MERGERS & ACQUISITIONS

An insider's look at the future of M & A in Canada

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It's the nineties all over again

But instead of a tech boom, it's healthy balance sheets and Canada's resources fuelling M&A's record roll

Barely a day goes by without the business pages trumpeting another blockbuster deal.

The mergers and acquisitions business is hot — and there's every indication that the sizzling pace of M&A activity will continue, driven by a robust global economy, healthy corporate balance sheets and a consolidation trend sweeping key industries, including Canada's booming resource-based sectors.

"It reminds me of the late nineties, when the tech boom was on and companies were doing deals like crazy," said Garth Girvan, senior partner at McCarthy Tetrault LLP.

"Compared with three or four years ago, the life for someone like me who does this for a living is much more active."

That may be putting it mildly.

According to investment bank Crosbie & Co. Inc., the number of M&A transactions in Canada soared to 1,244 in 2005 from 875 in 2004 — a 42-per-cent increase. The total value of Canadian M&A activity rose to $166-billion, up 48 per cent from $112-billion a year earlier.

What's more, there were 34 "mega-deals" — defined as transactions valued at more than $1-billion. They included Barrick Gold Corp.'s $10.4-billion (U.S.) acquisition of Placer Dome Inc. to create the world's biggest gold miner, Arcelor SA's $4.9-billion (Canadian) purchase of steel maker Dofasco Inc., and Inco Ltd.'s $12.8-billion play for fellow nickel miner Falconbridge Ltd., which was recently overshadowed by Teck-Cominco Ltd.'s surprise $17.8-billion offer for Inco.

Not since the tech boom has the M&A scene featured so much action.

"With a strong wind in its sail, the M&A market has raced to one of the best years on record," said Ed Giacomelli, managing director at Crosbie.

The frenetic pace of M&A reflects several factors, chief among them the availability of inexpensive capital.

With interest rates still low by historical standards, financing remains relatively cheap and banks — which, thanks to the strong economy, are enjoying a period of very low credit losses — are eager to lend.

Corporate balance sheets are also in great shape, reflecting several years of rising profits, during which companies paid down debt and raised cash balances. Companies are now looking at ways to spend their wealth.

"Corporations are more apt to enter into ... M&A transactions when balance sheets and cash flows are strong. That situation is the case today for corporations in the aggregate like never before," said Lehman Brothers chief U.S. strategist Henry "Chip" Dickson.

Moreover, because of the generally sluggish performance of U.S. equity markets, "the pressure on companies to improve returns [by entering into M&A transactions] appears to be intensifying," he said.

But this isn't a repeat of the tech bubble.

The growing number of companies paying cash distinguishes the current wave of M&A from the last boom, when stock transactions — many involving companies with no track record of earnings — were all the rage. Today, companies involved in M&A deals tend to be profitable, and are looking to add muscle in a competitive marketplace.

The current boom is also more broad-based, involving companies in a wide variety of sectors, from retailing to resources.

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Canadian M&A Activity By Sector in 2005

Industry Group	# of Deals	Value
Consumable Fuels	281	$40.2-billion
Industrial Products	240	$17.8-billion
Real Estate	189	$12.3-billion
Merchandising	98	$8.0-billion
Consumer Products	88	$6.4-billion
Metals & Minerals	74	$21.9-billion
Financial Services	68	$12.4-billion
Transp./Environment	58	$4.6-billion
Utilities	51	$17.2-billion
Comm./Media	42	$5.5-billion
Gold	27	$16.1-billion
Paper/Forest	24	$2.7-billion
Pipelines	4	$475-million
Total	**1,244**	**$165.5-billion**

Source: Crosbie & Co. Inc.

1. Blair Cowper Smith, Partner, McCarthy Tetrault LLP, Craig Thorburn, Partner, Blake Cassels & Graydon LLP, William Braithwaite, Senior Partner, Stikeman Elliott LLP, Glenn Keeling, President and Chief Executive Officer, Georgeson Shareholder Canada, Roy Shanks, Senior Vice-President, Georgeson Shareholder Canada, Clay Horner, Partner, Osler, Hoskin & Harcourt LLP, Philip Brown, Partner, Torys LLP

Fighting the good fight

When a company suddenly moves onto someone's radar screen, all of its stakeholders have a role to play in making a wise response

What do you do when a company in which you're a stakeholder suddenly becomes the target of a hostile takeover?

The proper course of action, the experts say, is to put up a good fight.

But that doesn't necessarily mean rejecting an unsolicited offer, they add. Fighting the good fight in a takeover bid simply means doing what's best for shareholders — and that could include accepting a takeover proposal if the price and conditions are right.

Each of the stakeholders in a target company — directors, management and shareholders — has an important role to play in a takeover bid, the experts say.

For directors and senior executives, this role starts with the creation of a strategy that outlines how the company should respond to a takeover proposal, and who should be involved.

Philip Brown, co-head of the mergers and acquisitions practice at Toronto law firm Torys LLP, says that companies should have a strategy in place even if there isn't a takeover offer in sight.

Frank Callaghan, Borden Ladner Gervais LLP

Tristram Mallett, Osler, Hoskin & Harcourt LLP

"The key thing to recognize is that, once a takeover bid starts, it's usually too late to start planning because the bid period begins and ends quickly," he says. "In Canada, these offers are outstanding for as short as 35 days, and that's a very short period of time to develop a strategic plan of action."

What should this strategic plan of action look like? Tristram Mallett, managing partner at Osler, Hoskin & Harcourt LLP's Calgary office, says it should include a list of the names and contact information of a target company's legal and financial adviser, investment bank, directors, investor or shareholder relations consultants, and public relations specialists — in short, everyone who will be involved in fighting the good fight.

"It's very important to assemble the best possible team, where each expert brings to the table a different set of skills — all of which are essential to the goal of maximizing shareholder value in the face of a hostile bid," he says.

Frank Callaghan, a partner and manager of the Toronto business law department at Borden Ladner Gervais LLP, says that companies should have detailed, up-to-date financial information about the business, including its dollar value. A list of other companies that might have an interest in acquiring the business should also be part of a plan of action during a takeover bid.

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Unsung firms play key roles in M&A deals

Among the coterie of professionals needed to pull off a successful merger or acquisition, investment bankers and lawyers arguably have the highest-profile roles.

But the work of lesser-known niche firms in fields such as communications, proxy solicitation and documentation management is also vital to the M&A process. And often, they don't get the attention they deserve.

“There has not yet been a CEO of a company that we have represented who hasn't come back to us at the end and said, ‘I had no idea of the value you would bring to this transaction.’ That's pretty powerful stuff,” says Glenn Keeling, Toronto-based president and chief executive officer of Georgeson Shareholder Canada, one of the world's leading shareholder-response firms.

One of the key roles Georgeson plays for its clients is keeping them on top of who their investors are and what's happening with their stocks. Providing such demographic information on their shareholder base — such as whether investors are primarily retail or institutional — as well as tracking movements in their stocks can be important to clients — and vital pieces of information when it comes to formulating an effective M&A strategy.

If a client needs to reach out to shareholders during a vote to gain approval for or try to defeat a merger, it needs to know what audience it is targeting

Another important service that Georgeson provides is proxy, or vote, solicitation, which tracks and manages the shareholder voting process.

“There's some highly strategic and time-critical activities going on in that particular space,” Mr. Keeling explains. For instance, “we have to be the sounding board for senior management and other advisers when a vote is coming through. We've got to be on top of the game and make sure that it does come through," he says.

“While we got our reputation because of our track record, we got our track record because we knew who to go to in order to get votes. We developed a skill in identifying who the holders of the stock are at the time the vote was required,” Mr. Keeling adds.

Georgeson Inc., the company's New York-based parent, along with Georgeson Shareholder Canada, handles about 1,200 proxy voting solicitations a year, many of them involving cross-border deals between Canada and the United States.

“As a result of this experience, we know how to identify and locate who the shareholders of a publicly traded company are. That may seem like an obvious thing the company should know, but frequently it doesn't. There's a lot of trading activity and shares are held through custodians, so it's not always easy for them to have a very good fix on who actually owns its shares,” Georgeson chairman Bill Crane explains.

Toronto-based Computershare Trust Co. of Canada, is another firm in the M&A game. Acting as a trustee and transfer agent to several clients involved on either the issuer or acquisition side of M&A activity, it is “really in the best position to interface directly with unit holders,” says Stuart Swartz, the company's vice-president of corporate trust.

Glenn Keeling, Georgeson Shareholder Canada

Kevin Gormely, Bowne of Canada Ltd.

By having a direct link to shareholders and with its services including contacting them to impart critical information necessary to vote for or against a takeover bid, “we act as the agent, or go-between for the parties involved.”

Communications are also critical during an M&A, and companies often need to turn to outside specialist help to effectively communicate. Companies are “so focused on the deal because everything is just happening so fast and in real-time on a 24/7 basis, plus they're also trying to run the business at the same time, that they inadvertently, but frequently, let communications fall through the cracks,” says Anne Lachance, senior vice-president and partner with Toronto-based communications specialist Fleishman-Hillard Canada Inc.

And there are lots of people to keep informed. Aside from shareholders, employees, for instance, are typically very anxious about what an impending deal might mean to them, she points out.

“They wonder ‘what is my job going to look like?’ What are my benefits going to be? Who will my boss be? How is this M&A going to affect our culture?’ Especially in companies with very different cultures, the integration is where the real work begins for management,” Ms. Lachance stresses.

“We need to be able to explain in plain language exactly what that hundred-page circular means to them. Otherwise, people fill in that information gap with speculation. Part of our job is to anticipate every possible scenario and basically have all the communications ready so we can stay a couple of steps ahead of the process."

It's not just employees who have to be apprised of what's going on. Some businesses also have unions that need to be consulted. And some customers and vendors of firms affected by an M&A might also have to be kept in the loop. Specialist firms in the fields of corporate communications and investor relations can make a big difference in helping to keep everyone who needs to be in the know.

Another specialist activity vital to the logistics of a successful M&A is provided by financial printer Bowne of Canada Ltd., which helps its clients create, manage and distribute highly confidential materials.

Bowne also assists companies in filing shareholder documents required to be filed with the System for Electronic Document Analysis and Retrieval (SEDAR) and the Securities and Exchange Commission's EDGAR system in the United States. Clients need that help because “it's an organizational and logistical feat to co-ordinate the distribution of the myriad and associated regulatory filings and documents for a large M&A transaction,” says Kevin Gormely, Bowne's senior vice-president and director of sales.

Bowne also makes it easier for companies to carry out due diligence prior to a deal. Traditionally, groups of lawyers and other professionals acting on behalf of a potential acquirer would have to physically assemble at a specific location to search through myriad documents. That was a very expensive and time-consuming process.

Instead, Bowne provides its clients with a virtual data room, where all documents can be posted on a secure Internet website. “Now, various bidders can look at this website at the same time. They don't have to fly anywhere. This limits the time associated with the due diligence process, which makes it cheaper. We manage everything here, and it's been very successful,” Mr. Gormely says.

Investment bankers and lawyers also have very specialized roles to play in the M&A process. Financing, for instance, requires experts who understand the dynamics of the contemporary market and how it is continually offering new, varied, and increasingly complex financial structures and instruments. And lawyers who specialize in M&A transactions don't always emanate from the high-profile blue-chip firms.

“Even in the legal environment, you sometimes end up getting boutique law firms that specialize in M&A activity for companies above or below a certain size,” notes Michael Nowlan, Toronto-based president and chief executive officer of CCN Matthews Ltd., a worldwide organization that specializes in communications and investor relations.

Spread the word: Communication counts

Whether it's a marriage between giants or an acquisition of a small dot-com, each M&A deal is built on a mountain of information — piles of documents, gigabytes of electronic records, analysts' and media reports, not to mention the flurry of meetings, presentations and conversation.

Fact and perception play equally critical roles in the success — or failure — of a merger or acquisition. That's why experts say it's important to have a communications strategy in place that covers every stage of the deal.

“There will be a lot of questions before, during and after the deal is closed,” says Michael Nowlan, president and chief executive officer of CCN Matthews Ltd., a Toronto-based newswire services company that, among other things, circulates press releases for companies involved in a merger or acquisition. “So both the acquirer and the target company should be communicating to all stakeholders, to be sure that all the terms are understood.”

How to go about creating a smart communications strategy? Craig Thorburn, a lawyer and mergers and acquisitions specialist at Toronto law firm Blake, Cassels & Graydon LLP, says there are many components to an effective strategy, and they won't be the same for every company.

One essential component, however, should be a progressive plan that outlines the company's messages at each and every stage of the M&A process.

For example, a target company should have a set of messages for when it initially receives a takeover proposal, and then again when it responds to the proposal, or when it is in the midst of negotiating certain terms of the proposal. Each of these messages must be consistent with the company's strategic objectives, Mr. Thorburn says.

Acquirers should also have a stage-by-stage communication strategy in place, he says. And whether you're a buyer or a seller, you need to have this strategy in place even when there isn't a takeover in sight, Mr. Thorburn adds.

“In the current business environment, you can wake up any morning and find out that you've become the target of a takeover,” he says. “You have to assume that, at any moment in the future, you could be buying somebody else, or the other way around.”

A savvy communications strategy should also state how messages should be circulated. Apart from the standard communications that are expected in the course of a deal — such as the circulars sent to shareholders that state whether or not the board of directors supports the offer — various other types of information need to be disseminated to a broad range of parties that include management, employees, customers, suppliers and, of course, shareholders.

Michael Nowlan, CCN Matthews Ltd.

Susy Monteiro, Georgeson Shareholder Canada

Mr. Nowlan says that many companies choose to send press releases through a newswire service, such as CCN Matthews. This allows them to address a wider audience, including regulators, the investment community and the media. For acquirers, this is also a good way of getting a message across to the shareholders of the target company.

“If it's a public company, the acquirer needs to get those shareholders on side and convince them there's a better future as a combined entity,” Mr. Nowlan says.

Companies need to choose their words carefully when crafting their message, Mr. Nowlan advises. Terms like “hostile takeover” or “hostile offer” are bound to elicit negative reactions and may blind stakeholders to a deal's potential value.

Such inflammatory terms immediately position the acquirer and the target company as adversaries, he says. And, too often in Canada, what starts out as an unsatisfactory offer gets negotiated into a deal that's good enough to seal. But by then, management and employees in both companies may have formed negative opinions about the companies because pejorative terms were used in communications surrounding the deal.

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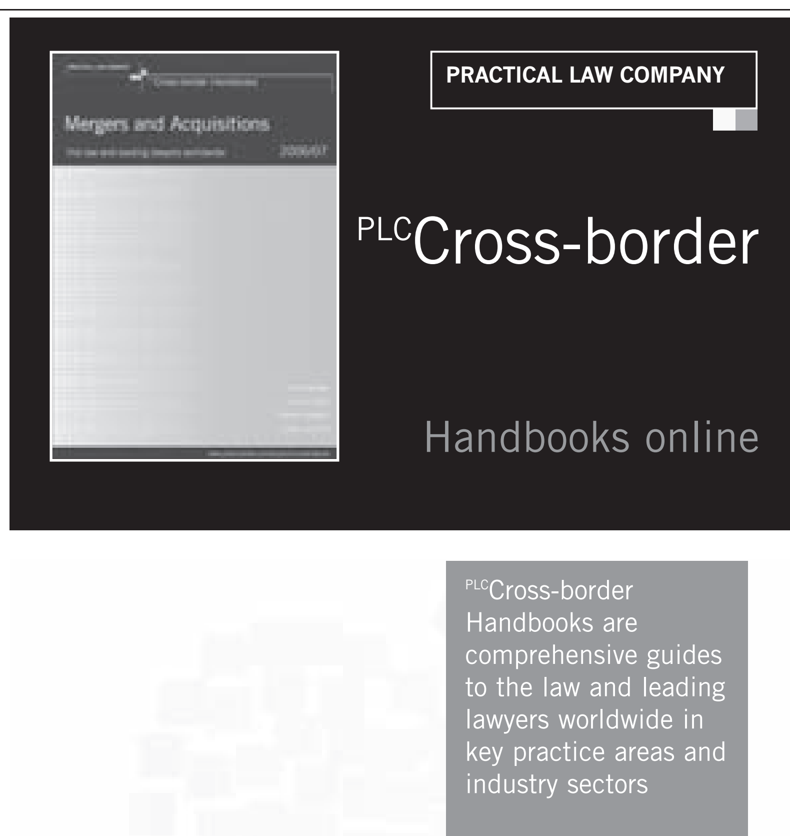

The Practical Law Company has just published its 2006 Mergers & Acquisitions Handbook.

Fraser Milner Casgrain LLP, a leading Canadian business law firm, was invited to author the Canadian Chapter for this publication.

If you are interested in receiving a comprehensive overview of the M&A guidelines in Canada, please contact:

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Power to the shareholders in takeover game

There's power in numbers, and, when it comes to the outcome of any M&A deal, it's the power of individual shareholders that adds up.

But while such investors are really the final arbiters in the mergers and acquisitions game, ironically enough, far too many retail shareholders discount their own importance, preferring to stay at arm's length from their investment — even when that investment is about to be scooped up by another company.

Unlike their institutional and hedge-fund counterparts, which are managed by financial professionals, individual shareholders will too often choose not to get involved during a takeover bid.

That's something that needs a change agent to motivate a shareholders response, says Roy Shanks, senior vice-president for the Canadian arm of Georgeson Shareholder Communications Inc., a global company that provides such services as shareholder response management and proxy solicitations.

Mr. Shanks puts this hesitation down to a lack of understanding among some retail shareholders of their roles in a merger or acquisition. Too many figure that what they say or do won't matter, because their stakes in a company are small compared to those owned by institutional investors and hedge funds.

Paul Mingay, Borden Ladner

Clay Horner, Osler, Hoskin & Harcourt LLP

Roy Shanks, Georgeson Shareholder Canada

But nothing could be further from the truth. Indeed, without their consent — which they signal by tendering their shares to the bidder — a takeover offer could simply expire after the usual timeframe of 35 days.

"Small shareholders sometimes think they're not important, but they are," Mr. Shanks says. "Takeover offers have certain quorums and thresholds, and every little small shareholder, when added together, can play a very significant role in terms of thresholds that have to be met within very tight timeframes."

Mr. Shanks believes the complex information surrounding M&A transactions may discourage some shareholders from more actively participating in a takeover bid. Others may feel they don't have enough information to make a proper decision about their shares.

But Clay Horner, a lawyer with the Toronto law firm Osler Hoskin & Harcourt LLP, says that retail shareholders need to know they have as many rights when it comes to a merger proposal as larger shareholders. And they need to take the time and energy to become informed about decisions about whether to offer their consent or not.

"They have the right to tender their shares, vote their shares and sell their shares — basically, the rights owners have with their property," he says. "And they have the right to ask the [target and acquiring] companies to make sure they've got the appropriate information on which to make their decision."

How to make sure important information reaches this very important group? Companies such as Georgeson are often hired by an acquiring or target company to help make that happen.

In addition to taking care of such things as soliciting shareholders for a call to action, Georgeson also usually sets up a toll-free phone number that shareholders can call for information.

Shareholders should also take steps to make sure they are as informed as they need to be, experts say.

Paul Mingay, a partner at the Toronto office of law firm Borden Ladner Gervais LLP, says that, aside from making sure they receive the information they are entitled to, shareholders can turn to their financial advisers, accountants or lawyers for advice on how they should vote in a takeover bid.

Stockbrokers are particularly good sources of information in these matters, Mr. Mingay adds.

"They're often going to have their own research done by their own analysts," he says. "They also usually have recommendations (on a takeover bid) internally, so you're getting the financial expertise and perspective of the whole firm when you're talking to your stockbroker."

Even when they can't attend a shareholders' meeting, shareholders can still have a say. This is where the proxy form comes in handy. When companies send out shareholder information packages containing details about a purchase offer which require the shareholder to make some kind of decision, they always include a proxy form.

Shareholders who can't cast their votes in person can simply fill out this form indicating their position and authorize someone else — usually a representative for the target company — to submit their vote.

"It's very important to pay attention to the proxy form," advises Philip Brown, co-head of the mergers and acquisitions practice at Torys LLP, a Toronto law firm. "Retail shareholders need to assume that their vote will count, not the other way around, and the proxy form is one way of exercising their right to vote."

There is a legal glitch that many small shareholders may not be aware of. During the response period in a takeover offer, the target company creates a record of all shareholders. Shareholders who sell their shares between the time this record is created and the date the offer expires still have the right to vote even though they no longer have stakes in the company.

Conversely, shareholders who buy stock in the target company between the same period will not be on record as having the right to vote. But Mr. Horner says in some provinces these shareholders can ask and be granted the right to vote on a takeover bid.

Mr. Shanks says that some takeover bids have been decided by the narrowest of majorities — something retail shareholders should keep in mind.

"The small shareholder played a very big role in those types of situations," he says. "Had it gone the other way, the future of the company would have been reversed."

Hot commodities grease M&A activity

Canada is blessed with an abundance of natural resources, from oil and natural gas to copper, zinc, nickel and potash.

And with the strong global economy boosting demand for commodities and pushing prices skyward, it's no surprise that a mergers and acquisitions boom is reshaping Canada's resource-based landscape.

"It's a combination of factors all coming together. Obviously one is high commodity prices," said Jim Turner, a senior partner in mergers and acquisitions at international law firm Torys LLP.

Resource producers "have lots of cash and high stocks prices, so [these are] circumstances in which you can pay for the targets," he said.

Natural resources industries generated nearly half of the $166-billion worth of M&A deals in Canada last year, according to investment bank Crosbie & Co. Inc. Oil and gas was the most active sector, accounting for $40-billion. Contributing to the hectic pace in the oil patch were 121 deals involving energy trusts, which sought to replace depleting reserves by merging with or acquiring other producers.

John Ciardullo, Stikeman Elliott LPP

"What's happening is the oil and gas income trusts are realizing that, in order to maintain distributions over the long run, they need to make sure they have adequate reserves, and so those that don't are trying to merge with those that do," explained Garth Girvan, senior partner and M&A lawyer at McCarthy Tetrault LLP.

Canada's metals and minerals sector has also witnessed a heady amount of deal-making, as soaring commodity prices touched off a record $22-billion worth of M&A transactions last year. Among the largest was Inco Ltd.'s proposed $12.8-billion takeover of Falconbridge Ltd., a deal that was eclipsed recently by Teck Cominco Ltd.'s surprise $17.8-billion offer for Inco.

"Soaring demand for energy and base metals has made Canadian resource companies highly profitable and attractive properties for targeting by domestic and international acquirers alike," said Ed Giacomelli, managing director at Crosbie.

Indeed, in an increasingly global business world, it's no surprise that a growing number of takeovers are being consummated across borders.

Last year, Canadian companies made 338 acquisitions of foreign firms, for a total value of $35-billion. Foreign companies made roughly one-third as many purchases of Canadian firms, but those deals tended to be larger, worth a total of $65-billion.

Examples included Arcelor SA's estimated $4.9-billion acquisition of Canadian steel maker Dofasco Inc., U.S. financier Jerry Zucker's $1-billion purchase of Hudson's Bay Co. and China National Petroleum Corp.'s $5.1-billion purchase of PetroKazakhstan Inc.

To be sure, the booming economies of China and India are, both directly and indirectly, driving, the feverish pace of deals in Canada. Prices for commodities such as oil, copper and zinc have all traded at records in recent months, boosted by soaring global demand and concerns that supplies may not keep pace.

But Canada's resource-rich economy isn't the only reason the country is a favourite hunting ground for companies on the prowl for acquisitions. Canada also has a welcoming regulatory environment for would-be acquirers.

"Compared to other countries, Canada has relatively few barriers to foreign takeovers or takeovers generally. We have, relative to most European and other markets, a largely open market with generally fewer regulatory hurdles," said Frank Callaghan, a partner at Borden Ladner Gervais LLP.

Another factor that makes Canadian companies tempting prey: Canadian companies do not have the same array of takeover defences at their disposal as American ones do, making them more vulnerable to acquisitions.

"Unlike other jurisdictions such as the U.S., the Canadian regulatory environment does not easily facilitate a 'just say no' defence. Once a hostile takeover bid has been announced, it is quite likely that the sale of the target company will ultimately occur," said John Ciardullo, a partner at law firm Stikeman Elliott LLP.

A board can attempt to convince shareholders not to tender to an unsolicited bid, but that is "often a difficult task, given the tendency of short-term arbitrage investors to acquire a large position in the stock following the announcement of a bid," he added.

Such an environment is encouraging more companies to launch unsolicited takeover offers.

"A few years ago, there was great reluctance to launch a hostile bid," Torys' Mr. Turner said. "Today, there's much less reluctance. One of the reasons is that, in Canada, a bid may start out hostile but often ends up friendly. The target knows that the bidder may be the entity that will pay the highest price at the end of the day."

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Takeover tactics: How to woo a company

The takeover game is on. And one company that wants to snap up another company will do everything in its power to ensure a deal is consummated.

There's no guarantee of success, of course — but the odds can be increased with the right takeover tactics.

Here are some of the smart ones that victorious firms tend to employ.

Make a friendly approach

While every deal is going to be different, there's nothing better than a smile on the face of a potential acquisitor, experts say. If an attempted merger or acquisition gets tagged as hostile, or unfriendly, "the chances are you're not going to be the winner," warns Blair Cowper-Smith, a partner with law firm McCarthy Tetrault LLP.

"In a hostile transaction, the natural human reaction is to say, 'I don't want to be taken over without my consent,'" adds Mr. Cowper-Smith, who is a member of his Toronto law firm's corporate finance and mergers and acquisition group.

Another reason to approach with open arms, and perhaps also an open chequebook, is because many shareholders have become much more active in their willingness to do everything they can to maximize the value they receive on cashing out their shares.

Moreover, if there is the perception of a hostile takeover, and/or it appears that shareholders are about to get shortchanged, the target company may well react by seeking out an alternative bidder — commonly known as a 'white knight' — that is able to offer more favourable terms.

When that happens, the end result may be that numerous competitors end up entering into the fray. "That can start an auction or process (the initial bidder) might end up losing out on," Mr. Cowper-Smith warns.

That doesn't necessarily mean that all successful M&A bids start off with a friendly overture.

"Ideally, you want to end up with a friendly transaction. But every deal is different and you've got to model your approach to what makes the most sense under the circumstances," says William Braithwaite, a senior partner with law firm Stikeman Elliott LLP's Toronto office.

"It may well be that from what you understand about the target, you realize the only way (this process) is going to get started is on an unsolicited basis, so that leads you down this path."

However, the experts stress how companies that show flexibility and a willingness to negotiate with shareholders are not only more likely to turn a hostile into a friendly situation, they are also more likely to succeed in the end.

William Braithwaite, Stikeman Elliott LLP

Prepare, prepare, prepare

Potential acquirers can avoid lots of problems right up front if they do all their homework, investing sufficient time and effort in studying carefully and in detail the company they want to take over. That's the only way to get to know the company in its scope, and how best to address its management and shareholders, the pros say.

"Before you even approach your potential target, you need to have done everything you possibly can to understand that target based on documents that are publicly available," another senior practitioner emphasizes.

"You need to make sure there are no surprises that you could have found out about; then approach that company with the maximum amount of information you can possibly get," he adds.

Lots of help in doing that can come from using the services of a shareholder response firm. Just as such a firm can play a key role in helping a target company fend off a hostile takeover, it can also provide a very valuable service to companies that are seeking acquisitions, notes Mike McLeod, a vice-president with Georgeson Shareholder Canada in Calgary, whose company specializes in that area.

A shareholder response firm can, for instance, provide information that will help a potential acquirer understand and analyze a firm's shareholder base. Such details — such as whether the target company has a predominantly retail or institutional base — could have a major impact on the acquiring firm's ultimate M&A execution strategy.

Creep up on your target

One tactic a potential acquirer might take is to make so-called "toehold purchases" involving small amounts of the public stock of a target company before formally approaching that firm about taking control.

The potential advantages: First, if a predator were to purchase, say, 5 per cent to 10 per cent of its prey's shares ahead of time, it would likely pay a lower price for that stock than once its intentions are known, when the markets tend to drive up share value.

As well, this would also allow a potential acquirer to approach its target from a theoretically stronger position.

"If you want to do a deal and you come saying 'I'm a 9.9-per-cent shareholder,' it's different than if you come with no shares, so it sets the tone," Mr. Braithwaite says.

How much to buy varies on the size of the company and its shareholder composition. "That all goes back to information-gathering," Mr. Braithwaite says. "Before you even approach the target, you want to know what the shareholder profile is; who owns what stock; who are its largest shareholders; and how widely held it is."

He warns, however, that firms must be careful with toehold purchases. They must, for instance, ensure they don't violate any insider trading rules. There is also a pre-bid integration rule that firms cannot violate, which basically obligates them to offer at least as much for the remaining stock as they paid for the toe-hold purchase, if that offer is made within 90 days of the original purchase.

Keep up the communication

When a formal offer is made, adept communication between the potential acquirer and all interested parties of the target can play a significant role in the ultimate outcome of a proposed M&A, the experts say.

"Communications is fundamental to the success or failure of a takeover bid. In terms of the context of an M&A transaction, especially one that's not friendly, that's the key thing, price is probably No. 1 as you can imagine," Mr. Cowper-Smith says.

"Agrium is a good example of how communications were used by the acquirer, the target and key shareholders to achieve a higher price but with a successful transaction at the end of the day for all."

Failure to communicate, Mr. McLeod adds, is "the single biggest failure I've noticed."

An effective public relations effort by the acquirer can also go a long way toward boosting the impression of a friendly, rather than hostile, approach to the company's shareholders. And it will get close market scrutiny, since M&A transactions tend to become highly public negotiations watched closely by all sorts of parties, including regulators and stock exchanges.

And a company that understands its shareholder base must "reach out to them with messages on a regular basis that are clearly defined and well thought out," Mr. McLeod says.

Don't assume anything

After approaching a target company on a diplomatic basis and keeping the communication lines open, some acquisitors start to take things for granted and think they've won the game. That's often when they drop the ball, the pros say.

Often, notes Mr. McLeod, a firm will mail out its offering material and proxy circular, then incorrectly "just presume that everything is done and the vote will flow in." Or they will bank on promises of voting patterns expected to break in their favour that don't materialize.

Don't ever take anything for granted, the experts stress. Acquisitors should remain diligent and continue to work with professional shareholder response firms until those votes are counted and they have a favourable result in hand.

It's the nineties all over again

Continued from Page G1

Oil and gas was the busiest sector for M&A in 2005, generating $40-billion of transactions, according to Crosbie. Metals and minerals were next, with nearly $22-billion of deals, followed by the gold sector, at $16-billion.

All three benefited from soaring commodity prices. Industrial products, real estate and financial services are also coming off a busy year.

The strong global economy is also fuelling the rise in takeovers, as is a trend toward consolidation, with companies realizing that, to compete on an international stage, they need to bulk up, which often means swallowing a competitor.

"Size matters, basically," Mr. Girvan said.

Another key driver of M&A is the rise of private equity funds, which are on the hunt for takeover targets like never before.

Major players include Kohlberg Kravis Roberts & Co., Bain Capital, Blackstone, Credit Suisse Private Equity, Barclay's Private Equity and, in Canada, Birch Hill Equity Partners and EdgeStone Capital Partners.

"Private equity funds have had a lot of success raising money, especially in the United States, and they have to deploy it somewhere," explained Paul Mingay, a partner at law firm Borden Ladner Gervais LLP.

> 'U.S. private equity firms and activist shareholders, well-represented by hedge funds, are increasingly looking to Canada to fulfill their investment objectives.'
>
> *- John Ciardullo*

The rise of private equity funds — which invest in non-publicly traded companies, often by taking listed companies or divisions private — reflects disappointment over U.S. stock-market returns since the tech bubble burst in 2000.

To bolster returns, many U.S. private equity funds are looking for deals outside the United States. And more and more, they're focusing their eyes on Canada.

"U.S. private equity firms and activist shareholders, well-represented by hedge funds, are increasingly looking to Canada to fulfill their investment objectives," said John Ciardullo, a partner with Stikeman Elliott LLP.

Why here? "There are an abundance of attractive opportunities and the playing field is arguably less congested and competitive than in the U.S.," Mr. Ciardullo said.

How long will the M&A boom last?

McCarthy Tetrault's Mr. Girvan is optimistic. As long as interest rates remain relatively low, the economy strong and commodity prices firm, the hot pace of deal-making will keep filling the headlines, he said.

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On the defensive: Fending off a hostile bidder

When a hostile suitor shows up at its door, a company needs to have many tricks in its defensive bag to fend off an unsolicited pursuit.

"Think about this in the context of a small-cap firm. In a hostile situation, if you are defending the firm you may have founded and the investors that supported the firm's growth don't vote, you are running a very serious risk of losing the business to dissidents at a less than favourable premium," says Brad Allen, Toronto-based vice-president of Georgeson Shareholder Canada, one of the world's leading proxy-solicitation firms.

So how does a company smartly defend itself? Here are some of the tricks from the pros:

Victory isn't only a knockout

It is important at the outset to understand that victory against a hostile takeover can be achieved in many ways — and winning an M&A battle doesn't necessarily mean coming out of the ordeal with independence intact.

"People conventionally think of the most successful defence as one in which the company doesn't get acquired. That can be the result, but most often times, the best available outcome is ensuring that, if the company does get acquired, the shareholders get the best possible price from the right acquirer," observers Clay Horner, a Toronto-based partner and co-chairman at law firm Osler, Hoskin & Harcourt LLP.

Dale Lastman, Goodmans LLP

Philip Brown, Torys LLP

"At the end of the day, all a board of directors of a public company can do, realistically, is put itself in a position where it has the best chance to maximize value for its shareholders," agrees Dale Lastman, co-chair of Goodmans LLP in Toronto.

Experts say that a successful outcome generally follows one of three major themes: the target company completely spurns its unwanted suitor and remains independent; it seeks out a so-called white knight to make a friendly counteroffer; or it negotiates with the company making the unwanted offer to get better terms for its shareholders.

Target companies shouldn't count too heavily on the first option, warns Kevin Thomson, a senior partner at Davies Ward Phillips & Vineberg LLP in Toronto.

"If you look at statistics for companies in Canada that are put in play through hostile transactions, in the vast majority of those cases, there will be a change of control transaction. Very few public companies that have hostile bids made for them ultimately remain independent," he says.

In fact, according to Peter Buzzi, managing director and co-head of the M&A group at RBC Capital Markets in Toronto, companies that are targets ultimately remain independent only about 20 per cent of the time.

The vast majority of defences are split rather evenly between situations where a white knight comes in and takes control or the original bidder agrees to up the ante for shareholders. It's only in rare circumstances that a hostile bid succeeds without being adjusted upward, Mr. Buzzi says.

Don't get taken by surprise

Planning long before a bid materializes can lay the foundation for a successful defence once it's put on the table, the pros say.

"Issuers should not be caught by surprise," cautions Roy Shanks, senior vice-president of Georgeson Shareholder Canada in Toronto.

He says companies can do a lot to prepare themselves ahead of time. He notes, for instance, that while most issuer firms retain professionals such as investment bankers, lawyers, and accountants all year round, few typically keep a proxy solicitor to keep track of who their shareholders are by location, or by a breakdown of retail versus institutional split.

And that's a mistake, he says.

"You need to know who your shareholders are," Mr. Shanks emphasizes.

Moreover, firms that don't stay in touch with their shareholders on a regular basis to keep on top of whether they have concerns about the board's strategy or senior management's performance might also be asking for trouble when the chips are down.

If there is dissent, "and institutional shareholders in particular, turn on you and support the hostile bid, you're not going to get very far," warns Philip Brown, a partner and co-head of the M&A group at Torys LLP in Toronto.

Build your defence team

Once a hostile bid has been made, it's important to build a team both inside and outside the company to focus on its defence.

Within the company, it's advised to have team members dedicated full-time to the bid, and let others concentrate on running the business.

"Often times, you hear in defence situations (that) the company has lost sight of running its own business because the defence is an all-consuming and very distracting activity," Mr. Shanks says.

There should also be specialists outside the firm ready to assist. For instance, the judgment of an experienced investment banker can be invaluable in helping with the complicated financial and valuation analysis that will be required, as well as in assessing issues such as whether or not the value being put on the table is fair for shareholders, and how best, if a white knight strategy is chosen, to identify strategically compatible partners.

Legal counsel is also essential to let potential takeover victims "know what they can and can't do in terms of responding to a hostile bid," says Mr. Brown.

Keep potential allies in the loop

Another good practice, stress experts, is open communication. Senior executives should keep parties including employees, unions, shareholders and pension plan participants, and especially the board of directors, fully informed of developments.

Good communications can pay major dividends later on, especially if the hostile bidder attempts to play a divide and conquer strategy – a not uncommon occurrence.

"Lots of times, they'll try to access certain directors and create a divisive environment in the board," Mr. Lastman says.

While pre-planning and initial steps are pretty universal, devising the appropriate strategy to meet a corporation's specific needs are not. "The beauty of it is that there's no single precedent you can go to," Mr. Lastman explains. "Every single takeover bid has its own idiosyncrasies and strategies."

As subjective as the appropriate strategy might be, however, a firm must still take various situations into account. Here are some suggestions in that regard.

Know where to direct PR

Especially if the attempted takeover involves a large, well-known company and a major employer, "the public is going to pick up on a public relations effort (that emphasizes) how it might affect the community, the province or the country," Mr. Shanks notes.

Mr. Lastman warns, however, that efforts to win public opinion can also be misplaced in situations where the shareholders, hostile bidders and potential white knights are the ones who can best influence the final result.

"Companies shouldn't get (thrown off course) by the numerous distractions they're inevitably going to face in the context of a takeover bid. To the extent they can keep themselves focused on the job at hand, they have a much greater chance of achieving the right result," he says.

Put extra time on the clock

One of the serious disadvantages hostile M&A targets face is lack of time. In Canada, the minimum bid period is 35 calendar days from the time the formal bid is launched, but experts say that might not provide a lot of time to mount a successful defence. Consequently, various strategies must be devised to extend that period in order to buy time.

One way to do that is through shareholder rights plans that are colloquially known as "poison pills." With a poison pill, rights are triggered that dilute the hostile bidders' interest. This can either be done on a pre-existing or a tactical basis after the bid has been made, to allow all shareholders, other than the hostile bidder, the opportunity to purchase an increased number of shares.

This strategy could also force the original bidder to raise its offer, or buy time — generally about another 10 to 40 calendar days on top of the 35 days already allotted — for other bidders to come forward in an effort to maximize value for shareholders.

Targets should also consider putting rights plans in place to address a "creeping takeover," Mr. Brown said.

Spread the word

It can pay for management of a target company to promote themselves in the market, to gain the attention of arbitrageurs and hedge funds — particularly those taking part in U.S. markets, where the vast majority of purchasing activity takes place.

"There are many arbitrageurs and hedge funds (that) have been set up to profit from takeover bid situations, especially those that have been launched on an unsolicited basis," Mr. Thomson says. "When arbitrageurs and hedge funds end up buying substantial share positions in companies that are subject to a hostile transaction, this typically will have the effect of increasing the share trading price above the bid price."

"As much as anything, this is now driving the face of unsolicited M&A activity in Canada," he adds.

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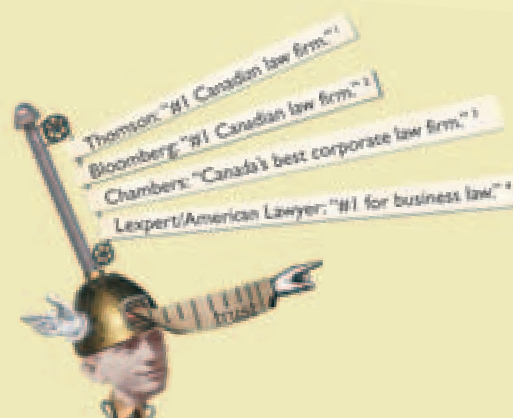

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1 *Thomson Financial 2005 Legal Advisory M&A Review*, year ended 2005: #1 law firm for Canadian deals, announced or completed in 2005, by value; #1 Canadian law firm for worldwide deals announced or completed in 2005, by value; #1 Canadian law firm for US deals announced or completed in 2005, by value.
2 *Bloomberg 2005 Global Financial M&A Rankings:* #1 law firm for Canadian deals announced in 2005; #1 Canadian law firm for worldwide deals announced in 2005; #1 Canadian law firm for European deals announced in 2005.
3 Client feedback in *Chambers Global, The World's Leading Lawyers 2005-2006*. Also named 2005 Canadian Law firm of the Year – The Chambers Global Awards.
4 *2006 Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada*, Corporate – Toronto.

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How to say 'I don't' when taken to the altar

A suitor has popped the question. All you have to do is say "yes" and you're on your way to the altar.

The reality is that marriages don't happen as simply as that — and neither do business mergers. Even when both parties are making nice and the price is right, there may be good reason to say "I don't" to a takeover proposal.

Brian Pukier, a partner in the Toronto office of national law firm Stikeman Elliott LLP and head of the public M&A practice group, says that gauging the fit between two companies looking to merge requires scrutiny from the perspectives of all of the parties involved, namely the company proposing the merger, the takeover target, and the target company's shareholders.

For acquirers, a key question to ask, he says, is: Have you done your homework?

Although companies that receive unsolicited offers to merge have no legal obligation to open up their books and operation for inspection, bidders can ask for — and often get — access to this information by entering into a confidentiality agreement with their target. There is usually a price for this access: bidders will be asked to submit to a "stand-

Craig Thorburn, Blake, Cassels & Graydon LLP

still," where they agree not to initiate a transaction — such as a takeover bid or a proxy fight to replace the target company's board of directors — without the consent of the target company's board.

Bidders who don't like the standstill requirement can still learn a lot about their target by looking at sources such as the System for Electronic Document Analysis and Retrieval (SEDAR), which provides access to most public securities documents and information filed by public companies, and by talking to their target's customers, competitors and other industry players, says Craig Thorburn, a lawyer and mergers and acquisitions specialist with the Toronto law firm Blake, Cassels & Graydon LLP.

Apart from the target company's general health, a bidder needs to look at whether or not the two companies' corporate cultures can work together. And the acquiring company needs to realize that swallowing up another company's culture may well negate a merger's value.

"When you take over another company, you're buying value, and value is often wrapped up in the culture," Mr. Thorburn says. "So you have to think about how you can preserve the best attributes of the business you're acquiring, while integrating it into your company's workflow."

From a target company's perspective, after the mandate of maximizing shareholder value, the main concern has to do with what the post-merger future will look like, Mr. Thorburn says. And for many companies, a key criterion for determining if a merger is a good fit is whether the potential acquisitor knows and understands their business.

Mr. Thorburn cites as an example the acquisition of Labatt Breweries of Canada by Belgium-based Interbrew (now InBev SA). Having received an unsolicited offer of purchase from Toronto-based Onex Corp., Labatt decided to look at other potential buyers.

"Labatt preferred to be bought by a company that was also a brewer," Mr. Thorburn says. "So when they found Interbrew, which has been brewing beer for centuries, it was a marriage made in heaven."

Ultimately, it is the shareholders who determine the outcome of a takeover bid — and that's why a target's directors and management must ensure that the investors in their company have all the information they need to decide if a proposed merger is a good fit or not, says Doug Scott, a partner in the business law group at Fraser Milner Casgrain LLP in Toronto.

For shareholders looking to cash in, a decision to vote for or against a merger generally hinges on how much the bidder is willing to pay for shares. But if the offer presents the opportunity to stay invested in the merged company, the question of merger compatibility is crucial, Mr. Scott says.

"These shareholders need to ask what the new entity is going to look like," he says. "They need to look at the acquirer, in particular the strength and liquidity of its stock, if the outcome will be that the shareholder ends up not with cash in his or her pocket but with a change of investment from the target company to the acquirer."

They also need to ask questions about who's going to manage the target company after the merger, and what the post-merger business strategy will look like.

It's not unusual for both acquirers and targets to seek the help of an investor relations or shareholder communications firm in educating shareholders about the merits—or lack of—of a merger proposal.

Some companies will also use the press to convey information to shareholders during a takeover bid.

Shareholders need to pay attention to all these messages, Mr. Pukier says. Otherwise they run the risk of saying "I do" to a merger that turns out to be an incompatible union.

Fighting the good fight

Continued from Page G1

Also referred to as bringing in a "white knight," it's not unusual for companies being targeted in a hostile takeover to solicit other bids.

Target companies sometimes do this to get the company that initiated the hostile bid to raise its offer.

At other times, the directors and executives of the target company simply don't think the potential acquirer would be a good fit for the company and would rather be bought by another company, perhaps one in the same type of business or with a similar culture.

Companies that want to ensure that any takeover proposal is only successful at a full and fair price can defend themselves against a takeover bid by making changes that would cause shareholders to reassess the company's value, says Clay Horner, a lawyer and M & A specialist at Osler, Hoskin & Harcourt LLP in Toronto. For instance, a company could change its dividend policy so that shareholders get more cash payments. Or it could recapitalize — essentially borrow more money —to make a large special dividend payment.

"This gives shareholders a better basis for comparing the value of their shares in the current company with the value of the bid," Mr. Horner explains. "It's meant to encourage them to compare the value of the bid against the true value of the company's shares."

To discourage a hostile bidder from taking advantage of an undervalued target, a target company might decide to sell off a business unit or even make an acquisition to better align its mix of businesses, says Mr. Horner.

"The market might look differently at your company if it divested one of three businesses that the market didn't see belonging together," he says. "And your shareholders would also make a reassessment of the company if you had cash, generated from the sale of a business unit, to reinvest into the company or make a special distribution to shareholders."

Some companies choose to adopt shareholder rights plans, which essentially give them and their shareholders more time to review the plan and look for value-enhancing alternatives.

Mr. Horner says target companies should use this time to assess and pursue enhancing alternatives in the face of a serious and credible bid, and to ensure that the bidder has made all the required disclosures and filed all necessary documents.

To fight the good fight in the takeover bid, target companies need to make sure their shareholders have all the information they need to decide whether or not to tender their shares, says Roy Shanks, senior vice-president for the Canadian arm of Georgeson Shareholder Communications Inc., a global company that provides such services as shareholder response management and proxy solicitation services.

"Shareholders need to understand every relevant detail of the offer," he says. "They need to understand the time frames and deadlines involved, as well as the value that's attached to the offer and in what form the offer is being made — is it cash or shares or a combination of both?"

It's not unusual for both the target company and the acquirer to hire a company like Georgeson to relay information to shareholders. Mr. Shanks says Georgeson does this by contacting shareholders regarding the details of the takeover proposal, and setting up Web sites and toll-free phone lines.

What began as a hostile bid may end in friendly negotiations, so experts recommend maintaining a civilized atmosphere throughout the takeover bid process.

In the end, says Mr. Callaghan at Borden Ladner Gervais, winning a takeover battle isn't a matter of fending off a bidder but of doing what's best for the target company's shareholders.

"Hostile bids are a fight for the hearts and minds of your shareholders," he says. "So you owe it to your shareholders to be prepared to fight to get the best value for them."

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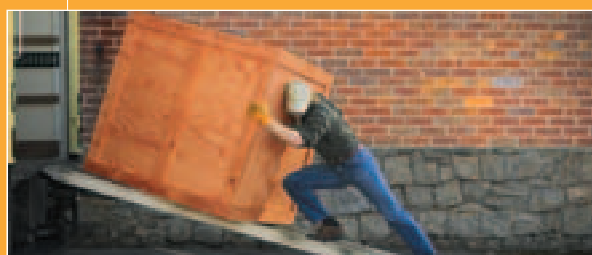

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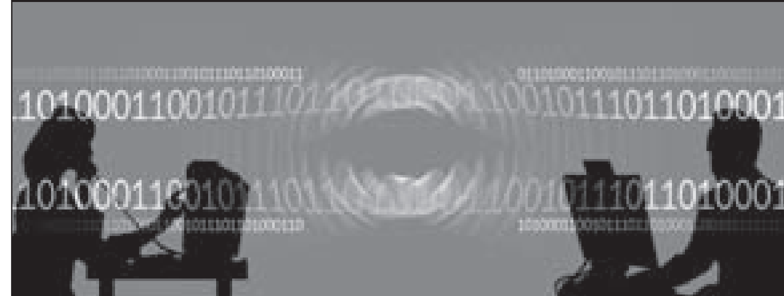

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Income trusts also embrace 'urge to merge'

When it comes to sizzle on the M&A broiler, nothing is turning up the heat like the income trust sector.

Income trusts have become so popular, especially over the past four years, that they "have become M&A machines," says Jeffrey Singer, a partner with law firm Stikeman Elliott LLP in Toronto.

"The Canadian landscape is populated by far more income trusts now, each of which is a potential acquirer, target or merger partner," he adds.

There were 112 M&A deals worth $22.8-billion in Canada involving income trusts in 2005, according to statistics provided by Bloomberg Financial Markets. That's up from 76 deals worth $12.7-billion in 2004. The number has spiked sharply since 2002, when there were just 40 M&A deals, worth $4.7-billion, involving income trusts, which are investment trusts that hold assets that generate cash flows for investors.

What's fuelling this action? "It's the same urge to merge, if you will, that fuels corporations," says Stephen Halperin, a senior partner with law firm Goodmans LLP in Toronto.

"And so long as the income trust market remains a significant and growing asset class in public capital markets, we see absolutely no reason to believe this won't continue as a long-term trend," he adds.

Because income trusts make cash distributions to unit holders, by merging with or buying other firms, they acquire a broader asset base with which to make such distributions, while at the same time decreasing their overall risk because their payout ratio is reduced.

"As a result, some trusts have, over time, discovered they need to partner up in an M&A situation in order to assure their survival and longevity," says Stacie Moore, general manager of corporate trust at Computershare Trust Co. of Canada in Calgary, which provides shareholder services to companies.

Toronto law firm Blake, Cassels & Graydon LLP has, in recent years, acted for income trust-structured clients in a number of high profile M&A cases — most notably involving energy. This sector, which "is probably the hottest area of M&A activity in Canada right now…is particularly suited to the income trust model because, once a company has found energy and started producing it, there's a fairly steady steam of income," says Toronto-based partner Craig Thorburn of the law firm Blake, Cassels & Graydon LLP.

Stephen Halperin, Goodmans LLP

Stuart Swartz, Computershare Trust Co. of Canada

Income trusts had a fairly inauspicious start, perceived by many in the investment community as a conservative vehicle when they were first introduced in the 1990s, experts point out.

"They weren't exactly in high-growth businesses, like the technology dot-coms," Mr. Singer recalls. "The focus was on security. Growth was desirable, but it was far and away a secondary consideration."

But as the market for income trusts began to mature in about 2000, investors came to appreciate that an investment in units of an income trust represented an investment in what was essentially an equity security with a very high payout, particularly as compared to other instruments, such as GICs, and T-bills, which were yielding historically low rates of return.

Investors also appreciated that income trusts offer a security factor not evident in other kinds of equities — and at a time when the value of many of the same dot-coms everybody rushed to buy began to tank.

Aside from the income stream they provide, what other appeal do income trusts hold for M&A activity?

One key advantage is the tax leverage they provide. Because of the tax efficiency of their structure, acquirers can often afford to pay a higher price on them than for most corporations. And that bodes well in a bidding war, explains Phillip Brown, a partner and co-head of the M&A group at Torys LLP in Toronto.

Moreover, they distribute cash directly, thus eliminating the potential for double taxation that exists within more conventional companies, whereby the corporation pays tax and then the individual is taxed again when the firm's dividends are distributed.

Still, a firm that considers acquiring an income trust needs to be aware that the trust structure can be very different from that of a conventional corporation. To avoid potential complications later on, anybody looking to acquire an income trust should therefore do a lot more digging and due diligence before a deal gets the green light, the experts warn.

For instance, although corporate shares and income trust unit structures are both governed by provincial or territorial securities acts, a corporation is also governed by various statutes, such as the Canada Business Corporations Act, which provide clearly established rules with respect to requirements for shareholder meetings, dissenting shareholder rights, and other corporate governance issues.

In contrast, an income trust is governed by a declaration of trust, or an agreement that serves as a contract for the income trust's operation and governance. Such declarations are less rigid than the statutes a conventional corporation faces so there is more flexibility with an income trust.

"A corporation comes with a standard set of rules and assumptions, whereas an income trust really involves whatever its founders put together," says Mr. Thorburn.

He provides a construction analogy. "If you think about it, a corporation is like a pre-fab house. You fill in the interior with the decorations you want, but you know what it looks like inside. With an income fund, it's sort of like a completely blank canvas. The people who create it paint the canvas," he says.

While the sector is still growing, with new trusts still coming to market (where they are now a part of the S&P/TSX composite index), some existing income trusts have reached the point of maturity whereby they have begun to consolidate for growth.

And that, too, adds fuel to the income trust M&A fire.

Blakes, for instance, recently acted for a client on a deal involving two energy trusts — Sequoia Oil & Gas Trust and Daylight Energy Trust — which combined to create a brand new trust with an estimated enterprise value (debt and equity) of more than $1.7-billion.

"Here is yet another flavour, with two existing income trusts coming together and forming a new one," Mr. Thorburn says.

"I think this really is a sign of a maturing market. Not only are you getting ordinary companies acquiring income trusts. You're also getting income trusts acquiring one another or combining together to form new ones."

It's a trend expected to continue.

"You're still going to see a lot more income trust M&A transactions relative to the income trust market than there are corporate transactions relative to the corporate market, because a lot of the corporate transactions have already been done," Mr. Halperin says.

And there should be no shortage of investors eager to seize the opportunity to invest in the income trust structures that are sparking the growth.

"Particularly as people get older, retire and want more yield instruments, I think this will be a continuing phenomenon," Mr. Brown says.

A smart communications strategy

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Because M&A deals involve a great deal of legal and financial information, companies also need to ensure that no questions in the minds of their shareholders' go unanswered. For help in making sure that is taken care of, acquirers and targets often turn to the services of companies such as Georgeson Shareholder Communications Inc., which look after soliciting votes and shares tendered to the offer in detail and point out important timing, such as voting deadlines and offer expiry dates.

"The shareholder needs to be well-informed, and that's what Georgeson provides," says Susy Monteiro, vice-president, proxy services, for Georgeson Shareholder Canada.

Companies also need to make sure that everyone on their M & A team — from managers and directors, to lawyers and accountants — is working off the same page. Kevin Gormely, senior vice-president of Toronto-based Bowne Financial Print, a division of financial printing firm Bowne Canada, Ltd., says that digital technology and the Internet have made this easier.

Today, companies like Bowne can take the boxes of corporate documents that are typically dragged out in an M&A, and transfer all the information in them into an electronic repository. Authorized parties can then access this information by logging into a secure, password-protected Web site.

"Our sites typically have instant-messaging service," Mr. Gormely says. "It's great because the parties can talk to each other when they're on-line, and instant messaging also has logging and archiving functions which can create an audit trail."

While it's important for companies to communicate during an M&A deal, they also need to be careful about revealing confidential information. That's why they should keep tight controls on what is being said and by whom.

Mr. Thorburn advises companies to assign public-speaking roles to one or two executives, and to make sure they're well prepared to answer even the toughest questions.

Even with the best-laid M&A communications strategy, something somewhere is bound to be misunderstood, misquoted or leaked, say the experts. But this is better than not communicating at all.

"The lack of communication around an M&A transaction can be worse than communicating incorrectly," Mr. Nowlan says. "Companies' futures and people's livelihoods are all tied up in the outcome of a merger or takeover, so this is not the time to go into a shell."

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