



Canada and Chile: Public Financing for Exploration and Mining Issuers

Raymond A. McDougall
Stikeman Elliott LLP
Toronto, Ontario, Canada

Objectives:

(1) Market Activity

(2) Liquidity



- For mining and exploration issuers, more market activity in the Canadian capital markets - TSX and TSXV - than any other international markets
- By volume of global mining and exploration equity finance transactions, 80% are through the TSX and TSXV (the five-year running average)
- Highly active secondary market on TSX and TSXV, high liquidity and therefore higher valuations than on markets without same level of activity

Domestic Activity and Liquidity



- How do you generate transaction activity and liquidity in an industry sector in a domestic market?
 - Domestic financing is key to domestic liquidity (which is key to the valuations in the market that will in turn attract issuers to list in the jurisdiction)
- I The Canadian Model
 - II Chile - Ideas for Consideration

I The Canadian Model



- (1) Domestic Projects and Investing Culture
- (2) Regulatory Framework
- (3) Marketplace Rules and Thresholds to Encourage Exploration and Mining Companies
- (4) Incentives and Vehicles for Investors
- (5) “Critical Mass” in one Marketplace

(1) Domestic Projects - Investing Culture



- Great mining discoveries have contributed significantly to the exploration, settlement and growth of Canada, well known in popular culture, television news, newspapers
- Klondike Gold Rush, Cobalt Silver Boom, Ontario-Quebec Gold Camps (Rouyn-Noranda, Timmins, Kirkland Lake, Larder Lake)
- Ontario Gold at Hemlo and Red Lake, Sudbury Basin Nickel-Copper (Inco, now Vale), Voisey's Bay Nickel, Northwest Territories Diamond Rush, James Bay Nickel and Base Metals Discovery

(1) Domestic Projects – Investing Culture

- Cobalt, Ontario Silver Boom 1903-1918
- The “Silver Sidewalk” vein
- Major stock exchange activity in Toronto – rise to prominence of mining investment
- Even a brief stock exchange in Cobalt itself!



(2) Regulatory Framework



- Securities Laws and Regulation

- Extensive, sophisticated and well regulated securities markets to foster both investor protection and market efficiency
- Registration requirements: Market activity (eg trades) must be through qualified registrants; mutual/investment funds, managers and advisors highly regulated
- Disclosure-based: prospectus-level disclosure required to distribute securities, secondary market disclosure required to adhere to high standards
- Liability for issuers, directors, officers and experts for misrepresentations, significant omissions
- Securities Commissions, Stock Exchanges and Market Regulator

(2) Regulatory Framework



- Securities Laws and Regulation – General
 - Prospectuses
 - Continuous Disclosure
 - Exempt Distributions
 - Accredited Investors (sophisticated purchasers)
 - Listing Requirements
- Mineral Disclosure and Mining and Exploration Company Rules

National Instrument 43-101 – Standards of Disclosure for Mineral Projects



- Cornerstone of the success of the Canadian capital markets in mining
- Key to restoring confidence and market liquidity in the wake of scandals including Bre-X
- Cartaway Resources

National Instrument 43-101 – Standards of Disclosure for Mineral Projects



- Applies to all disclosure, written or oral, made by every issuer (public and private) with respect to a “mineral project” on a property material to the issuer
- “Mineral project” means any exploration, development, or production activity, including a royalty interest or similar interest in these activities, in respect of diamonds, natural solid inorganic material, or natural solid fossilized organic material, including base and precious metals, coal and industrial minerals

The Three Fundamentals of NI 43-101



- (1) Reserve and Resource Reporting. Rules prohibiting certain mineral disclosure and prescribing the mineral disclosure standards
- (2) Qualified Persons. Rules requiring that a “qualified person” (usually must be independent) prepare or supervise all of an issuer’s scientific and technical disclosure (includes certification and expert liability)
- (3) Technical Reports. Requirement that scientific and technical disclosure about mineral projects on properties material to the issuer be supported by technical reports in prescribed form

NI 43-101 Considerations



- Timing impact of Technical Reports on the transaction - Regulatory review of Technical Reports
- Foreign code reporting: Currently, issuers may make disclosure of mineral reserves and mineral resources in accordance with an acceptable foreign code - US SEC Industry Guide 7, the JORC Code (Australia), the IMMM Reporting Code (UK), or the SAMREC Code (South Africa) - and reconciliation is required
- Under proposed amendments, reconciliation will not be required and the Certification Code (Chile) will be an acceptable code

(3) Exploration and Mining Company Rules and Thresholds



- Listings of mining and exploration companies are facilitated through special mining-specific listing thresholds
- Applying the standard industrial company requirements (eg income, asset value) would preclude many mining and exploration companies from accessing capital through a listing

(4) Investor Incentives, Other Vehicles and Instruments



- “Flow-through” shares
- CPCs (Canadian Capital Pool Companies)
- Investment Funds in the mining sector:
 - Flow-through funds (requires a flow-through tax regime)
 - Mutual/investment funds
 - Private equity/hedge funds
 - Large institutional pension funds

(5) “Critical Mass” in Domestic Market



- Companies successfully accessing capital required for next phase of one or more projects, through domestic listing/market
- Favorable valuations of the issuer’s securities due to liquidity and active secondary market trading
- Analyst coverage of the issuer to add to likelihood of higher valuations
- Presence in the same markets with majority of world’s public mining companies to facilitate merger, acquisition and joint venture opportunities

Overview of Transaction Structuring Alternatives



- (1) Initial Canadian public offering with listing
- (2) Reverse take-over transaction, with or without prior financing

(these two alternatives usually at least 3-4 months)

- (3) Additional listing for international issuers
- (4) Accessing capital in Canada through “private placement” financing, with or without concurrent listing

Additional Listings



- Issuers with securities listed on one or more international stock exchanges add TSX listing
- Long-form listing application and 43-101 technical reports are required
- If no financing in Canada, less time and cost than IPO or RTO, but not often successful (although there are cases)
- Canadian market success usually requires significant number of domestic Canadian holders to generate secondary market activity on TSX (or TSXV)

Additional Listing with Private Placement Financing



- International issuer finances and lists in Canada concurrently
- Financing on a private placement basis to “accredited investors”
- Achieves some Canadian shareholding
- No immediate liquidity due to four-month statutory hold period

Streamlining with other Jurisdictions



- MJDS (Multi-Jurisdictional Disclosure System). Reciprocal acceptance in Canada and the US of prospectuses prepared under the laws of the other jurisdiction – senior companies, subject to certain rules.
- NI 43-101 Recognition of acceptable Reserves/Resources codes and Qualified/Competent Persons from certain international jurisdictions
- Tax Treatment of Investments where assets are in foreign jurisdictions used to be restricted, limiting the amount of “foreign property” that could be held in Canadian individuals’ tax deferred retirement plans
- Canadians are now unlimited in investing in foreign companies – issuers no longer need to “re-domicile” to attract this investment

Streamlining with other Jurisdictions



- No longer need to meet distribution requirements in Canada specifically – 300 shareholders worldwide (along with other listing criteria)
- If less than 25% of trading occurs on TSX, TSX will defer to foreign exchanges on certain exchange requirements, such as shareholder approvals for certain transactions
- North American distribution of the issuer's shares no longer required if shares listed on another “senior exchange” (although must take steps to ensure liquid market develops)

II Chile

- (1) Supply of Domestic Projects for Financing
- (2) Regulatory System, fostering efficient markets and investor confidence, accommodating of and/or consistent with international standards, JORC, 43-101
- (3) Investment Incentives

Chile

(1) Supply of Domestic Projects for Financing Domestically

- Availability of concessions – “use it or lose it”
- Facilitation of exploration activities
- Larger companies with exploration projects making projects available for investment (can retain minor or even major percentage shareholding)

Chile

(2) Regulatory System

- foster efficient capital markets and investor confidence
- accommodating of and/or consistent with international standards, particularly 43-101 and JORC
- expectation that junior exploration companies may have their eyes on listing in international markets like Toronto or Sydney, consistency with those regimes means that listing on the Bolsa is in line with their preparations
- facilitation foreign listed issuers raising capital (for example private placement financing domestically)

Chile

(2) Regulatory Considerations

- Law No. 20.235 and the Certification Code, addressing competent persons, mineral reserves and resources
- efficiency of regulatory process is key to issuers, because going to market quickly in tough markets is most important and delays will dissuade a company from a jurisdiction
- securities regulatory (and stock exchange) proficiency/expertise with the industry is of fundamental importance (understanding of issues and materiality)

Chile

- (3) Investor Incentives to encourage liquidity
 - flow-through share regime
 - other public subsidies (tax-related, or guarantees)
 - eg. modeled on existing CORFO program

Chile

Illustrative Model

- Individual Investor Accounts
- Combination of tax credit and partial guarantee of principal
- One-time guarantee right, exercisable during a specified time period (eg between year 2 and year 3)
- Guarantee only available to the extent that proceeds are reinvested in qualifying shares of other exploration and mining companies on the Bolsa
- Relatively small public expenditure could generate retail liquidity over time



QUESTIONS & ANSWERS

Raymond A. McDougall

STIKEMAN ELLIOTT LLP – TORONTO

(416) 869-5227

rmcdougall@stikeman.com