2012 Corporate Finance Review

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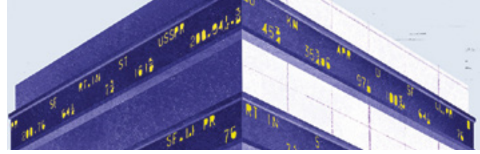
by Desmond Lee and Michael Innes

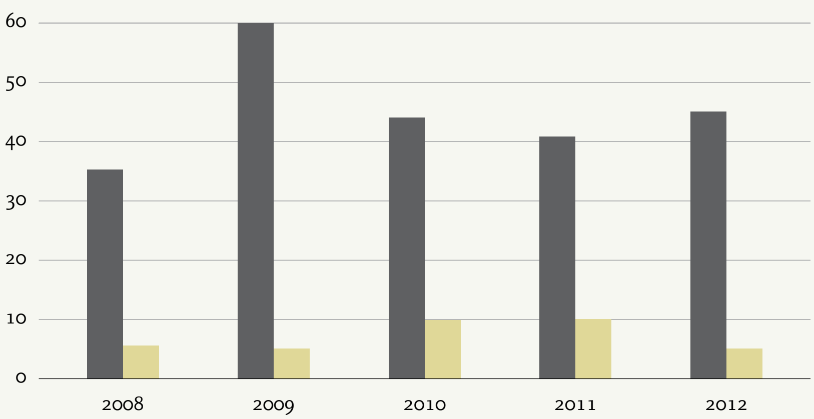
More than four years after the start of the global financial crisis, the Canadian equity and debt markets continue to present both opportunities and challenges for issuers. Although much has been written about the relative stability of the Canadian financial system and economy, this has not necessarily translated into a stable market for capital raising for all issuers at all times. Instead, looking back at the past five years, it's clear that windows of opportunity have opened (and closed) at various times for issuers in different industries. In a market sometimes known for its copycat mentality, the quality and competitive strengths of an issuer remain key factors in determining whether or not it will be successful in raising capital.



Political and Economic Events Create Windows of Opportunity in the Equity Markets

Although the U.S. financial crisis is now well behind us, the impact of recent political and economic events around the world continues to be felt in the Canadian equity markets. It is interesting to note that total equity financings by TSX-listed issuers in the past five years actually reached a peak in 2009. This was due in part to the market window that opened at that time for gold and commodities-based issuers, as well as for financial institutions seeking to strengthen their balance sheets.

Total Equity Financings by TSX and TSX-V Listed Issuers (billions of dollars)

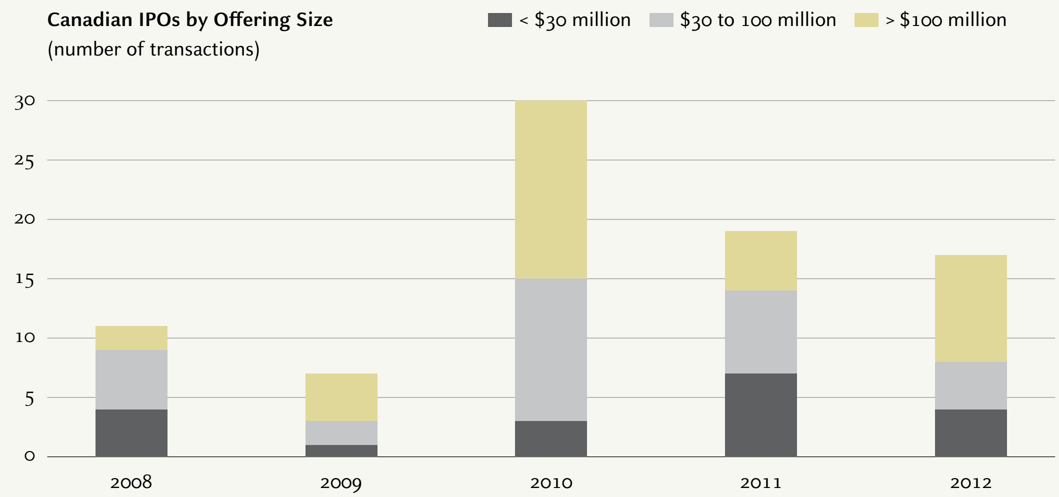


Source: TMX Group Equity Financing Statistics. Includes proceeds from both IPOs and follow-on offerings, whether on a treasury or secondary basis. Information for 2012 is to the end of November.

In more recent years, market windows have opened and closed more abruptly. New equity issue activity got off to a slow start in 2012 (with the first TSX IPO of the year closing in April) but ended with a strong finish, whereas in 2011 the opposite was true. The ability to execute transactions with urgency has often meant the difference between success and failure in these volatile markets. Issuers would also be wise to prepare themselves for the possibility that they may not be successful in completing their transactions. While previously a rare occurrence in Canada, in the past three years nearly 20%, or one in five IPOs, have been withdrawn. This does not include issuers who commenced their process but did not reach the initial filing stage.

IN 2012, OSLER ACTED FOR THE ISSUER OR DEALERS IN CONNECTION WITH OFFERINGS BY:

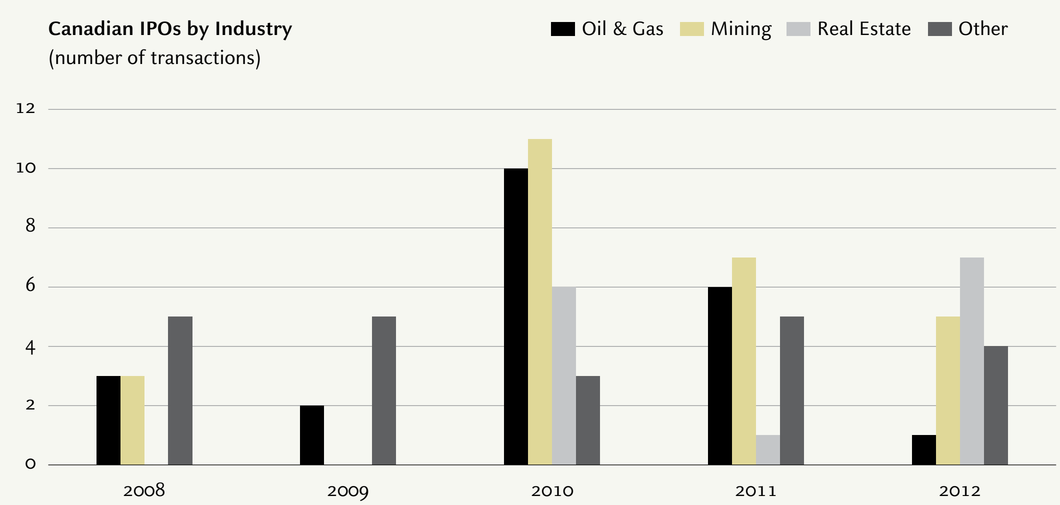
- **Aéroports de Montréal**,
- **Angle Energy Inc.**,
- **Cameco Corporation**,
- **Emera Incorporated**,
- **Fairfax Financial Holdings Limited**,
- **Hydro One Inc.**,
- **Novadaq Technologies Inc.**,
- **Parallel Energy Trust**,
- **Rogers Communications Inc.**,
- **TELUS Corporation**,
- numerous REITs, including the **Dundee group of REITs**, **Chartwell Seniors Housing REIT** and **Calloway REIT**.



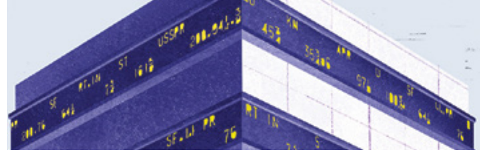
Source: FPInfomart. Includes marketed IPOs over $10 million in offering size involving either a TSX or TSX-V listing. Excludes CPC transactions. Some 2012 transactions were not completed at press time.

It is perhaps surprising that 2010 and 2009 have been the strongest and weakest years, respectively, for initial public offerings in Canada in the past five years. With 30 completed transactions, 2010 stands out as the strongest year for IPOs since the onset of the global financial crisis, although this was still down substantially from 44 transactions completed in 2007. In contrast, with seven completed transactions, it was 2009, not 2008, that remains one of the slowest periods for IPO activity in recent years, despite the fact that total equity financing activity in Canada was otherwise robust that year.

The graph below breaks down Canadian IPO volume by sector over the past five years.



Source: FPInfomart. Includes marketed IPOs over $10 million in offering size involving either a TSX or TSX-V listing. Excludes CPC transactions. Some 2012 transactions were not completed at press time.



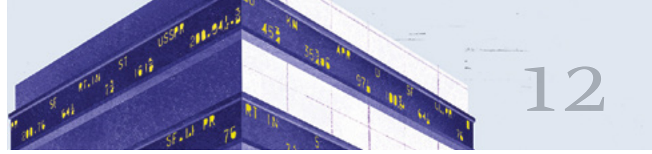
Amid talk of growing U.S. domestic oil production replacing Canadian sources of supply, there has been a noticeable slowdown in the number of new issuers in the oil and gas industry coming to market in Canada. After taking advantage of a window of opportunity, new oil and gas issuers going public by way of a conventional IPO reached a high in 2010. However, in 2012, we saw only one oil and gas issuer (Argent Energy Trust) successfully complete a similar transaction. Argent, which is a so-called foreign asset income trust or FAIT, finally completed its IPO in August after several attempts. One other oil and gas FAIT was unable to agree on a price for its IPO after its marketing process, while another IPO for an oil and gas FAIT was formally withdrawn in 2012 after having announced its intentions in 2011. We believe that these withdrawals are not a reflection of the FAIT structure itself. Opportunities for non-Canadian businesses to raise capital in Canada will continue to grow, whether through the FAIT structure or by way of a conventional offering of corporate equity.

After being shut out of the Canadian IPO market in 2008 and 2009 due to economic events in the United States, real estate income trusts or REITs were poised to make up the largest industry segment of new IPO issuers in 2012. The first two TSX IPOs to be completed during the year were for REIT issuers, as were two of the IPOs that were marketed towards the end of the year. At press time, at least one of those was to be deferred until 2013. Access to capital markets have made REITs one of the few buyers able to compete with large pension funds for investment opportunities. We had expected that there would be some slowing in the pace of new REITs coming to market in 2013, as transactions completed in 2012 continue to be absorbed. However, with the recent announcement by Loblaw Companies Limited of its upcoming REIT IPO and speculation that there may be similar transactions being considered, the pipeline of quality issuers could be extended. Interestingly, although follow-on offerings by existing REITs were plentiful in 2011, only one new real estate issuer (Dundee International REIT) actually completed a conventional IPO in 2011. As a result, it will take some time for the market for new REITs to be saturated.

As was the case with oil and gas issuers, IPOs by mining issuers reached a peak in 2010 based on strong demand for commodities. 2012 saw a slowdown in both IPO and follow-on activity by mining companies. Although there have been transactions in the mining sector that have been completed, they have generally involved smaller offering sizes – the one exception being the $300 million IPO by Ivanplats Limited, a Canadian issuer with assets entirely located in Africa. We anticipate that the market will open again for quality mining issuers in 2013.

Low Interest Rate Environment Provides Opportunities in the Debt Markets

2012 in the Canadian debt markets is perhaps best described as a year of opportunity for many issuers of corporate debt. A historically low interest rate environment, combined with a moderate easing of concerns over the sovereign debt crisis in Europe by mid-year,



provided issuers the opportunity to issue debt at historically low coupon rates. As in previous years, market windows were erratic and opportunity-driven, but the pace of issuance year-over-year indicated that demand for credit remains strong.

We saw opportunities for Canadian issuers of high-yield debt, as investors continued to seek yield in a low rate environment. Issuance volume was up year-over-year, with a significant number of transactions taking place in the energy sector. Covenant patterns in Canada continue to evolve, but generally still follow those seen in the high-yield market in the United States.

In 2012, there was a notable increase in the issuance of long-term bonds with maturities over fifty years, including the issuance of a bond by Enbridge Pipelines Inc. in July 2012 that matures in July 2112 and carries a coupon of 4.1% – reported as the first hundred year bond issued in Canada since 1997. To date, the market for these bonds has been limited to utilities and pension fund issuers, as these entities are viewed by investors as most likely to be still in existence at the time of maturity. For the right issuer, long term bonds are an opportunity to take advantage of current low interest rates as part of a stable, long-term financing strategy.

Frequency of Consent Solicitations on the Rise

Once considered rare in the Canadian market, consent solicitations have become a more popular mechanism for seeking modifications to the terms of debt securities. In 2012, we saw increased consent solicitation activity, both for high-yield and investment grade bonds.

The old adage "nothing is ever free" holds especially true in a consent solicitation process, as issuers often have to pay a significant "consent fee" in order to entice investors to agree to amend the terms of bonds or other debt securities. The nature of the amendments will have an impact on the amount of the consent fee. However, we have seen certain transactions where investors were not willing to agree to amendments, no matter what the fee. This can be particularly frustrating for issuers if required amendments cannot be approved because of the blocking position of a significant holder or holders of bonds. In order to deal with such circumstances, seeking key investor feedback in advance of soliciting other holders is an important step to consider. The uncertainty presented by consent solicitations also requires consideration at the time of issuance of debt securities to ensure their terms provide needed flexibility for issuers in the future.

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