

Mining and Metals

M&A and Capital Markets Opportunities in Canada

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Presented by

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- Leading Canadian business law firm with a significant U.S. law capability through our New York office
- 300 Toronto- and New York-based legal professionals
- Top-ranked cross-border and international experience, having worked on many groundbreaking and innovative international matters:
 - mergers and acquisitions
 - public and private financings
 - stock exchange listings
 - cross-border and international investment structures
 - corporate reorganizations
- U.S. law capability
 - allows for seamless Canada-U.S. cross-border service
 - most significant Canadian businesses have U.S. operations
 - enhances ability to lead international transactions

Our experience

- Advised on some of the most important Canada-related mining and metals deals in recent years, including the following:

<p>Hindalco Industries US\$6 billion</p> <p>Acquisition of Novelis by Hindalco and related financing transactions</p> <p>Global deal counsel to Hindalco</p>	<p>Algoma Steel C\$1.85 billion</p> <p>Sale of Algoma to India's Essar Global</p> <p>Canadian and U.S. counsel to Algoma Steel</p>	<p>Mitsubishi Corporation US\$2.5 billion</p> <p>Investment in, and project financing of, the Antamina copper project in Peru</p> <p>Counsel to Mitsubishi Corporation</p>
<p>Gerdau Ameristeel US\$4.22 billion</p> <p>Acquisition of Chaparral Steel by Gerdau and related financing transactions</p> <p>Canadian and U.S. counsel to Gerdau on various aspects of the transactions</p>	<p>Sherritt International C\$1.6 billion</p> <p>Acquisition of Dynatec</p> <p>Counsel to Sherritt International</p>	<p>OAO Severstal C\$900 million</p> <p>Acquisition of PBS Coals</p> <p>Counsel to OAO Severstal</p>

- Experience in working on significant international projects, such as The Thomson Corporation's recent US\$35 billion combination with Reuters Group
- Experience with international transactions for foreign clients, including expertise on Canadian and U.S. foreign investment and competition/antitrust rules, and other regulatory matters

Our Reputation

- “Torys is recognized for its capacity to advise on transactions of any shape or size, its dominance in key areas of business, and above all, its great clientele and tremendous brand.” *Chambers Global*
- “Innovation, complexity and market impact; consistent ability to offer high-quality legal advice on specialist, complex and groundbreaking matters; and outstanding advice on innovative international deals.” *IFLR*
- “Clients said that ‘you could never go wrong with Torys as you know you’ll always get incredibly good professionals who can deal with the trickiest situations.’ Described as ‘a great team of individuals,’ the team at Torys prides itself in giving clients realistic, bulletproof advice.” *Chambers Global*
- Clients report very positive experiences working with Torys: “The firm takes a real team approach to our business, making sure that those who deal with our files are aware of work being done by other parts of the firm, which may sound simple, but it is of great value to us.” *Chambers Global*
- “Strong, well-supported leaders. Torys is a highly respected and rounded top-tier group.” *Chambers Global*
- “Sound advice and superb depth.” *Lexpert*

Our Mining and Metals Practice

- Torys has a long history of involvement in all aspects of mining and mineral resource development, including in the complex domestic and international regulatory environments related to mining projects.
- We regularly assist our clients on both sides of the Canada-U.S. border and internationally with exploration and development agreements, royalty agreements, joint venture arrangements, engineering and service contracts, sales contracts and international concession arrangements.
- We also have particular expertise in the areas of public and private securities issues by mining entities, bank financing (including mine project financing, as well as corporate lending), mergers and acquisitions of mining companies and assets and the structuring and implementation of national and international mining joint ventures.
- From our North American base in Toronto and New York, we serve clients around the globe with a wealth of expertise in all the practice areas relevant to a robust mining practice.

- **Our specialties include**

- mergers and acquisitions
- corporate and capital markets
- project finance
- project development
- tax
- environmental, health and safety
- climate change
- Aboriginal matters
- litigation and dispute resolution

- **Representative clients**

- | | | |
|--|-----------------------|-------------------------------|
| • Aleris International | • Essar Steel Algoma | • Pallinghurst |
| • Barrick Gold | • Gerdau Ameristeel | • Placer Dome |
| • Brookfield Asset Management (formerly Brascan) | • Glencore | • Royal Utilities Income Fund |
| • Cameco | • Goldcorp | • Severstal |
| • Centerra Gold | • Hindalco Industries | • Sherritt International |
| • Diamet Minerals | • Inmet | • Trelleborg AB |
| • Dundee Precious Metals | • Mitsubishi | • Western Mining |
| • Dynatec | • Namibian Minerals | |
| • ENRC plc | • Novelis | |

- The typical process for a Canadian M&A transaction is as follows:
 - A. Friendly/negotiated transactions**
 - initial approach to target
 - formal expression of interest
 - confidentiality/standstill agreement
 - due diligence
 - possible lockup agreement with major shareholders
 - binding agreement negotiated and entered into by parties
 - obtain required regulatory approvals
 - generally, closing timeframe of 40–60 days after entry into a binding transaction agreement
 - B. Hostile/unsolicited offers**
 - approach target's board with transaction proposal
 - look for ways to engage target board
 - make offer to target shareholders
 - target board considers value maximizing alternative transactions and defensive measures and may implement a shareholders rights plan
 - acquiror and target may enter into discussions and agree to a friendly deal or target resistance may continue
 - termination of target's rights plan
 - target shareholders get to decide

- Acquisitions of Canadian public companies are typically carried out through
 - takeover bids
 - plans of arrangement
 - amalgamations
- The most advantageous acquisition structure will depend on the circumstances of the transaction and the nature of the shareholdings, and will be influenced by a variety of strategic, tax and regulatory considerations
- Takeover bids
 - offer to acquire shares of target directly from shareholders
 - some form of second-stage transaction will be required to obtain 100% of shares
- Plans of arrangement and amalgamations
 - single step negotiated with the target and undertaken in accordance with the statutory requirements of the target corporation's governing statute
 - shareholder approval required—threshold is typically 2/3 of the votes cast at the special meeting
 - plan of arrangement also requires court approval—determination of procedural and substantive fairness
 - plan of arrangement offers the most flexibility for tax planning and dealing with various classes of securities

Acquiring a Toehold

- Acquiring target stock before making a bid
 - may be made at prices below formal offer price
 - provides a form of compensation if tendered to a higher third party offer
 - toehold purchases usually viewed as “hostile” by target board - target may respond by implementing a shareholder rights plan (poison pill), which limits flexibility of bidder
 - timing of acquisitions should be discussed with counsel
- May increase possibility of a leak of intended bid, and necessitate public disclosure
- Popular in Canada because less risk of target preventing change of control and leaving bidder with a block of unwanted stock
- Pre-bid integration:
 - consideration paid and proportion of shares sought in formal offer must be same as highest price paid and highest portion of shares purchased in any private transaction during the 90 days before the bid
 - bids for less than all shares permitted in Canada; a private agreement purchase pre-bid may inhibit ability to make partial bid
 - a formal bid may include shares as part of consideration if pre-bid purchases were for cash, but shareholders must be given the option of electing all-cash consideration

- Impact of pre-bid purchases on acquiring shares not tendered to formal offer
 - shares acquired before a bid do not count toward 90% minimum to effect compulsory acquisition under corporate law
 - if target shareholder vote is required to approve a second step business combination, shares acquired pre-bid excluded in determining whether majority approval obtained

Early Warning Disclosure

- Applies to voting or equity securities of a target
 - disclosure requirement by acquiror triggered when acquiror and others acting together with acquiror cross the 10% level (5% if acquisition made during a bid); U.S. threshold is 5%
 - on crossing 10%, acquiror must promptly issue a news release disclosing its shareholding position and future investment intentions, and file a report with securities regulators within two business days
 - acquiror must halt purchases of target shares until 1 business day after report is filed (unless acquiror already owns 20%)
 - material changes in information on file, or further acquisitions of 2% or more of target shares, will trigger further disclosure and 1 business day standstill

Unsolicited/Hostile Offers

- Unsolicited offers often lead to friendly deals in the Canadian context
- They can serve as way of causing a reluctant target to engage in discussions
- They can include many conditions that protect the offeror
- Under Canadian law a target board cannot "just say no" and create long term structural impediments to an unwanted takeover bid
 - for example - unlike in the U.S., securities commissions will ordinarily cease trade a poison pill within 40 to 50 days
- When confronted with an unsolicited bid, a target board will look for value maximizing strategic alternatives (e.g., a white knight) and/or seek to engage in discussions with the unsolicited offeror
- In many cases a friendly deal is ultimately reached with the unsolicited offeror
 - may include a higher offer price, due diligence access and deal protections such as non-solicitation, matching right and break fee provisions
- In most cases where an unsolicited bid is made, a change of control transaction for the target will occur - involving either the original offeror or a subsequent offeror

Case Study - Inmet's Acquisition of Petaquilla Copper

- Background**
- Inmet, Petaquilla Copper and Teck Cominco were joint venture partners in a large Panamanian copper development project
 - relationships among the partners were strained and Inmet was looking for a way to acquire control of the project
- July 6/08**
- Inmet announces intention to launch a \$320M unsolicited takeover bid for all of the shares of Petaquilla Copper
 - bid is for \$2 per share representing an approximate 108% premium
 - bid formally launched on July 28, 2008
- Aug. 12/08**
- Petaquilla Copper responds to the effect that its Board of Directors is making no recommendation with respect to the bid, citing that the bid was made based on outdated technical information, Petaquilla Copper is pursuing strategic alternatives and the uncertainty regarding the arbitration proceeding with Teck
- Aug. 29/08**
- transaction becomes friendly; Petaquilla Copper agrees to support Inmet's bid by entering into a support agreement
 - bid price is increased to \$2.20 per share and Inmet is granted due diligence access and deal protections (target non-solicit, matching right and break fee)
- Sept. 19/08**
- 95% of the Petaquilla Copper shares are tendered to the bid and taken up by Inmet
- Nov. 26/08**
- date of meeting scheduled to consider resolution which, if approved, will result in Inmet owing 100% of Petaquilla Copper

Case Study - Mineralogy's Bid for Waratah Coal

- Background**
- Waratah is a TSX-Venture Exchange-listed Canadian company with rights to coal production in an area covering over 15,000 km² in the Galilee Basin in Queensland, Australia. Cross-listed in Australia.
 - During September 2008, Mineralogy made numerous acquisitions of Waratah shares to hold just over 19%.
- Oct. 06/08**
- Mineralogy launches unsolicited partial offer to acquire Waratah shares to take Mineralogy to 50.1% on a fully-diluted basis. Offer to expire November 7, 2008.
 - Bid is at \$1.41, negligible premium to market, for approximately 36% of Waratah's shares on a fully-diluted basis.
- Oct. 07/08**
- Mineralogy Board establishes a Special Committee, engages financial advisor and Canadian counsel.
 - Mineralogy Board adopts limited duration shareholder rights plan.
- Oct. 08/08 (and following)**
- Waratah establishes data room, signs confidentiality agreements; third parties enter data room to assess Waratah's strategic alternatives.
- Oct. 14/08**
- Mineralogy submits application to securities commission to waive Waratah rights plan.
- Oct. 17/08**
- Waratah Board recommends rejection of Mineralogy's partial offer; Merrill Lynch inadequacy opinion; pre-bid integration issues.
- Oct. 24/08**
- Mineralogy amends and extends offer - new offer for 100% at \$1.41 per share, extended to December 3, 2008.
 - Securities commission hearing to consider cease-trading Waratah rights plan delayed until late November.
- Oct. 30/08**
- Waratah Board recommends rejection of amended offer. Consideration of Waratah strategic alternatives proceeds.

- In the current environment of uncertainty and volatility in the financial markets and commodity prices, acquirors may desire to change transaction terms prior to the closing
 - includes reducing purchase price or changing other terms or even seeking to terminate the transaction

Example - Severstal's recent acquisition of PBS Coals

- in its original public takeover bid, Severstal initially offered aggregate consideration of approximately \$1.3B
- transaction was subsequently renegotiated with PBS Coal's major shareholders to reduce the aggregate consideration to approximately \$900M

How can deal terms be changed if transaction agreement signed?

- **MAC/MAE**
 - most transactions provide the acquiror with a pre-closing "out" if a material adverse change or effect occurs post signing or if the target's representations and warranties are inaccurate so as to result in a material adverse change/effect
 - generally a difficult standard to meet in Canada and the U.S.
 - courts have set a relatively high bar - must generally be an unknown event of significant duration that goes to the fundamentals of the deal
- **Other Conditions**
 - consider whether target has adequately performed each of its covenants and complied with all other closing conditions

- Regulatory Considerations
 - Canadian securities regulators have indicated that they may intervene to protect securityholders if the terms of a bid are varied
 - changes to bid terms must be considered in light of potential regulatory reaction

Financing Conditions

- Takeover Bids
 - financing conditions are generally not permitted for Canadian takeover bids
 - possibility of financing conditions not being fulfilled if the bid conditions are fulfilled must be remote as determined at the time the bid is commenced
- Arrangement Transactions
 - prohibition on financing conditions does not apply, but target boards have traditionally been unwilling to support a transaction with a financing condition
 - could that change given current credit market conditions?
 - use of “credit market MAC” clause

- Distressed M&A can take many forms, some of which are informal (i.e. no court involvement) and some of which require formal court proceedings
 - informal distressed M&A
 - buying assets
 - convertible debt
 - back-stopped rights offering
 - formal distressed M&A
 - plan of arrangement
 - restructuring proceedings (CCAA or BIA)
 - receivership

Informal Options: Out of Court/Pre-Bankruptcy

Buying Assets

- Investor can acquire assets of company and not assume any (or certain) liabilities
 - contrasted to acquisition of shares, where liabilities stay with the acquired company
- Sale of “all or substantially all” of company’s assets requires shareholder approval
 - threshold is significantly below 90% of assets
 - asset sale may also require creditor approval
- If assets are transferred at less than fair market value, creditors may challenge transfer as oppressive or fraudulent

Convertible Debt

- Allows investment higher up in the food chain with “equity play” available at a later date
- Does not cleanse the target of existing contracts or debt, so investment protection is in the form of a higher ranking interest which can be converted to equity once balance sheet problems are resolved
- Can be accompanied by a mix of shareholder/debtholder protections (board representation, veto rights, financial and operating covenants)

Informal Options: Out of Court/Pre-Bankruptcy (*cont'd*)

- May require securityholder approval (TSX rules, terms of other securities)
 - exception for securityholder approval if company is in financial distress

Back-stopped Rights Offering

- Typically undertaken when no other reasonable financing available
- Essentially underwriting a rights offering to a company's existing shareholders
- No certainty regarding final size of commitment or ownership interest (depends on extent to which existing shareholders participate)

Formal Restructurings - Solvent Companies

Plans of Arrangement

- Solvent companies can seek court approval of a plan of arrangement to accomplish an exchange of securities (including debt to equity conversions)
- This can be a very effective tool for an investor to take a control position in a company without a time-consuming insolvency proceeding
- There are 3 steps in a typical plan of arrangement:
 - interim court hearing
 - security holder meeting
 - final court hearing, at which the court is asked to approve the arrangement
- See discussion re plans of arrangement on page 8

Formal Restructurings - Insolvent Companies

- Formal insolvency proceedings can take many forms, the principal three being:
 - proceedings under the Companies' Creditors Arrangement Act (the "CCA")
 - bankruptcy (including proposals) under the Bankruptcy and Insolvency Act (the "BIA")
 - receiverships
- Each of these restructuring options provides a formal, court supervised process for a company to restructure its debt and/or sell assets

CCA Proceedings

- Designed to give insolvent companies an opportunity to restructure
- The insolvent company maintains control of its operations and affairs under its usual Board and management regimes
- The court supervises the restructuring process and must approve material transactions and the ultimate restructuring plan
- A "monitor" is appointed by the court to act in a watchdog role and report to the court and stakeholders as requested

Formal Restructurings - Insolvent Companies (*cont'd*)

- Pending the outcome of the restructuring plan, the court typically puts in place a broad “stay of proceedings” that prohibits creditors, counter-parties and others from taking any adverse actions against the insolvent company
 - creditors cannot enforce rights and remedies
 - contract counterparties cannot exercise rights triggered by insolvency, such as termination or buyout privileges
- CCAA proceedings facilitate interim financing for a restructuring company
- Courts may create “super-priority” liens for the new financing, thereby subordinating existing creditors
- DIP lenders often get a degree of supervision over the process, which may be an advantage to an investor that is willing to provide DIP financing
- If a sale or M&A process is pursued, the court typically issues a separate order setting out key elements of process including:
 - who runs the sale process (i.e., company itself, independent committee of the Board or a court appointed monitor)
 - who may have access to data room
 - timelines for making an offer
 - minimum terms/conditions for an offer
 - if a stalking horse process is approved, the protections available to the stalking horse

Formal Restructurings - Insolvent Companies (*cont'd*)

Bankruptcy Proceedings

- Process is initiated by creditors
- Typically involves a liquidation of the assets and a shut-down of the business
- A trustee-in-bankruptcy is appointed with control over the company's assets
- Involves a stay of proceedings against unsecured creditors, but secured creditors are free to enforce their security and are outside of the formal liquidation
- With approval of the court, a trustee may sell the assets of the bankrupt to a purchaser, usually following a sale process involving a solicitation of offers on a confidential basis

Formal Restructurings - Insolvent Companies (*cont'd*)

Receiverships

- Unlike restructurings under the CCAA or proposals under the BIA, receiverships are not “debtor-in-possession” proceedings
- Like bankruptcy proceedings, typically involves a liquidation of the assets and a shut-down of the business
- A receiver can be appointed under security held by a secured party or pursuant to a court order
- In a court-appointed receivership, a broad stay of proceedings is granted and the court will supervise the sale of the debtor company’s business
- A typical receivership sale process involves a solicitation of offers, advertising in a national newspaper and a “confidential” sale process with offers being due by a specified deadline (similar to M&A process described for a CCAA proceeding)
- Similar to a restructuring, a receiver may apply to the court to terminate existing contracts and transfer the assets free and clear of contractual claims

- *Investment Canada Act*
- FINSA—U.S. national security review
- *Canadian Competition Act*
- U.S. Hart-Scott-Rodino (HSR) Act

Regulatory Considerations: *Investment Canada Act*

- A transaction will be reviewable if:
 - acquiror is non-Canadian
 - there is an acquisition of control of a Canadian business, and
 - either a cultural business is being acquired or the value of assets acquired or the assets of the entity carrying on the business being acquired exceed certain thresholds (in most cases C\$312 million)
 - the asset value test will be replaced by an enterprise value test (expected to occur in the next few months); under the enterprise value test, the threshold will be C\$600 million
- If a transaction is reviewable, there is a minimum 45-day waiting period and required demonstration of “net benefit”
- If a transaction is not reviewable (i.e., does not meet the above noted threshold), it is modifiable and notice must be provided within 30 days after completion
- Must be able to demonstrate “net benefit” to Canada
 - consider effect on Canadian employment and resources; use of products and services produced in Canada; Canadian productivity, technological development and product variety; Canada’s ability to compete in world markets; and the acquisition’s compatibility with national industrial, economic and cultural policies
 - regulator often requires undertakings relating to matters such as continuation of employment levels, minimum R&D levels, maintenance of head office, etc.

Regulatory Considerations: *Investment Canada Act (cont'd)*

- In December 2007, the federal government released guidelines clarifying review criteria for acquisitions of Canadian businesses by foreign state-owned enterprises (SOEs)
 - investments by SOEs will now face more scrutiny
 - governance, transparency and commercial orientation of SOEs will be assessed
- Recent amendments permit investments to be reviewed on the basis that they maybe “injurious to national security”
 - no definition of “national security”
 - Torys is not aware of any investments having been reviewed under this provision to date
 - legislation does not contemplate voluntary notification
- “National security” provisions apply even if a proposed investment does not exceed the asset value and control thresholds
- Torys recently represented wholly-owned SOE that acquired Canadian business (first transaction where the SOE guidelines were applied in the context of a wholly-owned SOE of a foreign government)

Regulatory Considerations: FINSA

- U.S. developments—*Foreign Investment and National Security Act of 2007* (FINSA)—in force October 2007
 - the president has the authority to suspend, prohibit or divest any foreign acquisition of a U.S. business that is determined to be a threat to the national security of the United States
 - FINSA broadens scope of foreign investment review under the U.S. national security transaction review regime
 - national security mandate broadened to include “homeland security” matters, “critical infrastructure” including “major energy assets”, and “critical technologies”, in addition to the traditional defense sectors
 - as before, initial 30-day review followed by a more thorough 45-day second-stage investigation if there is a potential threat to national security
 - second-stage investigation now mandated when the acquiror is a foreign government–controlled entity (subject to relief)
- Review process can be expected to be more politicized than in the past
- Market participants need to factor national security ramifications, broadly framed (both Canadian and U.S., as applicable), into their transaction planning, and develop proactive strategies early in the process to address regulatory risk

Regulatory Considerations: Canadian Competition Review

- *Competition Act (Canada)*
 - pre-merger notification is required based on the size of the parties and the size of the transaction
 - **size-of-parties test:** parties and their affiliates have assets in Canada or annual gross revenues from sales in, from or into Canada that exceed C\$400 million
 - **size-of-transaction test:** C\$70 million of Canadian assets or revenues
 - initial statutory (no-close) waiting period is 30 days
 - commissioner may clear transactions before expiry of waiting period
 - if a supplementary information request is issued during the waiting period, the parties cannot close until 30 days after the required information has been received by the Commissioner
 - exemption granted with an Advanced Ruling Certificate

Regulatory Considerations: U.S. Pre-merger Notification and Review

- Hart-Scott-Rodino (HSR) Act
 - transactions must be reported based on certain size thresholds to the U.S. Federal Trade Commission and the Antitrust Division of the Department of Justice
 - must observe a waiting period before consummating the transaction
 - exemptions may apply
 - when must parties report under HSR Act?
 - **commerce test:** acquiror or target is engaged in U.S. commerce or some activity affecting U.S. commerce
 - **size-of-transaction test:** as a result of the transaction, the acquiror will hold assets or voting securities valued at more than US\$65.2 million
 - **size-of-person test:** one party has at least US\$130.3 million and the other party has at least US\$13 million in total assets or annual net sales
 - transactions are valued at more than US\$260.7 million, unless there is an exemption

TSX: Background and Mining Leadership

- Sophisticated, world-leading equity exchange
 - seventh-largest in the world by total listed company capitalization
 - world's leading market for mining industry
 - well-established protocols for accessing public market
 - timely process
 - vibrant institutional and retail investor base
 - strong equity culture — 49% of Canadians own shares
 - TSX Venture Exchange (TSXV) designed for emerging and junior companies
 - provides access to public venture capital to facilitate growth
 - potential to graduate to the senior exchange

TSX: Background and Mining Leadership (*cont'd*)

- Mining expertise
 - 79.3 billion mining shares traded on TSX and TSXV
 - lists nearly 60% of the world's public mining companies
 - institutional investor base that understands mining
 - more mining equity capital raised than on any other exchange
 - best access in the world for capital for junior explorers
 - best graduation rate between junior and senior market (TSXV to TSX) compared with competing mining markets
 - specialized mining indices
 - stepping stone to a U.S. listing
 - includes many companies holding exclusively or primarily foreign assets
 - 50% of the mineral exploration projects held by TSX and TSXV companies are outside of Canada

TSX: Background and Mining Leadership (*cont'd*)

- 2008 was another strong year for new mining listings on TSX and TSXV
 - 138 new mining listings in 2008
 - 45 mining companies graduated from TSXV to TSX in 2008
 - 20 new international listings in 2008
 - C\$8.3 billion in equity capital raised by 1,427 mining issuers listed

TSX: U.K. Connection

- Mining companies from the United Kingdom who joined the TSX in 2008 include
- Overall, 48 cross-listings with AIM
 - predominantly natural resource companies
 - 20 mining issuers cross-listed with AIM

Overview of TSX/TSXV Listing Requirements for the Mining Sector

MINIMUM LISTING REQUIREMENT	TORONTO STOCK EXCHANGE	TORONTO STOCK EXCHANGE	TORONTO STOCK EXCHANGE	TSX VENTURE EXCHANGE	TSX VENTURE EXCHANGE
	SENIOR EXEMPT	PRODUCER	EXPLORATION OR DEVELOPMENT	TIER 1	TIER 2
FINANCIAL	COMMERCIAL PRODUCTION \$7.5 MILLION NET TANGIBLE ASSETS \$300,000 PRE-TAX EARNINGS AND \$700,000 PER-TAX CASH FLOW (AND TWO YEAR AVERAGE OF \$500,000)	ADEQUATE FUNDS TO COMMERCIALIZE \$4 MILLION NET TANGIBLE ASSETS 18 MONTH PROJECTION OF SOURCES & USES	\$750,000 WORK PROGRAM \$3 MILLION NET TANGIBLE ASSETS \$2 MILLION WORKING CAPITAL 18 MONTH PROJECTION OF SOURCES & USES	\$500,000 18 MONTH WORK PROGRAM \$2 MILLION NET TANGIBLE ASSETS \$100,000 UNALLOCATED	\$200,000 12 MONTH WORK PROGRAM \$100,000 UNALLOCATED
DISTRIBUTION	PUBLIC FLOAT OF \$4 MILLION 300 PUBLIC SHAREHOLDERS	PUBLIC FLOAT OF \$4 MILLION 300 PUBLIC SHAREHOLDERS	PUBLIC FLOAT OF \$4 MILLION 300 PUBLIC SHAREHOLDERS	PUBLIC FLOAT OF \$1 MILLION AND 20% OF ISSUED AND OUTSTANDING 200 PUBLIC SHAREHOLDERS	PUBLIC FLOAT OF \$500,000 AND 20% OF ISSUED AND OUTSTANDING 200 PUBLIC SHAREHOLDERS
TECHNICAL	3 YEARS PROVEN AND PROBABLE RESERVES	3 YEARS PROVEN AND PROBABLE RESERVES	3-D CONTINUITY AND INTERESTING ECONOMIC GRADE 50% OWNERSHIP OF PROPERTY	MATERIAL INTEREST IN A PROPERTY (SUBSTANTIAL GEOLOGICAL MERIT)	SIGNIFICANT INTEREST IN QUALIFYING PROPERTY

Cross-Listing on the TSX/TSXV from the AIM and Other Exchanges

- TSX/TSXV open to foreign company listings
 - 123 foreign companies listed
- Factors facilitating cross-listing on the TSX/TSXV
 - expertise in the Canadian legal and financial advisory sectors on TSX/AIM dual listings facilitates the process
 - National Instrument 43-101 is becoming a global standard in mining disclosure
- Issuers can access liquidity, high levels of analyst coverage and the profile of a TSX listing with compliance requirements less onerous than U.S. Sarbanes-Oxley:
 - research shows that dual trading does not reduce “home exchange” trading volumes, but increases it
 - of these dual-listed issuers, approximately 2/3 of trading volume is generated on TSX/TSXV, 1/3 of volume on AIM

Preparing for a TSX/TSXV Listing

- Choose experienced advisers: legal, accounting and consultants
- Prepare technical reports to 43-101 or equivalent standards
- Listing application will include the following:
 - technical reports
 - generally, prospectus-level disclosure document
 - equivalent information such as existing U.K. disclosure documents may be acceptable
 - most recent audited and interim financial statements
 - one year for TSX, three years for TSXV
 - quarterly financial statements not necessarily required by TSX; usually required by TSXV
 - TSXV often requires CDN GAAP reconciliation up-front
 - pro forma financial statements if recent or proposed material transaction
 - sources and uses of funds showing sufficient working capital
 - required by TSXV because of early stage of companies' development; required by TSX if company is not profitable
 - personal information forms from officers, directors and control persons

Preparing for a TSX/TSXV Listing (*cont'd*)

- additional material information (e.g., MD&A, news releases, material contracts)
- exchange may request additional documentation or materials on a case-by-case basis
- sponsorship report (rarely required by TSX; usually required by TSXV if mining company's properties are outside Canada or the United States)
 - prepared by an exchange member
 - involves site visits and other due diligence
 - TSXV estimates cost C\$25,000 – C\$40,000
 - TSX requires it only where viability of business is at issue (e.g., political issues where property is located)

Mining Property Requirements for the TSX/TSXV

- TSX
 - company needs to have at least one “property of merit”
 - “mineralization in 3 dimensions with interesting grades”
 - supports reasonable geologist conclusion that further work is warranted with a view to commercial production
 - company should have a 50% ownership interest in its main property
 - in exceptional circumstances, exchange will consider (i) as little as 30% if the other interest is held by a major issuer or (ii) a binding option to acquire a 50% interest
- TSXV
 - Tier 1: material interest in a Tier 1 property
 - less than 50% accepted on a discretionary basis
 - Tier 2: 50% interest in a qualifying property
 - definitions of “Tier 1” and “qualifying” property based on amount of drilling and recommended work program in geologist’s report
 - in all cases, there must be a recommendation for further exploration or development under 43-101 or equivalent standards

Listing Process

- Issuers and their counsel should contact exchange informally to discuss potential listing
- Preliminary listing application may be provided first with summary materials
 - TSXV recommends a pre-filing conference to determine viability of listing and whether a sponsor is required
- Both exchanges require management and/or board members to have expertise in mining industry and public markets experience (North American or Canadian)
- Application approval:
 - clean applications without legal, business or other special issues can be approved by TSX in as little as 1–2 months; for TSXV, process usually takes 3–4 months
 - various issues can delay timing
 - background checks
 - board chair, CEO and CFO
 - preparation of sponsorship report
 - need to prepare additional financial statements or other company information requested by exchange
 - need to raise additional funds (e.g., working capital)

Private Placements

- Very common and efficient way to raise capital
- Quicker and less expensive than public offerings
- Available for both listed and non-listed issuers
- Relies on exemption from Canadian prospectus requirement
 - for example, sales to sophisticated investors (such as institutions, “accredited investors” or in a minimum amount of \$150,000 per purchaser)
- For private companies, does not result in public company obligations
- Offering memorandum (OM) optional
 - liability document if used
 - no prescribed disclosure; depends on marketing requirements
 - no regulatory review
- Combined Canada-U.S. private placements also very common
 - similar timing, prospectus exemptions and resale rules
 - deep and liquid private market of sophisticated institutions: Rule 144A
 - no SEC review
 - does not result in U.S. ongoing reporting obligations (or S-Ox)
- Stepping stone to IPO in either or both jurisdictions

Private Placements: “Closed System”

- Securities sold in a private placement are not freely tradeable; must be legended
 - generally, 4-month restricted period for a listed issuer
 - during this time, resales permitted pursuant to another exemption
- Securities will generally become freely tradeable
 - if issuer is already a reporting issuer in Canada, after the 4-month holding period
 - if issuer is not listed in Canada, 4 months after it becomes listed in Canada

Private Placements: TSX/TSXV Requirements

- Provide advance notice and details of the transaction to the exchange
 - exchange approval required
- TSX: will generally accept private placement if
 - priced at or above market, or
 - results in <25% dilution and priced within allowable discount (15%–25%, depending on trading price)
- TSXV: price must be within allowable discount (same as TSX)
- Shareholder approval may be required if above requirements are not met, or if transaction materially affects control, is not arms-length or purchasers include insiders

Public Offerings: Key Steps Before Initiating an IPO

- Choose experienced advisers: legal, accounting, underwriters and consultants
- Review and potentially reorganize corporate, capital and managerial structures
- Prepare historical financial statements to public company standards
- Identify board members experienced in home jurisdictions and North American public markets
- Prepare technical or engineering reports that may be required, for example, relating to mining assets (NI 43-101)
- Assemble due diligence materials

Public Offerings: Structuring and Investment Protection

- Consider restructuring asset holding company in order to
 - ensure clean title of assets, secured rights
 - clarify foreign investor position, depending on where principal assets are situated
 - optimize for tax, foreign exchange cash flows and financial reporting
- Consider need for intermediate holding company
 - for optimal taxation treaty treatment
 - for investment treaty protection against expropriation, unfair treatment or discriminatory regimes against foreign companies

Public Offerings: IPO Milestones

- Three key components
 - preparation of preliminary prospectus and TSX listing application
 - regulatory review by TSX and securities regulators
 - marketing and building investor base
- Closing and listing on TSX

Public Offerings: Preparation of Preliminary Prospectus

- Company cannot be marketed to investors until preliminary prospectus is publicly filed
- Most time-consuming aspect of process
- Full, true and plain disclosure
- No misrepresentation, nor material omission
- Liability document for issuer, CEO, CFO and board of directors
- Identify use of proceeds
- Technical and scientific information must be NI 43-101 compliant
- Due diligence
- Prospectus prepared to meet regulatory requirements and as a marketing document
- Financial statements and MD&A
 - Canadian GAAP or IFRS (no reconciliation)
 - U.K. GAAP with reconciliation

Public Offerings: Regulatory Review

- Ontario Securities Commission will (in most cases) be lead review authority
- TSX requirements
- Usually three- to five-week process
- Substantially less time and more certain process than U.S. regulatory review process

Public Offerings—Next steps: Marketing, Closing and Listing

- Company's investment opportunity presented to institutional and other investors
- "Road show"
- Once regulatory review is completed, underwriting agreement is signed and final prospectus is filed
- Final prospectus delivered to investors; closing and listing of shares on TSX occurs shortly thereafter

Public Offerings: Short Form Offerings

- Available for established Canadian reporting issuers listed on the TSX/TSXV
- Facilitates access to capital through timely and cost-effective public offering
 - issuer can take advantage of market window
 - marketing, business and liability aspects similar to long form offering, but disclosure streamlined and regulatory review shorter
- Prospectus filing includes mining reports, plan of distribution, use of proceeds and other information related to the offering
 - other disclosure incorporated by reference to publicly available documents
- Shelf offerings are another alternative, using a short form prospectus
 - 2-year life; multiple kinds of securities
 - file a prospectus supplement at time of takedown
 - takedown does not involve regulatory review
 - way to take advantage of market windows for multiple offerings

Basic Requirements

- Purpose of regulation: protect investing public and maintain confidence in the capital markets
- Ongoing reporting obligations
 - audited annual and unaudited quarterly interim financial statements—Canadian GAAP (moving to IFRS in 2011)
 - CEO and CFO certifications
 - management’s discussion and analysis of financial statements
 - file material contracts
 - full, timely disclosure of material developments
 - report all material changes reasonably expected to affect market price or value of securities
 - annual meetings, information circulars and annual information forms

Basic Requirements (*cont'd*)

- Corporate Governance
 - board and audit committee requirements: at least three independent directors (TSX and National Instrument 52-110)
 - disclose governance practices (National Instrument 58-101 and National Policy 58-201)
 - TSX and/or shareholder approvals required for certain transactions (e.g., dilutive share issuances, fundamental changes, related-party transactions)
- Fees
 - TSX: annual fees based on market capitalization and fees for additional listings of securities
 - Provincial securities regulators: annual fees in some provinces, fees per filing/offering in others
- Certain exemptions for designated foreign issuers (less than 10% Canadian shareholders, fully diluted), but no exemption from CEO/CFO certification and audit committee requirements

National Instrument 43-101

- mining and mineral exploration companies must follow specific rules when disclosing any scientific or technical information about their mineral projects to the public
 - NI 43-101 is the rule developed by Canadian securities administrators to improve the accuracy and integrity of scientific and technical information disclosed by mining companies
 - all disclosure of scientific or technical information must be based on a technical report (or other information) prepared or supervised by a “qualified person”; in certain circumstances, that person must be independent
 - instrument applies to all written and oral disclosure (press releases, website, etc.)
 - standardized terms and definitions for disclosure of mineral reserves and resources (CIM definitions) and restricts certain disclosure (e.g., restrictions for inferred resources)
- Materiality driven
 - trigger for technical reports
 - many requirements apply only to material mineral properties (determined by management)
 - material changes in information may trigger requirements for updated technical reports

Corporate Governance Comparison

- Most corporate governance requirements for public companies are substantially similar under Canadian and U.S. law and best practice:
 - certifications by CEO and CFO as to fair presentation of financial information, no material misstatements in report, etc.
 - majority independent board
 - auditor independence
 - independent audit committee with direct oversight of external auditors
- Key difference: auditor attestation
 - pertains to effectiveness of company's internal controls
 - required for public companies under s. 404 of the Sarbanes-Oxley Act
 - but not required in Canada
 - Canadian regulators observed U.S. experience and decided not to duplicate
 - this is the most costly and time consuming aspect of Sarbanes-Oxley
 - amounts to a formal opinion from auditors as to the effectiveness of company's internal controls
 - associated procedures must be performed

Corporate Governance Comparison (*cont'd*)

- Additional U.S. Sarbanes-Oxley requirements not applicable in Canada
 - criminal penalties for false certifications under s. 906 of Sarbanes-Oxley by CEO and CFO in each annual report re
 - no material misstatements or omissions
 - fair presentation of financial information
 - prohibition on loans to directors and officers

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