2013 Canadian Public Mining Mergers & Acquisitions Deal Survey

For Transactions Announced in 2012

Goodmans LLP
Barristers & Solicitors / goodmans.ca
Acknowledgements and Disclaimers

This survey focuses on mining specific deal points, but also reviews certain other key deal points. Readers are encouraged to review other general deal surveys in addition to this survey for information on general deal terms.

The review of transaction agreements requires judgement since not all survey categories lend themselves to simple characterizations necessary to compile data for this survey. Accordingly, the findings presented in this survey may be subject to important qualifications that are not expressly articulated, and readers should consult a member of the Goodmans’ Mining Group for a full understanding of the issues covered.

The findings presented herein do not reflect views of Goodmans LLP or any lawyer of Goodmans LLP.

This survey is intended to provide general comment only and should not be relied upon as legal advice. No solicitor-client relationship shall arise from the receipt or review of this survey.
2013 Canadian Public Mining Target M&A Deal Survey

- This survey analyzes publicly available acquisition agreements (e.g., support agreements and arrangement agreements) for transactions announced in 2012 that involved Canadian public mining companies as targets with a transaction value in excess of C$10 million.

<table>
<thead>
<tr>
<th>Value Range (C$)</th>
<th># of Deals</th>
<th>Consideration</th>
<th>Form of Deal</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10 million- $1.2 billion</td>
<td>31</td>
<td>Cash</td>
<td>Arrangement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shares</td>
<td>Take-over bid</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mix</td>
<td>Other</td>
</tr>
<tr>
<td></td>
<td>35%</td>
<td>52%</td>
<td>13%</td>
</tr>
<tr>
<td></td>
<td>81%</td>
<td>13%</td>
<td>6%</td>
</tr>
</tbody>
</table>

- The list of announced transactions is sourced from Bloomberg, and the agreements were obtained from the System for Electronic Document Analysis and Retrieval.
- Certain transactions were excluded as a result of agreements not being available or not being applicable notwithstanding inclusion by Bloomberg.
- Totals presented herein may exceed 100% since certain data points are found multiple times in some agreements.
2013 Canadian Public Mining Target M&A Deal Survey

- Announced Total Value in Canadian Dollars (C$)

- C$10M-C$25M
- C$25M-C$50M
- C$50M-C$100M
- C$100M-C$250M
- C$250M-C$500M
- C$500M-C$1B
- >C$1B

0% 5% 10% 15% 20% 25% 30% 35%

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Target Representations and Warranties

• General Qualification of Representations and Warranties
  ▪ Example Language - Not Qualified
    ➤ The Target hereby represents and warrants to Purchaser as follows, and acknowledges that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

  ▪ Example Language – Qualified
    ➤ Except as disclosed in the Purchaser Disclosure Letter [(which shall make reference to the applicable section, subsection, paragraph or subparagraph below in respect of which such qualification is being made)], or the Target Public Documents [(other than any disclosures contained under the captions “Risk Factors” or “Forward Looking Statements” and any other disclosures contained therein that are predictive, cautionary or forward-looking in nature)] the Target hereby represents and warrants to Purchaser as follows, and acknowledges that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:
Target Representations and Warranties

• Are the Target’s Representations and Warranties subject to a General Qualification?

- Yes: 90%
- No: 10%
Target Representations and Warranties

Nature of General Qualification

- Disclosure Letter or Schedule: 96%
- Public Disclosure: 14%
- Knowledge of Purchaser: 4%
- Other: 4%
Target Representations and Warranties

- If Target Representations and Warranties are subject to a Disclosure Letter/Schedule general qualification, must there be a nexus to the representations and warranties?

If yes, how is the qualification narrowed?

- Specific references: 96%
- Reasonably apparent: 4%

- No: 18%
- Yes: 82%
Target Representations and Warranties

- If Target Representations and Warranties are subject to a Public Disclosure general qualification, are they narrowed in any way?

- If yes, how is the qualification narrowed?

- Risk factors
- and forward looking statements
- excluded
- 100%
Target Representations and Warranties

• Specific Representation and Warranty regarding Mineral Reserves and Resources

  ▪ **Example Language**
    
    - The proven and probable mineral reserves and mineral resources for the various Properties and Mineral Rights that the Target holds an interest, as set forth in the Target Public Documents, were prepared in [all material respects] in accordance with sound [mining], [engineering], [geosciences], [other applicable industry standards and practices], [Laws] and [NI 43-101].

Does the Target give a specific Representation and Warranty regarding its Mineral Reserves and Resources?*

*Where specific representation included, it was qualified by materiality 86% of the time.
Target Representations and Warranties

Representation and Warranty regarding Mineral Reserves and Resources must be in compliance with

- Laws: 71%
- 43-101: 67%
- Engineering: 57%
- Other Industry: 48%
- Mining Practice: 48%
- Geoscience: 48%
Target Representations and Warranties

• Specific Representation and Warranty regarding Property and Mineral Rights
  ▪ Example Language
    ▶ The Target’s material real properties and material mineral interests and rights [(including any mineral claims, mining claims, concessions, exploration licences, exploitation licences, prospecting permits, mining leases and mining rights), in each case, either existing under [contract, by operation of Laws of otherwise are set out in the Disclosure Letter]. Other than the Properties and Mineral Rights [set out in the Disclosure Letter], the Target does not own or have any interest in any [material] real property or any [material] mineral interests and rights.
Target Representations and Warranties

- Does the Target give a specific Representation or Warranty regarding Property and Mineral Rights?

No: 3%
Yes: 97%
Target Representations and Warranties

• Is the Representation or Warranty on Property and Mineral Rights qualified?

- No 10%
- Yes 90%
Target Representations and Warranties

• If qualified, what is the qualification used?

- Disclosure Letter: 100%
- Public Filings: 19%
- Other: 7%
## Target Representations and Warranties

### What does the Representation or Warranty on Property and Mineral Rights include?

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Properly located and recorded in compliance with laws/valid and subsisting mineral rights</td>
<td>87%</td>
</tr>
<tr>
<td>Exclusive right to deal</td>
<td>57%</td>
</tr>
<tr>
<td>No earn in rights, rights of first refusal, royalty rights or similar provisions</td>
<td>87%</td>
</tr>
<tr>
<td>Good standing and all work required to be performed, taxes, fees, expenditures and other...</td>
<td>87%</td>
</tr>
<tr>
<td>No restrictions on rights to use, transfer or exploit, other than pursuant to law</td>
<td>70%</td>
</tr>
<tr>
<td>No notice re: revocation of any interest</td>
<td>73%</td>
</tr>
<tr>
<td>All surface and exploitation rights</td>
<td>67%</td>
</tr>
<tr>
<td>No property expropriated or notice of intent to do so</td>
<td>70%</td>
</tr>
</tbody>
</table>
Target Representations and Warranties

Properly located and recorded in compliance with laws/valid and subsisting mineral rights

Is the representation qualified?

Yes 38%
No 62%

If qualified, what is the standard?

Knowledge 60%
MAE 60%
Materiality 30%
Target Representations and Warranties

Exclusive right to deal

Is the representation qualified?

Yes 29%
No 71%

If qualified, what is the standard?

Knowledge 40%
MAE 40%
Materiality 20%
Target Representations and Warranties

No earn in rights, rights of first refusal, royalty rights or similar provisions

Is the representation qualified?
- Yes: 38%
- No: 62%

If qualified, what is the standard?
- Materiality: 100%
- MAE: 0%
- Knowledge: 0%
Target Representations and Warranties

Good standing and all work required to be performed, taxes, fees, expenditures and other payments paid

Is the representation qualified?

- No: 54%
- Yes: 46%

If qualified, what is the standard?

- Knowledge: 42%
- Materiality: 33%
- MAE: 25%
Target Representations and Warranties

No restrictions on rights to use, transfer or exploit, other than pursuant to law

Is the representation qualified?

- Yes: 71%
- No: 29%

If qualified, what is the standard?

- Materiality: 67%
- Knowledge: 27%
- MAE: 20%
Target Representations and Warranties

No notice regarding revocation of any interest

Is the representation qualified?

- Yes: 27%
- No: 73%

If qualified, what is the standard?

- Knowledge: 50%
- MAE: 50%
- Materiality: 17%
Target Representations and Warranties

- All surface and exploitation rights to develop and/or operate as contemplated in public filings/technical report/mine plan?

Is the representation qualified?

- Yes 55%
- No 45%

If qualified, what is the standard?

- MAE: 55%
- Knowledge: 36%
- Materiality: 18%
Target Representations and Warranties

No property expropriated or notice of intent to do so

Is the representation qualified?
- Yes 67%
- No 33%

If qualified, what is the standard?
- Knowledge 86%
- Materiality 21%
- MAE 0%
Target Representations and Warranties

- Specific Representation and Warranty regarding the Environment
  - Example Language
   - [To the knowledge of the Target], it is in [material] compliance with all environmental laws and all terms and conditions of all environmental permits, has not received any order, request or notice from any person alleging a [material] violation of any environmental law, is not a party to any litigation or administrative proceeding threatened against it or its property or assets, is not subject to any judgement, decree, order or citation related to or arising out of applicable environmental law and is not involved in remediation operations and does not know of any facts, circumstances or conditions that would reasonably be expected to result in any environmental liabilities that would have a [material adverse effect] on the Target.

Does the Target give a specific Representation or Warranty regarding the Environment?

Yes 100%
Target Representations and Warranties

• Is the Environmental Representation qualified?

- Yes: 94%
- No: 6%
Target Representations and Warranties

• If qualified, what is the standard?

- MAE: 62%
- Materiality: 38%
- Knowledge: 28%
Target Representations and Warranties

- What time period does the Environmental Representation or Warranty speak to?

- At all times: 55%
- Currently: 42%
- Since a date: 3%
Target Representations and Warranties

• Specific Representation and Warranty regarding Permits
  ▪ Example Language
    ▶ The Target has obtained and is in [material] compliance with all material permits required by applicable laws, necessary to conduct its current business as now being conducted. [To the knowledge of the Target], there are no facts, events or circumstances that would reasonably be expected to result in a failure to obtain or be in compliance with such [material] permits as are necessary to conduct its business as it is currently being conducts [as set forth in the Target public disclosure documents].

Does the Target give a specific Representation or Warranty relating to the Target's Permits?

- Yes 84%
- No 16%
Target Representations and Warranties

- Is the Permit Representation qualified?

- Yes 88%
- No 12%
Target Representations and Warranties

- If qualified, what is the standard?

- MAE: 52%
- Knowledge: 30%
- Materiality: 39%
Target Representations and Warranties

• Specific Representation and Warranty regarding the Foreign Corrupt Practices Act and the Corruption of Foreign Public Officials Act
  ▪ Example Language
    ▶ The Target has not taken, committed to take or been alleged to have taken any action which would cause the Target to be in [material] violation of the [Corruption of Foreign Public Officials Act (Canada) (and the regulations promulgated thereunder)], [Foreign Corrupt Practices Act] or any applicable Laws of similar effect of any other jurisdiction, and [to the knowledge of the Target] no such action has been taken by any of its agents, representatives or other persons acting on behalf of the Target [that would cause a material adverse effect].

Does the Target give a specific Representation or Warranty regarding the Foreign Corrupt Practices Act or the Corruption of Foreign Public Officials Act?
Target Representations and Warranties

• Is the FCPA/CFPOA Representation qualified?

- Yes: 60%
- No: 40%
Target Representations and Warranties

• If qualified, what is the standard?

- Knowledge: 100%
- MAE: 0%
- Materiality: 0%
Interim Covenants of the Target

- Interim covenant regarding effort required to obtain regulatory approval(s)
  - Example Language
    - The Target shall [use its best efforts] [reasonable best efforts] [commercially reasonable best efforts] [reasonable efforts] [commercially reasonable efforts to] obtain all consents, approvals and authorizations as are required to be obtained by the Target under any applicable law or from any governmental entity that would, if not obtained, materially impede the completion of the transaction or have a material adverse effect on the Target.

Does the Target provide an interim covenant regarding effort required to obtain regulatory approval?

- Yes: 90%
- No: 10%

[Diagram showing the percentage distribution:]

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Interim Covenants of the Target

Effort required to obtain regulatory approval:

- Commercially Reasonable Efforts: 71%
- Commercially Reasonable Best Efforts: 14%
- Reasonable Best Efforts: 7%
- Reasonable Efforts: 7%
- Best Efforts: 0%
Deal Protection Provisions

• Non-Solicit Provision
  ▪ Example Language
    ▶ The Target shall not, directly or indirectly, through any officer, director, employee, advisor, representative, agent or otherwise, make, solicit, assist, initiate, encourage or otherwise facilitate any inquiries, proposals or offers relating to any Acquisition Proposal, engage in any discussions or negotiations regarding, or provide any information with respect to, or otherwise co-operate in any way with any effort or attempt by any other person to make or complete any Acquisition Proposal, provided that the Target shall be permitted to engaged in discussions and negotiations with a person that has made an unsolicited written Acquisition Proposal that the Target Board has determined [constitutes] [could/would result in] [could/would reasonably be expected to result in] a Superior Proposal.

Does the agreement include a Non-Solicit provision? Yes 100%
Deal Protection Provisions

- Does the Non-Solicity include a fiduciary out?

Yes
100%
Deal Protection Provisions

- What is the standard to consider and facilitate other offers?

```
Could/would reasonably be expected to result in a SP
Actual SP
Could/would result in an SP
Any AP

0% 20% 40% 60% 80%
70% 20% 10% 0%
```
Deal Protection Provisions

• Intervening Event
  ▪ Example Language
    ▶ Nothing in this agreement shall prevent the Target Board from responding through a directors’ circular or otherwise as required by applicable securities laws to an Acquisition Proposal that it determines is not a Superior Proposal, or from withdrawing, modifying or changing its recommendation as a result of [the Purchaser having suffered a Material Adverse Effect] [a material development or change in circumstance not known as at the date of the agreement].

Is there a specific provision relating to an intervening event?

- Yes 13%
- No 87%
Deal Protection Provisions

• Does the Non-Solicit contemplate existing standstills?

- No 10%
- Yes 90%
Deal Protection Provisions

- Can existing standstills be waived?

- Must actively enforce standstills: 63%
- No waiver: 33%
- Yes, can be waived: 11%
Deal Protection Provisions

- What is the amount of shares that would constitute a Superior Proposal?

- All or substantially all: 73%
- 66 and 2/3%: 3%
- 50% or more: 17%
- <50%: 3%
- Silent: 3%
Deal Protection Provisions

• What is the amount of assets that would constitute a Superior Proposal?

- All or substantially all: 80%
- 50% or more: 7%
- <50%: 3%
- Silent: 3%
Deal Protection Provisions

• Can a Superior Proposal include a due diligence or financing condition?

- Cannot include due diligence condition: 87%
- Only limited access to due diligence: 7%
- Cannot include financing condition: 27%
- Financing must be reasonably available: 57%
Deal Protection Provisions

• Is there a requirement for the anticipated timing of completion of a Superior Proposal?

- No undue delay and must be reasonably capable of completion: 90%
- Reasonably capable of completion: 3%
- No undue delay: 3%
- Silent: 3%
Deal Protection Provisions

**Does the Non-Solicit include a right to match?**
- Yes: 97%
- No: 3%

**What are the time constraints on the right to match?**
- 3 business days: 3%
- 5 business days: 86%
- > 5 business days: 10%
Deal Protection Provisions

- Does the transaction contemplate a break fee?

- No
  - 6%

- Yes
  - 94%
Deal Protection Provisions

Break Fee as a Percentage of Equity Value

- 2.0% - < 2.5%
- 2.5% - < 3.0%
- 3.0% - < 3.5%
- 3.5% - < 4.0%
- > 4.0%

• The average break fee is 3.7% of the deal’s equity value.
Deal Protection Provisions

• How is the break fee characterized?

- Liquidated damages and exclusive remedy: 62%
- Liquidated damages: 24%
- Exclusive remedy: 7%
- Not explicitly stated as liquidated damages or exclusive remedy: 7%
Deal Protection Provisions

- Is the break free triggered by a naked no-vote or failure to reach the minimum tender condition (MTC)?

Yes: 7%
No: 93%
Deal Protection Provisions

- Is the break fee triggered by a no-vote/failure to reach MTC after an AP has been announced?

  - Yes (announced): 7%
  - Yes (announced, still pending and closed < 6 months): 10%
  - Yes (announced, still pending and closed 6 months - 1 year): 59%
  - Yes (announced, still pending and closed > 1 year): 7%
  - No: 17%
Expense Reimbursement

• Expense Reimbursement Provision
  ▪ Example Language
    ▶ If a [naked no-vote/failure to reach MTC] [breach of the non-solicit] [breach of a covenant] [breach of a representation] occur, the [Target/Purchaser] shall pay the expenses of the [Purchaser/Target].

Does the agreement include an expense reimbursement provision?

- Yes 42%
- No 58%
Expense Reimbursement

How is the expense reimbursement provision triggered?

- Naked no-vote/failure to reach MTC: 62%
- Breach of the non-solicit: 38%
- Breach of a covenant: 69%
- Breach of a representation: 54%
Material Adverse Effect / Change

• Material Adverse Effect
  ▪ Example Language
    ▶ A Material Adverse Effect means any one or more changes, effects, events or occurrences that, individually or in the aggregate, [has a material adverse effect] [could reasonably be expected to have a material adverse effect] [would reasonably be expected to have a material adverse effect] [could have a material adverse effect] [would have a material adverse effect] on the business, properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), capitalization, operations or results of operations of the business [and prospectus of the business], taken as a whole, other than any change, effect, event or occurrence relating to...[the mining industry] [the price of metals].

Direct condition to closing that a MAE/MAC has not occurred

Indirect condition to closing that a MAE/MAC has not occurred (i.e. rep includes a no MAE/MAC and condition requires rep to be accurate)
Material Adverse Effect / Change

- What does the definition of Material Adverse Effect / Change include (in addition to typical carve outs)?

- Prospects: 52%
- Mining industry exclusions: 89%
- Commodity price exclusions: 59%
- Quantitative test: 4%
About Goodmans’ Mining and Natural Resource Group

Goodmans is internationally recognized as one of Canada’s pre-eminent business law firms with market-leading expertise in M&A, corporate and transaction finance, private equity, real estate, tax, restructuring, litigation and other business-related specialities. Goodmans has offices in Toronto and Vancouver with over 200 lawyers.

Goodmans’ Mining and Natural Resource Group represents clients at every stage of development — from junior exploration companies to some of the world’s largest senior producers. In addition to corporate finance, M&A and continuous disclosure advice, we regularly assist clients in connection with earn-in, option, royalty, off-take and other exploration-stage agreements and with the co-ordination of their claim, permit and license management in a variety of jurisdictions around the world.

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