Goodmans LLP Update

Corporate Securities Law

December 1, 2015

ASC Strikes Oil Compromise - COSL Rights Plan Allowed to Stand for an Additional 30 Days

The Alberta Securities Commission (ASC) has temporarily upheld a shareholder rights plan implemented by Canadian Oil Sands Limited (COSL) for an additional 30 days in response to an unsolicited takeover bid made by Suncor Energy Inc. ("**Suncor**"). COSL had defended its rights plan on the basis that the 120-day tender period it required for hostile bids:

- was necessary for shareholders to evaluate recent developments related to COSL's business and thus the value of Suncor's offer; and
- was consistent with proposed amendments to the Canadian takeover bid regime (the "**Proposed Amendments**").

The ASC did not apply the principles of the Proposed Amendments in allowing the rights plan to endure for a total of 90 days. However, a 90-day period appears to be a compromise between the requirements of the Proposed Amendments and the 60 days Canadian securities regulators have generally considered a reasonable period for a rights plan to endure, depending on the factual circumstances. While the ASC's reasons have not yet been published, based on the evidence provided by COSL that it was in discussions with four credible buyers, the ASC concluded that allowing the COSL board an additional month to seek a better offer than the Suncor bid was in the best interests of COSL's shareholders.

Background

The background to Suncor's bid is described in our October 27, 2015 Update, *Hostile Bid for Canadian Oil Sands Foreshadows Tactics Under Proposed Takeover Bid Regime*. The rights plan in question was implemented in response to Suncor's unsolicited offer, which was structured as a "permitted bid" under COSL's pre-existing rights plan. COSL's second rights plan enhanced the "permitted bid" requirements in the pre-existing rights plan such that Suncor's offer would trigger substantial dilution unless it were to remain open for 120 days. In substance, COSL was challenging Suncor to revise its bid to comply with the Proposed Amendments or apply to the ASC for a cease trade order.

Implications of the Ruling

It is not clear whether Suncor will revise its bid to remain open until January 4, 2016, the date the rights plan will be cease traded. If Suncor extends its bid, COSL will likely continue seeking a more favourable offer from other bidders; if Suncor does not extend its bid, the auction for COSL will likely cease.

Reporting issuers should be aware that until the Proposed Amendments come into force, the regulators appear to be generally acting in accordance with current rules and principles (see also our December 1, 2015 Update, *BCSC Permits Private Placement in Face of a Hostile Bid*). All decisions regarding rights plans, however, are highly contextual, and the regulators will tailor remedies to their view of the facts and the shareholders' best interests.

Please contact any member of our Corporate Securities Group to discuss defensive tactics, take-over bids or other matters relating to public M&A generally.