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Corporate Finance & Securities

January 2021

New and Improved TSX-V Capital Pool Company (CPC) Program Rules Now in Effect

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On January 1, 2021, the rules governing the TSX Venture Exchange's capital pool company ("**CPC**") program were significantly changed and improved for the first time in many years. These changes, which followed an extensive review by the TSX-V and dialogue with market participants, are designed to reduce regulatory burden and provide greater incentives and flexibility in using CPCs in a 'going public' strategy. The key changes to the CPC program rules are highlighted below.

No More 24 Month Deadline to Complete Qualifying Transaction

Formerly, CPCs that failed to complete a Qualifying Transaction within 24 months of listing faced dire consequences in the form of suspension, delisting, or having their listing transferred to the illiquid NEX Board together with the cancellation of certain shares of the CPC held by parties not at arm's-length to the CPC (if approved by their shareholders). Under the new rules, CPCs no longer have any deadline within which to complete their Qualifying Transaction and are no longer subject to suspension, delisting, or transfer to the NEX for failing to do so. The elimination of the Qualifying Transaction provides CPCs with more time to find the most suitable acquisition target while avoiding the pressure of undertaking a less than optimal Qualifying Transaction in order to meet the deadline.

Lower Distribution and Public Float Requirements

The public distribution requirement upon completing the Initial Public Offering ("IPO") has been reduced to 150 public shareholders from 200 and the public float requirement is now a minimum of 500,000 shares, down from 1,000,000. However, public shareholders must hold at least 20% of the outstanding shares upon completion of the IPO.

Escrow Period Reductions

Escrowed CPC securities, which includes shares issued at a price below the IPO issue price, are now subject to a uniform 18-month escrow release schedule following the Qualifying Transaction, whether the Resulting Issuer is a Tier 2 Issuer or Tier 1 Issuer and will be released as to 25% on the date of the Final QT Exchange Bulletin and an additional 25% on each of the dates that are 6, 12 and 18 months thereafter. Previously, such securities in relation to Tier 2 Issuers were subject to a 36-month escrow release schedule.

CPC's Can Raise More Money

Under the new rules, the limit of Seed Capital that a CPC can raise in advance of and below the IPO share price has been increased to $1 million from the prior limit of $500,000. This change provides a greater upside for early CPC investors while also providing an opportunity for a greater commitment to the CPC's success as early investors can have more 'skin in the game'. Also, the total amount that a CPC can raise, from all sources, including Seed Shares, IPO and any Private Placements, has been increased to $10 million from the previous $5 million, providing greater flexibility where, for some CPCs, it would be important to have additional capital.

Finders' Fees and Agent Incentives

Additional incentives have been provided to those assisting in capitalizing CPCs. Upon completion of the Qualifying Transaction, the CPC and the Target Company may pay a finder's fee to a Non-Arm's Length Party to the CPC provided that certain conditions are met, including that disinterested shareholder approval is obtained by the CPC. Under the former rules, CPCs were prohibited from paying finder's fees to a Non-Arm's Length Party. The maximum term of an Agent's options has been extended from two to five years.

Stock Options Enhanced

CPC's may now have rolling 10% stock option plans (i.e. up to 10% of the outstanding shares of the CPC may be reserved for options, calculated on the date of grant of the options). Under the former regime, the maximum number of shares reserved for options was fixed at 10% of the shares outstanding at the closing of the IPO. Additionally, the minimum exercise price of CPC options granted before the IPO has been lowered to that of the lowest price at which the CPC has issued Seed Shares. The minimum pre-IPO option exercise price had been the greater of the IPO Share price and the Discounted Market Price.

Director and Officer Requirements Relaxed

Both CPCs and Resulting Issuers are now able to have international directors. Under the new rules, only a majority (as opposed to all) of the directors must be residents of Canada or the United States or have public company experience. Also, the same person may now serve as the CEO, CFO, and Secretary of a CPC.

Other Changes of Note

Under the new rules, the aggregate limit on a CPC's general and administrative expenses has been replaced by a cap of $3,000 per month, including for professional account, advisory, and legal services expenses, which is not time-limited. CPCs may also now loan up to the greater of $250,000 or 20% of the CPC's working capital to a Target Company in a Qualifying Transaction. Resulting Issuers are no longer prohibited from completing a reverse take-over transaction in the first year following a Qualifying Transaction.

CPCs In Process and Former CPCs can Benefit from the New Rules

The TSX-V has included transitional rules that allow CPCs that have not yet completed the CPC process, as well as CPCs that have completed their Qualifying Transaction, to take advantage of certain new CPC rules.

CPCs that have filed a prospectus but have not completed their IPO may continue to be governed by the former policy or may elect to comply with the new rules, so long as the CPC revises its prospectus and amends its escrow agreement

CPCs that have completed their IPO but not their Qualifying Transaction may immediately take advantage of the $10 million increased limit on aggregate gross proceeds but will require the approval of disinterested shareholders to utilize other changes such as the elimination of the consequences of not completing the Qualifying Transaction within 24 months, extending the term of Agent's options to 5 years, implementing the new escrow terms, paying a Non-Arm's Length finder's fee, and adopting a 10% rolling stock option plan.

If you are considering the TSX-V's Capital Pool Company program please contact Michael Hanley, James Leech or another member of Torkin Manes' Corporate Finance & Securities Group.

Capitalized terms not defined above have the meanings ascribed to them in the TSX-V's Corporate Finance Manual which is accessible on the TSX-V's website together with additional information in the TSX-V bulletin regarding the policy changes.

The foregoing is a summary intended for informational purposes and is not intended to be relied on as legal advice pertaining to the subject matter.

With appreciation, the authors acknowledge the contribution of Articling Student, Abel Hazon, who assisted in preparing this article.

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