Goodmans LLP Update

Quick Guide to the New Capital Pool Company Program: An Efficient Go-To-Market Strategy Complementing G-Corps and SPACs

The TSX Venture Exchange (TSXV) announced a major update to its Capital Pool Company (CPC) program that took effect on January 1, 2021 (the "**New CPC Policy**"). The New CPC Policy is aimed at making the program more attractive to founders and early stage growth businesses by increasing flexibility and relaxing certain regulatory burdens perceived as shortcomings of the program. This Update provides a high-level overview of the process and attractiveness to founders and businesses. For a more detailed overview of the New CPC Policy, see the TSXV's Notice to Issuers published December 1, 2020.

Notably, Neo Exchange Inc. recently announced the introduction of its Growth Acquisition Corporation ("**NEO G-Corp**") program, which is geared to mid-market growth companies seeking access to capital that may not be large enough to undertake a qualifying transaction with a special purpose acquisition company (SPAC). It also aims to address novel issues that have arisen from a busy period for SPACs in 2020 and 2021. For further background on the NEO G-Corp program, see our April 16, 2021 Update, *NEO Exchange Announces New Capital Markets Listing Vehicle: the Growth Acquisition Corporation™ or G-Corp™*.

While a complete comparison of the CPC program (including the New CPC Policy) with the NEO G-Corp program and SPACs is beyond the scope of this article, a few key differences are highlighted below.

Listing Standard	SPAC	NEO G-Corp	CPC
Seed Capital	Founders are expected to subscribe for between 10% and 20% of the SPAC's equity post-IPO.	Founders are required to provide at least $300,000 of working capital (after payment of formation and IPO costs).	Founders must provide cash contributions of at least $100,000 or 5% of the funds being raised in the IPO.
Size	Minimum of $30 million of funding is required to qualify for listing.	Minimum market capitalization must be $30 million or more immediately following closing of its Qualifying Transaction (QT).	Minimum aggregate gross proceeds that can be raised before its QT is $300,000 (inclusive of $100,000 in Seed Shares), with the maximum capped at $10,000,000 *(prior to the New CPC Policy, capped at $5,000,000)*.
Public Float	Must have a total of one million securities together with a minimum of 150 public shareholders holding a board lot each.		Minimum of 500,000 shares held by at least 150 public shareholders, each holding at least a board lot, with at least 20% of the issued and outstanding shares of the CPC being held by public shareholders *(prior to the New CPC Policy, minimum of 200 public shareholders was required)*.

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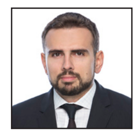

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Listing Standard	SPAC	NEO G-Corp	CPC
Use of Proceeds	Must place into escrow at least 90% of the gross proceeds raised in its IPO or subsequent rights offering, including 50% of the underwriters' commission relating to the IPO (although it has been market practice to deposit 100% of these proceeds into escrow to avoid a shareholders' vote on the qualifying transaction).	Must place into escrow 100% of the gross proceeds raised in its IPO or subsequent rights offering, including 50% of the underwriters' commission relating to the IPO.	Permitted to use up to $3,000 per month from its proceeds (Seed Shares and IPO) for general administrative expenses not associated with the Qualifying Transaction *(prior to the New CPC Policy, non-QT related expenditure was limited to lesser of 30% of gross proceeds raised by CPC and $210,000).*
Qualifying Transaction Timeline	Must complete its QT within 36 months following the closing of the IPO (unless prospectus prescribes a shorter period).	Up to 24 months to identify a QT and 27 months to close the QT. Failure to complete the QT within the permitted timeframe will result in a liquidation distribution to shareholders.	There is no deadline by which the CPC must complete its QT *(prior to the New CPC Policy, the CPC was subject to a 24-month deadline at the risk of certain Seed Shares being cancelled).*
Shareholder Approval	A non-offering prospectus is filed and, unless 100% of the IPO proceeds have been deposited into escrow, the QT must be approved by a majority shareholder vote. Investors can redeem securities.	Must file a prospectus and prepare an information circular. QT is then subject to a majority shareholder vote (excluding the votes of the founders). No redemption rights are provided to investors.	Must prepare either an information circular (if shareholder approval is required, for a non-arm's length transaction) or a filing statement, both providing prospectus level disclosure on the QT. No redemption rights are provided to investors. Where only a filing statement is required, the transaction can close seven (7) business days after the filing statement has been publicly filed.

Background to the CPC Program

Since 2013, over $190 billion has been invested in more than 4,500 private Canadian companies. Access to capital is critical to the success of any early growth company. The TSXV created the CPC program as a solution to the typical challenges private companies face when completing a go-public transaction. It has become the most popular vehicle for early growth companies to access capital on the TSXV.

The CPC program is a significant component of Canada's robust venture capital industry and offers an innovative alternative for pooling capital in a streamlined and controlled process. Since its inception in 1986, over 2,600 CPCs were created and raised over $75 billion in equity capital. In the past 10 years, almost half of all new TSXV listings were CPCs and just under one-third of all public companies currently listed on the TSXV are former CPCs.

The CPC program connects investors with entrepreneurs whose growth and development-stage companies require capital and desire an alternative "go public" approach than a traditional initial public offering (IPO). Below is a high-level overview of how CPCs are created and the various stages of their existence under the New CPC Policy.

Quick Guide to the CPC Process

Forming the CPC Board and Management Team

The founders of the CPC must consist of at least three individuals with aggregate experience managing a public company. Specifically, the founders need to demonstrate the ability to raise financing, a proven history of growing smaller companies, strong technical experience in the relevant industry sector and a positive track record with regulators. The majority of the directors of the CPC must be residents of either Canada or the United States, or have public company experience[1]. In addition, a single person can act as a director, CEO, CFO and corporate secretary of the CPC (prior to the New CPC Policy, the CEO and CFO positions could not be held by the same person) and international directors are permitted (prior to the New CPC Policy, all directors/officers were required to be residents of Canada/US or have public company experience).

Providing Seed Capital

The founders (who would typically serve as the initial directors and officers of the CPC) must provide seed capital (cash contributions) of at least $100,000 or 5% of the funds being raised in the IPO (the "**Seed Shares**"), with a minimum of $5,000 per person. The minimum price per Seed Shares is the greater of $0.05 and 50% of the issue price of the CPC shares at the IPO (the "**IPO Price**"), and the aggregate value of the Seed Shares is capped at $1,000,000 (prior to the New CPC Policy, capped at $500,000).

Once an experienced board is organized and the minimum required level of capital has been raised through the issuance of the Seed Shares, the CPC can commence the process of becoming a listed company.

Two-Phase Process

Phase One – The CPC conducts an IPO

Unlike a traditional IPO, the CPC program allows an entity with no assets (other than cash) and no commercial operations to conduct an IPO. The IPO process is otherwise substantially similar to a traditional IPO. The CPC must retain an agent for the IPO, file and clear a prospectus with the appropriate securities commission(s), typically Ontario, Alberta and British Columbia, at a minimum, and apply to list the CPC shares on the TSXV.

Phase Two – The CPC completes a Qualifying Transaction

Typically for this phase, a private company looking to raise capital and get liquidity for its shareholders (the "**Target Company**") is acquired through a reverse-takeover of a CPC by an operating business, resulting in the shareholders of the Target Company being shareholders of the public company (the "**Qualifying Transaction**"). The Target Company benefits from any fresh capital raised in connection with the Qualifying Transaction, while its shareholders typically maintain majority ownership and control of the resulting public company (the "**Resulting Issuer**").

Once a Target Company for the Qualifying Transaction is identified and an acquisition agreement (or letter of intent in most cases) is executed, a news release is disseminated to announce the potential transaction. If shareholder approval is required to undertake the Qualifying Transaction (i.e., for non-arm's length transactions or if amendments to the constating documents of the CPC are required), the CPC prepares an information circular and holds a shareholders' meeting. If no shareholder approval is required, the CPC must instead prepare a filing statement. In both cases, the disclosure document must provide prospectus level disclosure about the Qualifying Transaction and the Resulting Issuer and is subject to review and approval by the TSXV. A key advantage with the filing statement is that once the TSXV approves it, the Qualifying Transaction may close seven (7) business days after the filing statement has been publicly filed. In comparison, once approved by the TSXV, a circular must then be mailed to shareholders and a meeting held at least 21 days thereafter, before the transaction can be closed.

[1] Certain provincial corporate statutes may have additional Canadian-residency requirements for directors.

Other Highlights of the New CPC Policy

- *Escrow*. All (1) Seed Shares issued below the IPO price; (2) shares issued to non-arm's length parties before the Qualifying Transaction; and (3) stock options (and shares issued on the exercise of stock options at a price below the IPO price) issued before the Qualifying Transaction closes, must be deposited into escrow.

  All escrowed securities will be released from escrow within 18 months of the Qualifying Transaction closing: 25% once the Qualifying Transaction closes and 25% every 6 months thereafter (prior to the New CPC Policy, escrowed securities could be held for up to 36 months depending on the Resulting Issuer's tier).

- *Finder's Fee*. The CPC and Target Company may now pay a finder's fee to a non-arm's length party to the CPC, subject to certain conditions (prior to the New CPC Policy, a finder's fee was not permitted to be paid to a non-arm's length party to the CPC).

- *Option Plan*. A 10% "rolling" stock option plan is permitted and stock options granted before the IPO can be exercised at the lowest Seed Share issue price (prior to the New CPC Policy, this was limited to a 10% fixed option plan based on number of shares outstanding on closing of the IPO, with the minimum exercise price in no case being less than the IPO price).

For further information on CPCs, NEO G-Corps or SPACs, please contact any member of our Corporate Finance and Securities Group.