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YORK UNIVERSITY

Professional Development
CLE

Taught by over 25 leading
M&A practitioners using
a multi-issue acquisition
case study

The Osgoode M&A Skills Boot Camp

This unique program will help develop mastery of essential M&A skills, while providing a comprehensive overview of a M&A transaction. Topics include:

- Understanding the interests and objectives of your client
- Getting instructions from the client or another lawyer
- Knowing how to use and draft confidentiality agreements and letters of intent
- The forms a transaction can take and how they differ
- Factors to consider when structuring the deal, including tax issues
- Anticipating timing issues, negotiation challenges and logistical difficulties
- Strategies for handling corporate governance and regulatory issues
- Ethical issues in a transaction, including disclosure of information
- Emerging regulatory issues and risks
- Use of due diligence information in negotiating the deal
- Protecting your client with adequate representations, warranties and indemnities
- Structuring and tax planning issues in cross-border deals
- Conventions for drafting and negotiating opinions
- Strategies for handling closing and post-closing disputes

Plus! Optional Post-Conference Workshop – *Public Company Takeovers: Understanding the Strategies and Tactics Employed by the Offeror and Offeree*



DATES & TIME

April 27 - 28, 2010

8:30 a.m. - 5:30 p.m.

OPTIONAL WORKSHOP

April 29, 2010

9:00 a.m. - 12:00 p.m.

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

COURSE LEADER

David A. Seville
Partner, Torys LLP

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The Osgoode M&A Skills Boot Camp

Develop your knowledge of strategies, rules and regulations involving M&As

In order to complete an acquisition in today's M&A market, lawyers need a clear understanding of the client's business goals, and how to structure and negotiate a deal which meets these. They need to learn how to successfully execute the deal and manage the risks to their clients and their firms. And they need to do it on time. Mastery of these fundamental tenets of transactional practice is critical to lawyers who are striving to become tomorrow's M&A leaders.

This two-day, intensive *Osgoode Professional Development* boot camp is designed to teach lawyers how to run a M&A transaction from its inception through to closing. Built around a hypothetical corporate acquisition, the program features high-level instruction, demonstrations, simulated negotiations and lively discussion. You'll gain important insights and key strategies required for M&A success, in areas including:

- Drafting confidentiality agreements and letters of intent
- Choosing the right form for the transaction
- Securities issues impacting the transaction
- Negotiating representations, warranties, covenants and conditions and indemnities
- Mitigating risks through appropriate due diligence
- Competition/antitrust issues in M&A
- Mastering cross-border issues
- Handling closing and post-closing disputes

Whether you're a junior transactional lawyer or practice in another area, you'll come away from this program with a thorough understanding of the key principles and techniques you need to know to confidently deal with the issues that may arise in the context of the negotiated transaction.

Plus! Don't miss the optional half-day workshop, *Public Company Takeovers: Understanding the Strategies and Tactics Employed by the Offeror and Offeree*, for a thorough overview of the steps and processes you need to know to launch or defend a public corporate acquisition.

Register now by visiting www.osgoodepd.ca, **calling** 416.597.9724 or 1.888.923.3394, **emailing** opd-registration@osgoode.yorku.ca or **faxing** 416.597.9736.

Course Leader

David A. Seville, Torys LLP

Faculty

Michael D. Amm, Torys LLP

Richard F.D. Corley, Blake, Cassels & Graydon LLP

D. Paul Emond, Osgoode Hall Law School

Dolores Di Felice, Borden Ladner Gervais LLP

Paul G. Findlay, Borden Ladner Gervais LLP

Stanley W.L. Freedman, Heenan Blaikie LLP

Robert O. Hansen, McCarthy Tétrault LLP

Daniel F. Hirsh, Fogler, Rubinoff LLP

Darryl Hiscocks, McMillan LLP

Joris M. Hogan, Torys LLP (New York)

Naizam Kanji, Ontario Securities Commission

Cameron D. Koziskie, Torys LLP

S. Brian Levett, MacLeod Dixon LLP

Dennis E. Mahony, Torys LLP

Thomas A. McKee, Blake, Cassels & Graydon LLP

Paul A.D. Mingay, Borden Ladner Gervais LLP

J. Alexander Moore, Davies Ward Phillips & Vineberg LLP

Wendy Potomksi, CFA, PricewaterhouseCoopers LLP

Margaret T. Nelligan, Aird & Berlis LLP

Mark Opashinov, McMillan LLP

Ian G. Putnam, Stikeman Elliott LLP

Rima Ramchandani, Partner, Torys LLP

Karen Shaver, McMillan LLP

Mitchell Sherman, Goodmans LLP

Michael J. Siltala, Torys LLP

Kent E. Thomson, Davies Ward Phillips & Vineberg LLP

John J. Tobin, Torys LLP

Troy Ungerman, Ogilvy Renault LLP

Agenda

Day One: April 27, 2010

8:00 Registration and Continental Breakfast

8:30 Welcome and Introduction

David A. Seville, Partner, Torys LLP

8:35 Understanding the Deal, Gathering Information, Setting the Framework

Robert O. Hansen, Partner, McCarthy Tétrault LLP
Dolores Di Felice, Partner, Borden Ladner Gervais LLP
Troy Ungerman, Partner, Ogilvy Renault LLP

- The art of getting instructions from another lawyer or directly from the client
 - understanding the interests and objectives of the client
 - anticipating the concerns of the other side
- How to identify and obtain the information you need about and from the client and the other side
- Identifying the resources you will need
- Establishing the outside counsel/inside counsel relationship
- Range of authority a client may give a lawyer to negotiate
- How to service clients effectively

The Expression of Interest

- What do you need to settle up front?
- Confidentiality agreement
 - case law update
- Letter of intent/term sheet overview
 - purpose and effect
 - content
 - binding or non-binding
 - case law update
- Drafting the letter of intent
 - how much detail?
- Exclusivity clauses

10:30 Refreshment Break

10:45 Ethics in a Transaction

- Legal and business conflicts
- Disclosure of material information
- Duty to negotiate in good faith
- Consequences of allowing the other party to be misled
- Impact of the Rules of Professional Conduct

The Planning Process

- The checklist/timetable
 - when, what and who?
- The working group list
- Setting up the team within the law firm
 - assigning responsibilities
 - setting deadlines
- Keeping clients informed through effective communication

12:00 Networking Luncheon

1:00 Structuring the Deal

Ian G. Putnam, Partner, Stikeman Elliott LLP

Paul A.D. Mingay, Partner, Borden Ladner Gervais LLP

Mitchell Sherman, Partner, Goodmans LLP

Experienced counsel will walk you through the basic forms of transactions that you are likely to encounter including the securities law issues and tax implications for each type of deal.

- Factors to consider when structuring the deal
- How to anticipate timing issues, logistical difficulties and negotiation challenges, as well as business and legal issues
- What is the difference between public and private acquisitions?
- What forms can a transaction take and how do they differ?
 - share/asset purchases
 - takeover bids
 - amalgamations
 - plans of arrangement
- Securities issues impacting the transactions
- How do tax factors influence the choice of transaction structure?

3:00 Refreshment Break

3:15 Negotiating the Fundamentals

D. Paul Emond, Professor, Osgoode Hall Law School

Thomas A. McKee, Partner, Blake, Cassels

& Graydon LLP

S. Brian Levett, Partner, MacLeod Dixon LLP

This session will take you through the key issues related to negotiating transactions including case law updates. Using interactive discussion and role-playing, you will evaluate a series of mock negotiations on subjects including representations and warranties, covenants, conditions and indemnities.

Negotiation Strategies

- Why do people behave as they do in the course of a transaction?
- The role of the transaction lawyer in negotiations
- Negotiating approaches
 - types of strategies
 - important factors in choosing strategies
 - tactics
- Psychological aspects of the negotiating process
 - dealing with conflict
- Understanding the agendas of the various players in the negotiation process
 - clients, lawyers, regulators and other third parties

Representations and Warranties

- How representations and warranties are used to obtain information, allocate risk and achieve the maximum protection and the minimum risk for the client
- What is reasonable to ask for and why

Agenda

- Due diligence to support representations and warranties
- Survival of representations and warranties
 - effect of closing; what is a reasonable survival period?
- Bring-down certificates
 - why they are necessary; who should sign them?

Covenants and Conditions

- Implications of failure to perform
 - covenants to be satisfied before closing
 - covenants to be satisfied after closing
- Standards of performance
 - best efforts, reasonable efforts, commercial efforts
- Conditions of closing
 - what is appropriate?

Indemnities

- When is indemnification appropriate?
 - risk allocation where uncertainty exists
 - damages for failure to perform
- Limits on indemnification
 - minimum threshold
 - maximum liability
- Indemnity procedure
 - carriage of litigation
- Enforceability issues

5:30 Day One Adjourns

Day Two: April 28, 2010

8:00 Registration and Continental Breakfast

8:30 Recap and Introduction from the Course Leader

David A. Seville, Partner, Torys LLP

8:35 Effective Due Diligence

Daniel F. Hirsh, Partner, Fogler, Rubinoff LLP

Legal Due Diligence Generally

- Purpose and importance overview
 - what are the goals?
- Potential losses and liabilities as a result of deficient due diligence
- Results of legal due diligence
 - what action to take and reporting to the client
- Recent developments in due diligence including:
 - virtual data rooms
 - privacy law issues

Searches

Stanley W.L. Freedman, Partner, Heenan Blaikie LLP

- What should be searched?
 - corporate searches, liens, litigation, bankruptcy, etc.
- How to quickly interpret and effectively analyze search results
- Dealing with prior registrations
- The limits of the search process and how to address them

IT and Intellectual Property Issues

Richard F.D. Corley, Partner, Blake, Cassels & Graydon LLP

- The basic steps of IT and IP due diligence
- Determining who owns what
- Avoiding common IT/IP due diligence pitfalls
- International aspects of IT/IP due diligence
- Case law update

Employment Law and Pension and Benefits Issues

Karen Shaver, Partner, McMillan LLP

Darryl R. Hiscocks, Partner, McMillan LLP

- Pension and benefits plans
 - essential elements of the review and significant areas of liability
- Different ways pension and other benefits are handled in share purchases, asset purchases and mergers
- Employment contracts – general considerations
- Impact of collective agreements
- Termination and severance issues
- Pay equity, workplace safety and insurance and other statutory obligations
- Privacy issues

Environmental Issues

Dennis E. Mahony, Partner, Torys LLP

Wendy Potomski, CFA, Vice-President
PricewaterhouseCoopers LLP

- Breadth of risk and scope of diligence
- Increasing importance of climate related risk
- Using technical consultants effectively
- Documenting the exercise

10:45 Refreshment Break

11:00 Managing Regulatory Risk

Mark Opashinov, Partner, McMillan LLP

- Competition/antitrust issues in M&A
- Allocating competition law risk
- The merger review process
- Investment Canada considerations
- Emerging issues and trends

11:30 Cross-Border Issues

Michael D. Amm, Partner, Torys LLP

Joris M. Hogan, Partner, Torys LLP (New York)

- What is different about cross-border deals?
- Determining the role of Canadian and foreign counsel in a cross-border deal
- Structuring and tax planning issues
- Managing the *Competition Act* /*Hart-Scott-Rodino Act* pre-merger notification and review process and other regulatory approvals
- Foreign investment review/national security considerations
 - *Investment Canada Act*
 - *U.S. Foreign Investment and National Security Act of 2007*

Agenda

- Securities law issues – takeover bids, proxy rules and MJDS
- Recent case law developments in Delaware law relating to mergers and acquisitions and duties of directors

1:00 Networking Luncheon

2:00 Corporate Governance and Regulatory Issues

Kent E. Thomson, Partner, Davies Ward Phillips & Vineberg LLP

Michael J. Siltala, Partner, Torys LLP

Naizam Kanji, Manager, Mergers & Acquisitions Ontario Securities Commission

In this session participants will hear views from the regulatory, corporate and litigation perspectives on recent trends and emerging issues relating to:

- The application of the public interest mandate in M&A transactions
- Defensive tactics
- Related-party transactions
- Private placement investments in a target
- Fairness opinions

3:15 Refreshment Break

3:30 Legal Opinions

Margaret T. Nelligan, Partner, Aird & Berlis LLP

Paul G. Findlay, Partner, Borden Ladner Gervais LLP

- When are particular opinions appropriate to be given or required?
 - who should they come from?
 - enforceability opinions/qualifications
- A practical approach to opinion negotiation
 - the time and cost involved in giving certain opinions
- Opinions vs. due diligence vs. terms
- Conventions for drafting and negotiating
- Qualifications
- Wraparound opinions

4:15 Closing

Cameron D. Koziskie, Partner, Torys LLP

Rima Ramchandani, Partner, Torys LLP

- The dynamics and logistics of closing
 - anticipating issues and logjams
 - orchestrating the closing
- Developing the closing agenda
- Payment mechanics, electronic transfers and the Large Value Transfer System
- Escrow agreements and holdbacks
- Handling post-closing disputes
- Reporting to the client

5:00 Course Concludes

Optional Post-Conference Workshop

Public Company Takeovers: Understanding the Strategies and Tactics Employed by the Offeror and Offeree

Thursday, April 29, 2010 9:00 a.m. - 12:00 p.m.

Michael D. Amm, Partner, Torys LLP

J. Alexander Moore, Partner, Davies Ward Phillips & Vineberg LLP

Despite the slowdown in Canadian M&A markets since mid-2007, legal developments in the law governing public company M&A have continued at a surprisingly robust pace. With a reduction in the number of possible bidders, targets can no longer expect to be able to simply conduct an auction in response to an unsolicited approach. Understanding the strategies, tactics and challenges in completing or defending a takeover is crucial in today's environment in order for acquirors to successfully complete transactions and for targets to extract maximum value for shareholders or to repel an undervalued bid.

During this session participants will canvass numerous recent market and legal developments affecting friendly and hostile M&A transactions.

- Developments with respect to Poison Pills:
 - shareholder approval of tactical pills
 - ISS recommendations
 - recent securities commission decisions on poison pills: NEO and Canadian Hydro Developers
 - is there an increasing deference to corporate directors' business judgment?
 - TSX requirements for shareholder approval
- Confidentiality and standstill agreements:
RIM v. Certicom
- Recent CSA pronouncements on varying the terms of a takeover bid
- The advantages and potential pitfalls in using toeholds
- Implications of MI 61-101
- New TSX requirements for shareholder approval of share exchange transactions
- Independence requirements for fairness opinions in light of *Hudbay*
- Implications of the BCE decision for directors' duties

Registration

Register me for: M&A Skills Boot Camp Course only Course plus Workshop

I am unable to attend. Please send me information about ordering program materials.

"I appreciate the calibre of the speakers, particularly recognizing that this represents a significant contribution of senior lawyers and their time and skill. Well done!" (March, 2008)

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Conference only: \$1395 plus 5% GST for a total of \$1464.75. Conference plus Workshop: \$1695 plus 5% GST for a total of \$1779.75. Workshop only: \$300 plus 5% GST for a total of \$315. Fees include attendance, program materials, continental breakfast, lunch (conference only), and break refreshments. Please inquire about financial assistance.

Group discounts are available. Visit www.osgoodepd.ca for details.

CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist Program, Barreaux du Québec, BC CPD and the NY CLE Board (for transitional and non-transitional lawyers).

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Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

Dates & Times

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Day Two: 8:30 a.m. - 5:00 p.m.

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Please arrive a half hour early at the conference for sign-in and material pick-up.

Dress is business casual.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas Street W., 26th Floor
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