Orla Mining write Covid-19 excluson clause into their financing agreement



Orla Mining {TSX: OLA}

When Orla entered into an underwriting agreement for the recent $75 million fundraising with a syndicate of underwriters , they specifically included a provision to expressly exclude COVID-19 as a cause for termination of the offering.

This was prescient given the failure of the recent Silvercrest offering, terminated because of the effect of covid-19 on the markets.



Orla Mining {TSX: OLA}

When Orla entered into an underwriting agreement for the recent $75 million fundraising with a syndicate of underwriters , they specifically included a provision to expressly exclude COVID-19 as a cause for termination of the offering.

This was prescient given the failure of the recent Silvercrest offering, coincidentally also for $75 million, that was terminated by the bank due to concerns about the effect of covid-19 on the markets.

These sort of *force majeure*, disaster opt out clauses are included in case an event, action, law, condition, or circumstance, develops or comes into existence that has a significant or material adverse effect on financial markets, or the business or operations of the issuer concerned.

These clauses are not given much heedance due to the rarity of them being used, due to the short time frame between the signing of offering agreements, and the closing of the offerings. The underwriters are also financially incentivised to conclude the deal once signed.

Notwithstanding this, Silvercrest Metals Inc. recently entered into an underwriting agreement with a syndicate of underwriters led by a well-known Canadian Bank for a bought-deal offering to raise approximately $75 million. The offering was scheduled to close on April 3, 2020. One week after signing, on March 18, 2020, Silvercrest issued a press release announcing that it had received notice that the Bank was invoking the “disaster-out” provision to terminate the offering, citing extreme financial turmoil due to COVID-19.

Silvercrest, naturally, did not agree with this, and are pursuing legal action against the bank involved.

Subsequent to this Silvercrest have completed their financing, but at $7.50 instead of the original $8.25 price, so presumably they will be seeking the difference through the courts in due course. It will be interesting to follow this and see if it progresses further. It would not surprise me if

they do not pursue their action, given the covid-19 effect on markets worldwide.

Subsequent to the Silvercrest aborted offering, on March 30, 2020, Orla Mining entered into an underwriting agreement with a syndicate of underwriters, and they included a provision to expressly exclude COVID-19 as a cause for termination of the offering.

The provision states that *"any related interruption to the business, affairs or financial condition of Orla Mining, or any event, action, state or condition or financial occurrence related directly or indirectly to the COVID-19 Outbreak (whether now known or unknown or whether foreseeable or unforeseeable in the future), including any adverse effect on the financial markets generally"* will not be considered an event or occurrence that will enable the Underwriters to terminate the Orla Mining Agreement. While relatively uncommon prior to COVID-19, carve-outs such as the one in the Orla Mining Agreement should become an important point of consideration for issuers and underwriters/agents during the COVID-19 crisis and beyond.

Given the subsequent volatility in the financial markets, the inclusion of the covid-19 clause is, and has proven to be, a very wise move.

This is the sign of a top notch management team thinking ahead of the game, and taking precautions to protect their business and shareholder value in my view.