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Professional Development CLE

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Sarah J. Ennor, Senior Counsel and Vice-President, BMO Financial Group

4th Annual M&A Skills Boot Camp

Taught by over 25 leading M&A practitioners using a multi-issue acquisition case study, this program covers:

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

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

Course Leader

David A. Seville, Partner, Torys LLP



DATES & TIMES

April 11 - 12, 2011
8:00 a.m. - 5:30 p.m.

OPTIONAL WORKSHOP

April 13, 2011
9:00 a.m. - 12:00 p.m.

LOCATION

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

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4th Annual M&A Skills Boot Camp

Develop your mastery of M&A strategies, rules, regulations and skills

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 those goals. 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 and skills 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, negotiation strategies and lively discussion. You'll gain important insights and key strategies required for M&A success, including:

- Gathering the information you need
- 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 international deals
- Managing governance and defensive tactics
- Negotiating opinions
- Handling closing issues 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 Post-Conference 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, Partner, 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
Michael J. Fortier, Torys 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
Naizam Kanji, Ontario Securities Commission
S. Brian Levett, MacLeod Dixon LLP
Thomas A. McKee, Blake, Cassels & Graydon LLP

James H. Miller, Torys LLP
Paul A. D. Mingay, Borden Ladner Gervais LLP
J. Alexander Moore, Davies Ward Phillips & Vineberg LLP
Margaret T. Nelligan, Aird & Berlis LLP
Jon Northup, Goodmans LLP
Mark Opashinov, McMillan LLP
Ian G. Putnam, Stikeman Elliott LLP
Rima Ramchandani, Torys LLP
Karen Shaver, McMillan LLP
Michael J. Siltala, Torys LLP
Kent E. Thomson, Davies Ward Phillips & Vineberg LLP
Troy Ungerman, Ogilvy Renault LLP
Thomas H. Yeo, Torys LLP

Agenda

Day One: Monday, April 11, 2011

8:00 Registration and Continental Breakfast

8:30 Welcome and Introduction

David A. Seville, Partner, Torys LLP

8:35 Overview of M&A and Getting Started

David A. Seville, Partner, Torys LLP

Robert O. Hansen, Partner, McCarthy Tétrault LLP

Dolores Di Felice, Partner, Borden Ladner Gervais LLP

Troy Ungerman, Partner, Ogilvy Renault LLP

- Understanding the deal and client objectives
- Project management essentials for running a deal
- The checklist/timetable
 - when, what and who?
- Setting the team within the law firm
 - assigning responsibilities
 - setting deadlines
 - use of specialists
 - effective delegation
- Use of precedents and other resources
- Keeping clients informed through effective communication

Expression of Interest and Initial Transaction Steps

- What you need to settle up front
- Ethics in a transaction
 - duty to negotiate in good faith
 - consequences of allowing the other party to be misled
 - impact of the Rules of Professional Conduct
- Confidentiality agreements
- Letter of intent/term sheet overview
 - purpose and effect
 - content
 - binding or non-binding
- Drafting the letter of intent
 - how much detail?
- Exclusivity clauses
- Case law update

10:30 Refreshment Break

10:45 Effective Due Diligence

Daniel F. Hirsh, Partner, Fogler, Rubinoff LLP

Legal Due Diligence Generally

- Overview of purpose and importance
 - what are the goals?
- Understanding client expectations
- Developing an appropriate plan and proper staffing
- Working with specialists
- Coordinating with business and financial diligence
- Spotting the “red flags”

- 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

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

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

Jon Northup, 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 forms can a transaction take and how do they differ?
 - share/asset purchases
 - take-over 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 Overview of Acquisition Agreements and Negotiating the Fundamentals

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

S. Brian Levett, Partner, MacLeod Dixon LLP

D. Paul Emond, Professor, Osgoode Hall Law School

This two part session is designed to boost your knowledge of negotiation strategies and enhance your negotiation skills. Using precedents, the first part will provide an overview of how share and asset purchase agreements are structured and the key issues related to negotiating transactions, including case law updates.

The second part will focus on the things you to know to avoid destructive patterns in negotiations and to give you insight as to what motivates the other side to “buy in”. It will also give you the tools and techniques you need to make your negotiations more effective.

Agenda

Acquisition Agreements

- Share purchase agreement overview
- Asset purchase agreement overview

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/why not?
- 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 prior to 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

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

5:30 Day One Adjourns

Day Two: Tuesday, April 12, 2011

8:00 Continental Breakfast

8:30 Recap and Introduction from the Course Leader

David A. Seville, Partner, Torys LLP

8:35 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

9:15 Employment Law, and Pensions and Benefits Issues

Karen Shaver, Partner, McMillan LLP

Darryl R. Hiscocks, Partner, McMillan LLP

- Implications of share deals vs. asset deals for employees, pensions and benefits
- Key issues in employment, pensions and benefits due diligence
- Impact of collective agreements in acquisition transactions
- Different ways pensions and benefits are handled in acquisition transactions
- Termination and severance issues
- Emerging issues and trends

10:15 Refreshment Break

10:30 IT and Intellectual Property Issues

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

- Key issues in IT and IP due diligence
- How to determine who owns what
- Avoiding common IT/IP pitfalls
- Emerging issues and trends

11:15 International Transactions

Michael D. Amm, Partner, Torys LLP

Joris M. Hogan, Partner, Torys LLP

- 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 case law developments in Delaware law relating to mergers and acquisitions and duties of directors

12:15 Networking Luncheon

Agenda

1:15 Corporate Governance and Regulatory Issues

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

Michael J. Siltala, Partner, Torys LLP

Naizam Kanji, Deputy Director, Mergers & Acquisitions Corporate Finance, 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
- Governance and process considerations
- Defensive tactics

2:30 Refreshment Break

2:45 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
- Wraparound opinions

3:30 Environmental Issues

Michael J. Fortier, Partner, Torys LLP

- Breadth of risk and scope of environmental due diligence
- Increasing importance of climate-related risk
- Using technical consultants effectively
- Documenting the exercise
- Contractual options to address identified environmental matters

4:15 Closing and Post-Closing Issues

Rima Ramchandani, Partner, Torys LLP

James H. Miller, Associate, 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
- Reporting to the client
- Debriefing the client on lessons learned
- Handling post-closing disputes

5:15 Course Concludes

Optional Workshop

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

Wednesday, April 13, 2011: 9:00 a.m. - 12:00 p.m.

Thomas H. Yeo, Partner, Torys LLP

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

The battle for Potash Corporation of Saskatchewan highlighted many key issues in Canadian M&A law. As Canadian assets become even more attractive to foreign acquirors and as Canadian companies emerge from the financial crisis stronger than those in many other jurisdictions and look to make their own acquisitions, we can expect the debate to only intensify over issues such as appropriate defensive tactics for a target board and foreign investment review.

In this interactive, hands-on workshop, leading market practitioners will walk you through the steps and processes you need to know to help your clients launch or defend a public corporate acquisition. You'll get a thorough overview of the practical tactics and strategies you need to know, including:

- Target preparedness
- Public communications – when and how
- Considerations prior to making a bid
- Deal protections
- Managing the regulatory process
- Defence tactics, including poison pills
- Pitfalls to avoid
- Case studies

Who Should Attend

- Lawyers practising in
 - M&A
 - Corporate Finance
 - Securities
- Executives involved in M&A negotiations
- In-house counsel
- Government and regulatory representatives

Registration

Please complete all registrant information.

"Buying growth to drive M&A in 2011"
Globe & Mail, November 16, 2010

Register me for: **4th Annual M&A Skills Boot Camp**

I will attend: Course only Course plus Workshop Workshop only
 I am unable to attend. Please send me information about ordering program materials.

Fee Per Delegate

Course Only: \$1495 plus 13% HST for a total of \$1689.35; Course plus Workshop: \$1795 plus 13% HST for a total of \$2028.35; Workshop only: \$300 plus 13% HST for a total of \$339. Fees include attendance, program materials, continental breakfast, lunch (Course only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and CPD credits.



Approved in accordance with the requirements of the **LSUC CPD program** for 15 credit hours (18 with workshop), **LSUC EPPM** credits hours (pending); the **Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories,**

CPD Credits **Nunavut and Manitoba** for 15 credit hours (18 with workshop) for CPD requirements; the **New York CLE Board** for 18 credit hours (21.5 with workshop) in the Area of Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

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Osgoode Professional Development also offers many of its programs in-house and can customize some programs to your specific needs. If you would like further information, please contact Heather Gore, Program & Business Development Lawyer, at 416.597.8847 or custom@osgoode.yorku.ca or visit www.osgoodepd.ca.

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.

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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 14 days prior to the program date. No other refund is available.

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