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TSXV Introduces Changes to Capital Pool Company Program

December 11, 2020

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Introduction

On December 1, 2020, the TSX Venture Exchange ("**TSXV**" or the "**Exchange**") announced changes to its Capital Pool Company ("**CPC**") program, effective January 1, 2021.[1] Revisions to TSXV Policy 2.4 – *Capital Pool Companies* (the "**New Policy**") were introduced to renew interest in the CPC program. Specifically, the Exchange noted that the changes should:

- provide flexibility by easing residency restrictions and simplifying spending restrictions;
- reduce regulatory burden by relaxing requirements on shareholder distributions and shareholder approval, and by decreasing restrictions on certain subscriptions; and
- create value for participants by increasing seed investments, relaxing requirements on who can receive finders' fees, and shortening certain escrow requirements.

Overview of the Program

The CPC program is a listing vehicle that supports private companies seeking to complete a go public transaction. A qualifying transaction ("**Qualifying Transaction**") is similar to a reverse takeover, where an operating business takes over a CPC and can then access the capital, shareholders and expertise of the CPC to complete a listing. According to the Exchange, it is the most common way that companies go public on TSXV.[2]

Overview of Changes to the CPC Program

The key policy changes are summarized below. For a complete overview, the TSXV Bulletin announcing the changes can be found here. Capitalized terms not specifically defined in this article have the meanings ascribed to them in the Exchange's Corporate Finance Manual.

- **Removal of 24-Month Deadline for Qualifying Transaction**: if a CPC fails to complete its Qualifying Transaction within 24 months of listing, it no longer has to obtain shareholder approval to transfer the CPC to NEX and cancel certain seed shares.
- **Directors and Officers**: under the New Policy, only the majority of directors and officers—not all of them—must be residents of Canada or the United States or have public company experience. Furthermore, under the New Policy, one person may act as CEO, CFO and Secretary simultaneously.
- **Seed Capital and Aggregate Funds**: the New Policy will increase the maximum aggregate gross proceeds earned from the issuance of shares in its initial public offering ("**IPO**"), seed shares and shares issued pursuant to a private placement from $5 million to $10 million.
- **Public Distribution Requirements**: the requirement for a CPC to have 200 public shareholders at the time of the CPC's IPO

has been reduced to 150 public shareholders in the New Policy—although at the time of the Qualifying Transaction, standard listing requirements still require the issuer to have 200 shareholders. Furthermore, under the New Policy, CPCs will be required to have a Public Float of at least 500,000 shares, rather than 1,000,000. The New Policy also introduces a new requirement for public shareholders to collectively hold at least 20% of the outstanding shares.

- **Shortening of Escrow Periods**: pursuant to the New Policy, following the completion of a Qualifying Transaction, all CPC escrowed securities will be subject to an 18-month escrow schedule—regardless of whether the CPC is a Tier 1 or Tier 2 issuer—with 25% of the escrowed securities being released on the date that the TSXV files a bulletin for the CPC's Qualifying Transaction and 25% on each of 6, 12 and 18 months following that date. Further, CPC stock options and shares issued on exercise of stock options will be released on the date the TSXV issues its final bulletin, unless such securities were granted before the IPO and at an exercise price less than the IPO price.
- **Shares Subject to Escrow**: certain shares will no longer be subject to escrow requirements under the New Policy, including shares acquired by the Pro Group at or above the IPO price and shares acquired by a Control Person in the secondary market. However, escrow requirements will continue to apply to seed shares issued below the IPO price, shares acquired from treasury by non-arm's length parties to the CPC, CPC stock options and shares issued on exercise of CPC stock options at an exercise price that is less than the IPO price.
- **Use of Proceeds**: general and administrative expenses under the New Policy will be limited to $3,000 per month—rather than the previous limit of the lesser of 30% of the gross proceeds from the sale of securities issued by a CPC and $210,000—with new guidance on permitted uses of proceeds and payments to Non-Arm's Length Parties.
- **Finder's Fees**: a non-arm's length party can receive a finder's fee under the New Policy, provided that certain criteria are satisfied, including obtaining disinterested shareholder approval.
- **Stock Options**: CPCs will now be entitled to adopt 10% rolling stock option plans, in which the total number of common shares reserved under option shall not exceed 10% of the common shares outstanding on the date of grant.
- **Disclosure requirements**: Form 3B1/3B2 – *Information Required in an Information Circular/Filing Statement for a Qualifying Transaction* has been revised to more closely align with requirements under NI 41-101 to reduce duplication and regulatory burden.

Transition Provisions

The New Policy also contains tailored transition provisions, depending on the stage of the CPC.

<u>CPC Applicants</u>

If a CPC has filed its CPC prospectus but has not yet completed its IPO, it may elect to comply with the new policy, provided it revises its prospectus and escrow agreement; or it may file its final prospectus and complete its IPO in accordance with the former policy, and continue to be governed by the former policy, with the option to comply with the transition provisions applicable to existing CPCs detailed below.

<u>Existing CPCs</u>

Existing CPCs can implement certain changes immediately, such as increasing the maximum aggregate gross proceeds raised by the CPC to $10 million.

However, the following changes require disinterested shareholder approval in order to implement:

- Removing the consequences of failing to complete a Qualifying Transaction within 24 months of listing;
- Extending the term of outstanding Agent's options to five years from two years;
- Amending escrow terms to track those permitted under the new policy;

- Permitting a payment of a finder’s fee to a non-arm’s length party; and
- Adopting a 10% rolling stock option plan.

Resulting Issuers

Resulting issuers can amend existing CPC Escrow Agreements to track the escrow terms permitted under the New Policy and the revised CPC Escrow Agreement, including the 18-month release schedule and the immediate release of escrow securities no longer subject to escrow, as long as the resulting issuer obtains disinterested shareholder approval at a meeting of shareholders or by written consent.

Conclusion

This article provides a high-level overview of some, but not all, of the changes to the CPC program. For more information about changes to the CPC program, please contact a member of our Securities Practice Group.

[1] Subject to requisite regulatory approval.

[2] TSX Venture Exchange Bulletin, “Capital Pool Company Program” (2020) <online: https://www.tsx.com/resource/en/47>.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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