

8TH ANNUAL

M&A SKILLS BOOT CAMP



This unique and highly praised program will help you master essential M&A skills, while providing a comprehensive overview of the components of a M&A transaction. Topics include:

- Use of due diligence information in negotiating the deal
- Confidentiality agreements and letters of intent
- Transaction structures and how they differ
- Drafting preliminary deal agreements
- Factors to consider when structuring the deal, including tax law and securities law issues
- Strategies for handling corporate governance and regulatory issues
- Emerging regulatory issues and risks
- Managing risks in international transactions
- Protecting your clients with adequate representations, warranties and indemnities
- Emerging trends in today's deal market - remedies and indemnification

Join over 20 leading M&A experts as they take you through a multi-issue acquisition case study.

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Arthur Doyle
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Webcast Available

Chair

Aaron S. Emes
Torys LLP

Dates and Time

March 31 - April 1, 2015
8:30 a.m. - 5:30 p.m. EDT

Location

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

8TH ANNUAL M&A SKILLS BOOT CAMP

The M&A market is increasingly demanding and complex. You need a clear understanding of how to structure and negotiate a deal that meets your client's business goals. Working with *OsgoodePD's* faculty of M&A experts, you will acquire the knowledge and strategies you need to manage risks and successfully execute the deal.

This two-day, intensive *OsgoodePD* boot camp is designed to teach lawyers and other professionals 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, negotiation strategies and lively discussion with leading practitioners.

Whether you're a junior lawyer, business executive, in-house counsel or law clerk involved in M&A transactions, you'll come away from this program with a thorough understanding of the key principles and techniques you need to know to confidently anticipate and deal with the issues that may arise in a negotiated transaction.

You'll gain important insights and key strategies required for M&A success, including:

- Gathering the information you need and keeping clients informed
- Understanding the ethical and professional issues that may arise in negotiating the deal
- Mitigating risks through appropriate due diligence
- Choosing the right structure for the transaction
- The impact of asset versus share transactions on labour, employment, pension and benefits issues
- Negotiating representations, warranties, covenants and conditions and indemnities
- Investment Canada/competition/antitrust issues in M&A transactions
- Managing risk in international transactions
- Managing corporate governance issues in M&A transactions
- Trends and highlights from recent deals
- Identifying and mitigating environmental risks
- Handling closing issues and post-closing logistics and disputes

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Chair

Aaron S. Emes, *Torys LLP*

Faculty

Michael D. Amm, *Torys LLP*

Jason (Jake) Bullen
Cassels Brock & Blackwell LLP

Richard Corley
Goodmans LLP

Lisa Damiani, *General Counsel
and Corporate Secretary
New Gold Inc.*

Laurie N. Duke, *Torys LLP*

Michael J. Fortier, *Torys LLP*

Robert O. Hansen
McCarthy Tétrault LLP

Darryl R. Hiscocks, *Torys LLP*

Samantha Horn
Stikeman Elliott LLP

Jason Koskela, *Senior Legal
Counsel, Ontario Securities
Commission*

Brian Levett
Minden Gross LLP

Amanda Linett
Stikeman Elliott LLP

Thomas A. McKee
Blake, Cassels & Graydon LLP

Paul A.D. Mingay
Borden Ladner Gervais LLP

Susan Nickerson, *Torys LLP*

Jon Northup, *Goodmans LLP*

Mark Opashinov, *McMillan LLP*

André Perey, *Blake, Cassels
& Graydon LLP*

Kathleen M. Ritchie, *Gowling
Lafleur Henderson LLP*

Melanie A. Shishler, *Davies
Ward Phillips & Vineberg LLP*

Paul A. Simon, *Borden Ladner
Gervais LLP*

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

Adam Walsh, *General Counsel
Choice Properties REIT*

Catherine Youdan, *Blake
Cassels & Graydon LLP*



Enhance your knowledge of the strategies, rules and regulations needed to successfully close today's M&A deals.



AGENDA

DAY ONE: TUESDAY, MARCH 31, 2015

8:00-8:30

Registration and Continental Breakfast

8:30-8:40

Welcome and Introduction from the Chair

Aaron S. Emes, *Torys LLP*

8:40-10:30

Overview and Getting Started

Robert O. Hansen, *McCarthy Tétrault LLP*

Aaron S. Emes, *Torys LLP*

Catherine Youdan, *Blake, Cassels & Graydon LLP*

- Understanding the deal and client objectives
- Efficient project management in the M&A context
- Effective client communication

Preliminary Documents

- Key negotiated clauses in confidentiality agreements and letters of intent
- Engagement letters with financial advisors
- Case law update

Ethics and Professionalism Responsibilities in M&A Transactions

- Confidentiality and privilege
- Securities trading
- Conflicts of interest
 - understanding your duties and responsibilities
 - identifying conflicts
 - techniques for managing conflicts
- Other ethical considerations
 - duty to negotiate in good faith
 - new *Rules of Professional Conduct*

10:30-10:45

Refreshment Break

10:45-12:00

Effective Due Diligence

Jason (Jake) Bullen, *Cassels Brock & Blackwell LLP*

- Purpose and importance
- Understanding client expectations and reporting results
- Planning and staffing
- Co-ordinating with business and financial diligence
- Spotting the "red flags" and identifying potential solutions
- Addressing and managing the potential for professional liability
- Recent developments

12:00-1:00

Networking Luncheon

1:00-3:00

Structuring the Deal

Jon Northup, *Goodmans LLP*

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

Melanie A. Shishler, *Davies Ward Phillips & Vineberg LLP*

Experienced counsel will walk you through the most common transaction structures, including corporate and securities law considerations and tax implications.

- Factors to consider when structuring the deal
- How to determine the best structure for your transaction
- What forms can a transaction take and how do they differ?
 - share/asset purchases
 - take-over bids
 - amalgamations
 - plans of arrangement
- Trends in deal structures

3:00-3:15

Refreshment Break

3:15-4:15

Managing Regulatory Risk

Mark Opashinov, *McMillan LLP*

- The statutory framework for review of M&A transactions
- The Competition Bureau's review process, and the practical implications of how Bureau administrative processes overlay the statutory framework

AGENDA (Cont'd)

- Considerations in planning the *Competition Act* clearance processes
- Covenants, representations and warranties concerning the *Competition Act* clearance process and allocation of the risks of the regulatory process
- The typical give and take between buyer and seller - who has responsibility for what, who can make decisions about what, when can a buyer walk because of a *Competition Act* problem
- Planning the M&A process with the *Competition Act* process in mind
- The *Investment Canada Act* process and how it can affect your deal

4:15-5:30

Managing Risk in International Transactions

Michael D. Amm, *Torys LLP*

Lisa Damiani, *General Counsel and Corporate Secretary New Gold Inc.*

- What is different about international deals?
- Determining the role of Canadian and foreign counsel in international deals
- Structuring and tax planning issues
- Managing the *Hart-Scott-Rodino Act* pre-merger notification and review process and other regulatory approvals
- Foreign investment review/national security considerations - *U.S. Foreign Investment and National Security Act of 2007*
- Securities law issues - takeover bids, proxy rules and MJDS
- Recent Delaware case law developments relating to M&A and directors' duties
- Governing law and dispute resolution
- Anti-bribery/corruption

5:30

Day One Adjourns

DAY TWO: WEDNESDAY, APRIL 1, 2015

8:00-8:30

Sign-in and Continental Breakfast

8:30-8:35

Recap and Introduction from the Chair

Aaron S. Emes, *Torys LLP*

8:35-10:30

Negotiating the Fundamentals

Brian Levett, *Minden Gross LLP*

Thomas A. McKee, *Blake, Cassels & Graydon LLP*

Laurie N. Duke, *Torys LLP*

This session will, using precedents, review key negotiated clauses and negotiation techniques.

Representations and Warranties

- How representations and warranties are used to obtain information and allocate risk
- What is reasonable to ask for and why/why not?
- Due diligence to support representations and warranties
- Survival
 - effect of closing
 - conventional periods

Covenants and Conditions

- Implications of failure to perform
 - covenants to be satisfied prior to/after closing
- Conditions of closing
 - what is appropriate?

Indemnities

- When is indemnification appropriate?
 - risk allocation when uncertainty exists
 - damages for failure to perform
- Limits
 - deductibles, baskets and caps
- Enforceability issues

10:30-10:45

Refreshment Break

10:45-12:00

Labour, Employment, Pensions and Benefits Issues in the M&A Process

Darryl R. Hiscocks, *Torys LLP*

Susan Nickerson, *Torys LLP*

- The impact of asset versus share transactions on labour, employment, pension and benefits issues
- Key issues in employment, pensions and benefits due diligence
- Different ways employees, pensions and benefits are handled in acquisition transactions
- Impact of collective agreements in acquisition transactions
- Termination and severance issues
- Successor employer legislation issues
- Management incentive agreements
- Emerging issues and trends

12:00-1:00

Networking Luncheon

1:00-2:00

Corporate Governance Matters and Regulatory Update

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

Amanda Linett, *Stikeman Elliott LLP*

Jason Koskela, *Senior Legal Counsel, Ontario Securities Commission*

AGENDA (Cont'd)

- Corporate governance in M&A transactions
- Proposed amendments to take-over bid regime
- Shareholder activism and proxy contests

2:00-3:00

What's Market? Highlights from Recent Deals and Studies

Kathleen M. Ritchie, *Gowling Lafleur Henderson LLP*

André Perey, *Blake, Cassels & Graydon LLP*

Samantha Horn, *Stikeman Elliott LLP*

- Sources of deal points information
- Trends in Canadian, US and European deals
- Earnouts
- Escrows
- MAE/MAC
- Remedies
 - break fees
 - specific performance
- Indemnification
 - survival periods
 - sandbagging
 - deductibles, baskets and caps
 - types of losses
- Representation and warranty insurance

3:00-3:15

Refreshment Break

3:15-4:00

Assessing IT and Intellectual Property Ownership

Richard Corley, *Goodmans LLP*

- Key issues in IT and IP due diligence
- Establishing and implementing a due diligence plan
- Avoiding common IT/IP pitfalls
- Assessing IP ownership and exposure
- Open source and other software licences
- Emerging issues and trends

4:00-4:45

Identifying and Mitigating Environmental Risks

Michael J. Fortier, *Torys LLP*

- Breadth of risks, including potential exposures for directors and officers
- Increasing importance of climate-related risks
- Scoping environmental due diligence appropriately
- Using technical consultants effectively
- Documenting the exercise

4:45-5:30

Closing and Post-Closing Logistics: Best Practices

Paul A. Simon, *Borden Ladner Gervais LLP*

Adam Walsh, *General Counsel, Choice Properties REIT*

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

5:30

Program Concludes

WHO SHOULD ATTEND

- Lawyers practising in M&A, corporate finance, and securities
- Executives involved in M&A negotiations and transactions
- In-house Counsel
- Law Clerks who work on M&A transactions
- Government and regulatory representatives

WHAT PAST ATTENDEES HAVE SAID:

"Extremely knowledgeable panelists who are experts in their field. They provided some real-life scenarios and it was clear they were more than willing to provide all the tricks of their trade."

"The Due Diligence and Negotiating the Fundamentals sessions were outstanding, very practical discussion. The program exceeded my expectations, it was very well-done."

"Great substance and broad application."

REGISTRATION

Join over 20 leading M&A experts as they take you through a multi-issue acquisition case study

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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's 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 \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

Dates & Time

March 31 - April 1, 2015
8:30 a.m. - 5:30 p.m. EDT

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

Dress is business casual.

Location

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