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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 463/576 Securities Regulation

SECTION 001

Professor Maziar Peihani

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS

NOTE:

1. This is an open book examination. Students may take any materials they wish into the examination room except library books.

THIS EXAMINATION CONSISTS OF TWO QUESTIONS.

Question One: 90 Marks

Prime Resources ("Prime") is a mineral exploration company based in Vancouver. Prime has one class of common shares which trade on the TSX and the NYSE and the company's current market capitalization is \$500 million. Robert Quartermain is Prime's CEO and Andrew Chisholm, Jacynthe Côté, and Cynthia Devine are Prime's independent directors. Mason Capital Inc. is the prime's largest shareholder accounting for 21% of Prime's outstanding common shares.

Prime is currently developing the Brucejack Project, a significant gold mine in north-western British Columbia. Over the course of 2019 and 2020 Prime conducts a mineral exploration program at Brucejack that involves surface mapping and exploratory drilling. It hires Snowden, a well-known mining consultant, to review the results and produce a mineral resource estimate. Snowden does so and produces the November 2020 Mineral Resource Estimate which is used by another contractor as the basis for the June 2021 Feasibility Study. The Feasibility Study concluded that Brucejack contained economically recoverable mineral reserves capable of supporting a successful bulk-mining operation. However, the validity of the Feasibility Study is dependent on the validity of the underlying Mineral Resource Estimate on which it is based, including the unique style of mineralization in the Valley of Kings ("VOK") section of the Brucejack mine.

In order to test and verify the validity of its Mineral Resource Estimate, and by extension the Feasibility Study, Snowden recommends that Prime extract a 10,000 ton bulk sample (the "Bulk Sample Program") for milling and testing. Prime agrees and retains Strathcona Mineral Services, another well-known mining consultant, to oversee the excavation of the 10,000 ton sample and report on the test results. The original plan is to process the bulk sample in its entirety at a custom mill because this is the most reliable means of determining the mineral content. But Prime also agrees to use a sample tower. The idea of using a sample tower arises because Prime has difficulty finding a custom mill that is available. By the time space is secured at a custom mill in Montana, Strathcona has already procured a sample tower that would process and test a portion of the bulk sample before it is shipped for milling.

Starting in mid-July 2021, Strathcona, who has considerable experience in the use of the sample tower, begins to voice concerns. These concerns are reiterated as the weeks go by. Over the three months from July 23 to October 21, 2021, Strathcona repeatedly advises Prime that the sample tower test results are failing to confirm the validity of the Mineral Resource Estimate and by extension the validity of the Feasibility Study. Prime does not agree with Strathcona's concerns, insisting that they need to wait for the results of processing of the 10,000-tonne bulk sample before making any conclusions. Mr. Jones, who is Snowden's senior principal consultant support Prime's position. He maintains that "Strathcona is not qualified to make that opinion because they're not experts in resource estimation in any way." In July 2021, Mr. Jones decides to sell the stock options that he has received from Prime as part of his compensation package. He sells 10,000 stock options on July 24th, 2021, and uses the money to buy 1000 shares of Rivian, an electric car maker, on TSX.

(Question 1 – continued)

Having made no headway with Prime, Strathcona resigns from the Bulk Sample Program on October 7, 2021. In a news release on October 9, Prime announces Strathcona's resignation and in a further news release on October 22, Prime summarizes the reasons provided by Strathcona for its withdrawal and then adds its own views that these concerns were unfounded. Over these 13 days in October, Prime share price plummets by more than 50% from \$7.01 to \$3.45. When David Wong sees this sharp decline, he sells the 1000 Prime shares, which he bought earlier in March 2021.

Capstone Mining Corp. (“Capstone”), another mining company based in Vancouver, sees the downward pressure on Prime share price as a perfect opportunity to acquire complete control of the company. During October, Capstone enters into a series of cash-settled share swap transactions with Laurentian Bank Securities Limited for approximately 11% of the issued and outstanding common shares of Prime. Under the contractual arrangement between the parties, Capstone can terminate the swaps at any time and purchase the underlying securities from Laurentian. On October 30, 2021, Capstone enters into lock-up agreements with 5 of Prime's shareholders, representing 38% of Prime's outstanding common shares. They agree to tender their shares at a 20% premium over market value if Capstone makes a bid for Prime shares within the next three months.

On November 10, 2021, Capstone sends a bid circular to Prime's shareholders, offering to acquire all issued and outstanding shares of NorthStar for a 20% premium over current market value. The bid will stay open for 105 days. In its bid, Capstone raises the recent issues with Strathcona's resignation and outlines a roadmap for governance reforms, which could prevent such incidents from occurring in future. On November 14, Prime's board adopts a shareholder rights plan (“SRP”) with the rights becoming exercisable on the trading day following the acquisition by a person of 20% of Prime's outstanding stock. The SRP deems all parties to the lock-up agreements as acting jointly or in concert with Capstone and deem all securities subject to lock-up agreements to be beneficially owned by Capstone. The interaction of this provision and the definition of a 20% acquiror, means that Capstone is effectively prevented from acquiring any further Prime's shares for the duration of the SRP, which replicates Capstone's bid deposit period (105 days). On November 17, the Prime' board of directors issues a director circular which accuses Capstone of opportunistically trying to take over Prime when its share price is experiencing a temporary decline. It recommends the shareholders not to tender their shares as Capstone's offer is terribly low and is irreconcilable with prime's strong fundamentals.

It is now December 10, 2021, and Capstone is greatly frustrated with the Prime's SRP. On another development, the entire 10,000-tonne bulk sample has been milled. The final milling results show that 10,302 tonnes of bulk sample had yielded 5,865 ounces of gold, about 42 percent more than was originally predicted by Snowden's Resource Estimate.

Please advise on the securities regulation issues that arise in this matter.

Question Two: 10 Marks

Judy Schick is the sole shareholder, director, and officer of Schick Travels Inc, a small travel agency in Vancouver. The COVID-19 Pandemic has left Judy's business cash strapped. To help Judy keep her business operating, 5 customers agree to loan Judy \$500,000. The loan is evidenced by 5 promissory notes issued by the Schick Travels. The notes require the company to pay back the principal as well as a 10% interest on the one-year term. The notes are secured by Judy's personal toy soldier collection. The money received under the notes is deposited into Schick's corporate account.

Please advise whether the notes constitute a security under the *British Columbia Securities Act*.

END OF EXAM