquisition: acquisition of assets in Canada, with a book value in excess of $80 million or which generate gross revenues from sales in or from Canada of more than $80 million
  - $80 million threshold expected to move to $82 million in 2014
  - Other transactions: e.g., amalgamations, unincorporated business combinations

Competition - Notification Threshold (continued)

- Shareholding:
  - Voting shares – more than 20% of the voting shares of a public company or 35% of the voting shares of a private company
  - Combination - right to more than 35% of the profits or the assets on dissolution
  - If initial filing relates to a holding of less than 50%, subsequent acquisitions to over 50% require a further filing

Regulatory Issues - Antitrust Approval

Advanced Ruling Certificates

- Whether or not a transaction is notifiable, can seek an advanced ruling certificate ("ARC") confirming that, on the basis of facts presented, the Commissioner will not challenge the transaction

- Advantages of an ARC:

  - Exempts the parties from the statutory requirement to notify the transaction or terminates the statutory waiting period

  - Prevents the Commissioner from challenging the transaction after completion

Advanced Ruling Certificates (continued)

- ARC only issued in clear circumstances
- If no ARC is issued, Commissioner may issue a "no-action" letter (no current intent to challenge the transaction but retains the right to do so within 1 year of closing)

Substantive Review Test

- Whether the transaction "would or would be likely to prevent or lessen competition substantially" in a relevant market

Part 4 - PUBLIC TRANSACTION STRUCTURE AND DOCUMENTATION

- Takeover Bids
- Plans of Arrangement
- Takeover Bids vs. Plans of Arrangement

Public Transaction Structure - Takeover Bids

Key Aspects

- Canadian rules will apply to offers for 20% or more of the shares of the Target
- Identical consideration must be offered to each shareholder of the relevant class of the Target
- Bid price cannot be lower than the price paid by Bidder in any transaction for shares of the Target during the 90 day period prior to the commencement of the bid
- Financing for any cash portion of the consideration needs to be secured before announcing the offer

Public Transaction Structure - Takeover Bids

Key Aspects (continued)

- Bidder can start process through press release, but must deliver a takeover bid circular to target shareholders
- Target directors must deliver a directors' circular within 15 calendar days of the date of the bid. Target board must recommend for or against the bid, or make no recommendation at all (can defer making any recommendation until up to seven days prior to expiry of the bid)
- Minimum offer period of 35 calendar days from first announcement

Public Transaction Structure - Takeover Bids

Key Aspects (continued)

- If 90% of shares tendered, balance can be compulsorily acquired by Bidder at the bid price - can be completed within one week

- If less than 90% but more than 2/3 of shares tendered, Bidder can take up the shares tendered and undertake a second step "amalgamation squeeze-out" (back-end merger) transaction to acquire the remaining shares

- "Squeeze-out" requires a shareholder vote (2/3 plus "majority of the minority") - takes approximately 6 to 8 weeks to complete

Public Transaction Structure – Plans of Arrangement

Key Aspects

- Requires shareholder approval and Court review and approval
- Available only if the Target is not insolvent
- Requires support by the Target's board and 2/3 vote of shares present or represented by proxy at a special shareholders meeting
- Requires preparation by the Target of a management information circular

Public Transaction Structure – Plans of Arrangement

Key Aspects (continued)

- Requires minimum 7 calendar day notice of record date for shareholders meeting, then minimum 30 calendar days between record date and meeting date (total of approximately 45-60 calendar days from announcement to implement)
- Approval by shareholders assures a 100% transaction in as single step
- Shareholders will have the right to dissent and request payment of fair value

Public Transaction Structure – Plans of Arrangement

Court Approval - The Test

- The statutory procedures have been met
  - Arrangement meets statutory definition
  - Corporation is not insolvent
  - Not practicable to effect change in any other manner
- Arrangement is fair and reasonable
  - Arrangement serves a valid business purpose
  - The interests of relevant stakeholders are resolved in a fair and balanced way

Public Transaction Structure – Takeover Bids vs Plans of Arrangement

Takeover Bid

- Can be "friendly" or "hostile"
- Bidder maintains maximum control of documentation and timing
- No review of take-over bid circular of the Acquiror by Canadian securities regulatory authorities
- Minimum timing 35 calendar days
- If 90% threshold not achieved in first step, add 6 – 8 weeks to timing to complete second step

Plan of Arrangement

- Can only be used for "friendly" transactions
- Bidder has less control of documentation and timing
- No review of management proxy circular by Canadian securities regulatory authorities (typically limited TSX review, if listed)
- Timing to complete approximately 45-60 days from announcement
- No need for second step

Public Transaction Structure – Takeover Bids vs Plans of Arrangement

Takeover Bid

- No court approval required, but securities regulatory authorities could intervene to ensure compliance with securities legislation
- May provide more flexibility in face of competing bids

Plan of Arrangement

- Risk that the court expresses concerns about the fairness or reasonableness of the arrangement
- May provide more flexibility to execute pre-closing tax reorganizations and to deal with outstanding convertible securities
- Risk that shareholders use the meeting to voice complaints about the arrangement
- Bidder will offer dissent rights to shareholders

PART 5 – PRIVATE TRANSACTION – STRUCTURE AND DOCUMENTATION

- Share vs. Asset Purchase
- Off-Take
- Streaming

Private Transactions – Share vs. Asset Purchase

- Buyer has the ability to pick and choose the assets to be purchased and liabilities to be assumed in asset sale (although some liabilities flow with the assets)
- Asset sale may avoid triggering pre-emptive rights and/or the necessity to get the consent of minority shareholders
- Shareholder approval and dissent rights

  - Most Canadian corporate statutes require shareholder approval for the sale of "all or substantially all" of a corporation's assets
  - Approval by special resolution (two-thirds or three-fourths majority, depending on the legislation and constating documents)
  - Under most Canadian corporate statutes shareholders are entitled to dissent and have their shares purchased by the corporation for fair value

Private Transactions – Share vs. Asset Purchase

- Share sale is generally simpler
  - Documentation
  - Fewer third party consents
  - Employment issues
- Seller gets a "cleaner" break in a share sale
- Tax considerations: Canadian tax considerations generally lead sellers to prefer share sale and buyers to prefer asset sales

Private Transactions – Off-Take

Off-Take Agreements

- Entitles the "off-taker" to purchase a specified percentage of production
- Traditionally coupled with the acquisition of an interest in a company which owns a project
- Often difficult to draft definitive agreement prior to commercial production

Private Transactions – Streaming

Streaming - What is it?

- Advance purchase of metals
- Used to bring a development stage project into production or expand the operating capacity of an existing project
- Upfront deposit in return for a right to purchase a fixed percentage of future production
- In addition to deposit, additional payments are made on delivery of metal
- Additional payments typically equal to the lesser of a fixed price and market value at time of delivery

Private Transactions – Streaming

Streaming - What is it? (continued)

- Additional payment in cash up to amount of fixed price
- Deposit reduced to the extent the market price is greater than the fixed price
- By-product streams – base metal producer sells a portion of its precious metal by-products

Private Transactions – Streaming

Benefits to Mining Company

- Attractive source of funding when traditional financing difficult and expensive to obtain
- Non-dilutive to shareholders
- Less restrictive than debt financing
- Can be seen as a third party endorsement of a project's potential
- By-products stream may create shareholder value by allowing a base metal company that trades at a lower NAV multiple to obtain the higher NAV multiple of a precious metal producer for the precious metal stream

Benefits to Streamer

- Exposure to metals with out many of the operating risks
- No obligation to fund future capex or operating expenditures
- Allows streaming companies to diversify
- Streamers share in the upside potential of a project

For further information

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