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Timminco saga has its problems

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Maybe **Timminco's** revolutionary silicon process will work out and make investors filthy rich. Maybe it won't.

One thing is for sure, though: The people running the show aren't going to wait around to find out, at least not with all their skin in the game. Shareholders would be well served to watch what these people are doing.

That would be a lot easier if we had better disclosure laws. But what we can see from Timminco's disclosure to date should leave you feeling a little less than confident. Fact is the people who control the company are highly conflicted and have been liquidating their position furiously.

First, a little history: In 2003, a Pennsylvania-based private equity fund called Safeguard International LP effectively took control of Timminco by buying a big whack of new shares at a big premium to the market price, a little more than a buck a share.

Safeguard is controlled by Heinz Schimmelbusch and Arthur Spector. The former is now chairman and CEO of Timminco, and the latter is vice-chairman. They appear to own a little less than 10 per cent of Safeguard. The fund declined to confirm that. Their real interest in the fund, of course, is based on performance bonuses - these things always are.

Over the years, Safeguard gradually increased its interest in Timminco by lending the struggling company money. The debt, however, could be converted into stock on the cheap - about 40 cents a share for the most part.

The value of that conversion option started to become apparent last year, as Timminco's story - it says it can produce high-grade silicon for use in solar panels much more cheaply than anyone else - started to attract attention.

But it seems that Mr. Schimmelbusch et al. were not quite as convinced about Timminco's promise because last year, Safeguard created a new company, Advanced Metallurgical Group, or AMG. Mr. Schimmelbusch also runs AMG.

All of AMG's assets, including its controlling stake in Timminco, were transferred from Safeguard. None of AMG's officers or directors directly own shares in AMG.

Now here's the conflict part. First, Mr. Schimmelbusch runs and/or controls all three entities. He draws no salary from Timminco, although he has some stock options.

It's most probable that his biggest economic interest lies with Safeguard, however (remember he owns only a small stake in Timminco and owns no stock in AMG) so his incentive is to maximize returns for that fund and its investors.

To do that, he thought it wise to start liquidating his investment in Timminco. So he took AMG public last July, reducing Safeguard's ownership to 40 per cent from 92 per cent. Further sales of AMG shares, post-offering, cut Safeguard's ownership to 26 per cent.

These sales of AMG shares were effectively sales of Timminco. Why? AMG has a market capitalization of €1.2-billion ($1.9-billion). Its Timminco holdings represent 70 per cent of that market cap.

Now keep in mind that most of the Timminco stock Safeguard acquired was bought for an awful lot less than Safeguard got selling its AMG shares. The fund would have profited handsomely, and so, presumably, would Mr. Schimmelbusch.

Nothing wrong with that. The problems are elsewhere. First, Mr. Schimmelbusch is an insider of all three companies. Yet when Safeguard, to which his interests are apparently most aligned, sells shares in AMG - meaning starts to liquidate its position in Timminco - it doesn't have to disclose such sales as insider transactions, other than the original transfer to AMG, because they're not technically insider transactions. So you really have to do your work as an investor to track it.

Secondly, Timminco's CEO, Mr. Schimmelbusch, has less and less to gain or lose from the company's welfare. A big part of his indirect interest has been blown out. Yet he remains in control of the company. Control is useful. The people calling the shots speak for more than half the stock, even though they don't own it?

As I said earlier, the technology might work out. Or not. But it's clear that Mr. Schimmelbusch, a shrewd financial engineer if nothing else, wasn't sure enough of the outcome to hang in fully, having effectively sold Timminco shares well below where they are today (although he still has some interest in the company).

If he felt it was worth starting to sell at much lower prices, investors should know about it. It's time for better rules that make it easier for investors to spot what those in the know are up to.

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