

Introduction

Global capital markets experienced mixed results in 2012. Optimism regarding the economic recovery underway in some countries was tempered by the European debt crisis and the so called fiscal cliff in the U.S. as well as concerns about Asian GDP growth and political unrest in the Middle East. Trading volumes were down globally in 2012 and the IPO market experienced its worst year since 2008. Canada's markets behaved in a similar fashion. While the TSX traded up for the year, the TSX-V was down sharply and the volume of new issues of both equity and debt were down on a year-over-year basis. M&A activity measured by volume was down somewhat on a year-over-year basis although aggregate transaction value was up partially as a result of the announcement of several very large transactions in 2012. On a more positive note, there appeared to be an uptick in market activity towards year end with several significant M&A transactions being announced and a number of financings being completed. However it was Prime Minister Harper's approval of two significant acquisitions of Canadian oil and gas companies by Asian state-owned enterprises (SOEs) and the announcement of new rules regarding SOE investment that dominated headlines at year end.

The S&P/TSX Composite Index closed 2012 4% higher than its close a year earlier, while the Dow Jones Industrial Average closed the year up approximately 13% over 2011. However, the TSX-V was down sharply for the year closing on December 31st at 1221.30 as compared to 1484.66 at the end of 2011, underscoring the difficult capital market conditions experienced by junior issuers this year.

Through to December 14th there had been \$25.5 billion in public equity offerings during 2012, down from \$29 billion last year, making it the slowest year since 2008. However, issuers in the real estate and oil and gas sectors as well as issuers providing yield generally enjoyed strong access to the capital markets throughout the year. The private placement market saw reasonable activity in 2012 as good names and strong management teams continued to be able to raise funds on a private basis. Such market appeared to strengthen at year end as a number of sizeable private deals were completed.

The IPO market was considerably weaker than in 2011 with \$112 billion in IPO proceeds being raised globally making it the weakest year for such offerings since 2008. Through to the end of November 2012, 43 conventional corporate IPOs had been completed on either the TSX or the TSX-V (excluding those undertaken by capital pool companies and exchange traded funds and IPOs involving structured products) compared to 67 corporate IPOs in 2011. The mining sector, typically a bright spot in the Canadian capital markets, saw greatly reduced capital markets activity in 2012 with 40% fewer completed mining IPOs as compared to 2011. Further, trading volumes of securities in mining issuers in 2012 were down very substantially on the TSX and TSX-V both in terms of value and number of shares traded. However, the successful completion of the sizeable and previously postponed initial public offering of Robert Friedland's Ivanplats Limited provided some degree of hope that market sentiment had not turned entirely against the mining sector.

Canadian issuers raised \$133 billion of new corporate debt through to December 15, 2012, representing a decrease of approximately 4% over the same period in 2011. However, the Canadian high yield debt market continued to grow throughout the year, with RBC Capital Markets reporting that an aggregate of \$4.7 billion had been issued through to November 30, 2012 as compared to \$4.4 billion for the same period in 2011, demonstrating a continuing demand by investors for yield in a low interest rate environment.

Osler has consistently been at the top of M&A legal advisor league tables published by Thomson Reuters and Bloomberg over the past six years, with the following distinctions for year-end 2012:

- Thomson Reuters ranks Osler again this year as the #1 Canadian firm for completed deals, and again as #2 for announced deals.
- Bloomberg once again places Osler among the top Canadian law firms with a #3 ranking by volume (\$ value) and a #4 ranking by deal count.

Osler is also consistently recognized in corporate finance league tables. In 2012, Osler was ranked by Bloomberg as the #1 ranked issuer-side firm for both equity and debt offerings.

M&A activity in Canada in 2012 measured by volume was down on a year-over-year basis although aggregate transaction value was greater than in 2011. The year started reasonably strongly and through to the end of the second quarter 1497 deals had been announced with an aggregate value of \$97 billion, down approximately 10% over the same period in 2011. However, deal volume declined significantly in the third quarter during which there were 599 announced transactions worth \$58.6 billion representing a 21% decrease in volume, but a 16% increase in value as a result of the announcement of a number of mega deals in the quarter including CNOOC's proposed \$15 billion acquisition of Nexen. This was consistent with the experience in global M&A markets where deal volumes fell in the third quarter to their lowest level since 2005. The year ended on a more positive note with the announcement of some mega deals in December including a \$4.4 billion bid for Primaris Retail REIT by KingSett Capital and the Ontario Pension Board and Encana's \$2.2 billion joint venture with PetroChina. There was also optimism at year end that the greater clarity provided by Prime Minister Harper when announcing new rules applicable to SOE investment in Canada, together with a loosening in the credit markets, would lead to a stronger M&A market in 2013. In this regard, the new year started strongly with the announcement on January 2nd of a \$1.1 billion acquisition of interests in ArcelorMittal's Canadian mining operation by a group led by South Korea steelmaker, POSCO.

The energy sector was the most active sector in terms of M&A activity in 2012 and a number of high profile deals in the sector were either announced or completed during the year including: the \$1.25 billion acquisition of Flint Energy Services by URS Corporation announced in the first quarter and completed in the second quarter; PETRONAS' proposed \$5.5 billion acquisition of Progress Energy Resources announced on June 28, 2012; CNOOC's proposed \$15 billion acquisition of Nexen and Talisman's \$1.5 billion sale of North Sea assets to Sinopec both announced on July 23, 2012; and the previously mentioned \$2.2 billion joint venture between PetroChina and Encana. What is notable about these transactions is the fact that in each case they involve foreign parties on the buy side and, in four instances, those parties were Asian SOEs.

As noted above, foreign investors continued to be very active in the Canadian M&A markets in 2012 and, in some sectors, the pace of foreign acquisition appeared to increase. For example, the aggregate transaction value of the CNOOC and PETRONAS deals exceeds some estimates of total Asian investment in the Canadian non-conventional resource sector to date. This, combined with the fact that some Asian SOEs were seeking to acquire outright control of the enterprises in which they were investing, as opposed to significant minority interests, likely contributed to the government's decision to modify its policies on SOE investment in Canada announced by Prime Minister Harper on December 7th, 2012.

The REIT sector started the year strongly, continuing the growth experienced in 2011. The torrid transactional pace continued throughout the year and a number of significant transactions, IPOs and follow-on offerings were completed, including CANMAR REIT's \$900 million acquisition of Cominar REIT, Dundee REIT and H&R REIT's \$1.266 billion acquisition of Scotia Plaza from the Bank of Nova Scotia, Dundee REIT's \$1.4 billion acquisition of Whiterock REIT and Dundee Industrial REIT's \$155 million initial public offering on the TSX. 2012 is ending with the largest REIT take-over ever commenced in Canada, with a consortium led by KingSett Capital making an unsolicited \$4.4 billion offer for Primaris Retail REIT.

The Canadian financial services sector continued to perform strongly during the year with Canadian banks reporting record earnings. There were two significant domestic M&A transactions in the sector, with Scotiabank acquiring ING Financial's Canadian business and Royal Bank agreeing to acquire Ally Financial's Canadian business. Each of these transactions stemmed from a foreign financial institution seeking to raise capital to repay amounts owing to its national government. Canadian banks were also active in foreign M&A markets as they capitalized on their continuing financial strength relative to financial institutions in other parts of the world.

Osler was again fortunate to have represented our clients in many of the leading transactions that occurred in 2012 and we are grateful for the trust placed in us. We are pleased to share our observations and experiences in 2012 with our clients and other friends and to provide our thoughts on what 2013 might bring. Should you wish to discuss any of the articles contained in our 2012 Capital Markets Review, please do not hesitate to contact any of our legal professionals.

We wish you all the best for 2013.