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Update

Corporate Securities Law

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The Toronto Stock Exchange Releases Final Rules Approving the Listing of Special Purpose Acquisition Corporations

Introduction

On December 19, 2008, the Toronto Stock Exchange (the "TSX") released final rules (the "SPAC Rules") to facilitate the listing of Special Purpose Acquisition Corporations ("SPACS"). These rules are immediately effective. SPACs are shell companies with no operating business through which sponsors/promoters are able to raise capital from the public to be used to acquire an operating company within a three year time frame. Based on the US experience, SPACs are expected to offer experienced management teams access to significant pools of capital with an institutional securityholder base.

The TSX SPAC program is a logical extension of the TSX Venture Exchange's successful Capital Pool Company program (essentially micro-SPACs with a venture focused rule regime) and, in many respects, mirrors the SPAC regime in the United States. U.S. listed SPACs have raised over US$21 billion in gross proceeds since 2003. In 2007, SPACs became a significant asset class in the United States, a year in which there were 66 IPOs that raised approximately US$12 billion, representing 23% of the number of IPOs and 18% of capital raised. In the first quarter of 2008, over 50% of the capital raised by IPOs in the United States was raised by SPACs.

Offering Details

The SPAC Rules require that a minimum of $30 million be raised on the SPAC IPO with a minimum price of $2 per share and do not prescribe any maximum offering size. The offered securities may consist of shares or units and must be qualified by a prospectus. If units are issued, each unit may consist of one share and no more than two warrants. The SPAC must meet the TSX's minimum listing requirements with a minimum of one million securities held by the public and a minimum of 300 public holders. Note, however, that the TSX may, in its discretion, take into account any factors it considers relevant in assessing the merits of a listing application and may grant or deny an application notwithstanding the prescribed original listing requirements.

A SPAC seeking listing on the TSX must not carry on an operating business. A SPAC may be in the process of reviewing a potential qualifying acquisition, but may not have entered into a written or oral binding acquisition agreement with respect to a potential qualifying acquisition. Every SPAC must include a statement in its IPO prospectus that as of the date of filing, the SPAC has not entered into a written or oral binding acquisition agreement with respect to a potential qualifying acquisition. A SPAC may have identified a target business sector or geographic area in which to make a qualifying acquisition, provided that it discloses this information in its IPO prospectus and is permitted to have entered into non-binding agreements, including confidentiality agreements and non-binding letters of intent, at the time of its IPO.

Use of Proceeds

A minimum of 90% of the gross proceeds raised on the IPO must be put into escrow. The interest earned from the escrowed funds may be used by

the SPAC if disclosed in its prospectus (which interest is expected to be used to fund administrative expenses). In addition, the SPAC Rules require the underwriters to defer 50% of their commission from the IPO to be released only upon completion of a qualifying acquisition. Prior to completing a qualifying acquisition, additional securities of the SPAC may only be issued by way of a rights offering to existing securityholders (again with a minimum of 90% of such proceeds being placed into escrow). A SPAC is not permitted to obtain any form of debt financing (excluding ordinary course short term trade or accounts payables) prior to a qualifying acquisition but may enter into credit facilities prior to completion of a qualifying acquisition so long as funds are only drawn down contemporaneous with, or after, completion of the qualifying acquisition.

Founder Participation

The TSX will review the level of founder ownership in the SPAC as part of its review of the SPAC's listing application. The TSX expects that the founders will hold between 10% and 20% of the equity of the SPAC following completion of its IPO. In reviewing the level of founder ownership, the TSX will take into account the price at which the founding securities were purchased and the resulting economic dilution. Lower or higher levels of founder ownership may be acceptable to the TSX depending on the financial and other contributions by the founders. The TSX recognizes that founders are critical to the success of a SPAC and that unduly restricting their interests could negate the marketability and viability of SPACs as investment vehicles and expects that founder participation will be subject to negotiation between the underwriters and the founders and will take account relevant factors such as the experience and the track record of the founders as well as the sector (if specified) of the potential qualifying acquisition.

Under the SPAC Rules, founder equity: (i) may not be transferred prior to the qualifying acquisition, (ii) may be subject to TSX's Escrow Policy, (iii) cannot vote on the qualifying acquisition, and (iv) will not receive proceeds from any liquidation distribution. The foregoing limits do not apply to securities acquired by the founders in the IPO, on the secondary market or under a rights offering. A SPAC may not have any security based compensation arrangements in place prior to completion of a qualifying acquisition, after which securityholder approval will be required. Ten percent (10%) of the founding securities held in escrow will be released at the date of closing of the qualifying acquisition with the remainder released in increments over the following 18 months.

Qualifying Acquisition

SPACs will have up to three years from the IPO to complete a qualifying acquisition. The business or assets forming the qualifying acquisition must have an aggregate fair market value equal to at least 80% of the value of the amount in escrow, excluding deferred underwriting commissions. Where the qualifying acquisition is comprised of more than one acquisition, and the multiple acquisitions are required to satisfy the aggregate fair market value of a qualifying acquisition, these acquisitions must close concurrently (and within the three year time frame).

A qualifying acquisition must be approved by (i) a majority of the votes cast by public securityholders (excluding founders) at a shareholders meeting; and (ii) a majority of directors unrelated to the qualifying acquisition. Shareholders voting against the acquisition may elect to exercise a conversion right that attaches to the SPAC's shares and will receive a pro rata portion of the proceeds held in escrow if the qualifying transaction is completed. Although the SPAC Rules do not set a maximum threshold in respect of the exercise of conversion rights, the SPAC may impose such a condition and must disclose the condition in the information circular prepared in connection with the meeting (which information circular must be pre-approved by the TSX).

In addition, the SPAC will be required to file a prospectus regarding the resulting issuer assuming completion of the qualifying acquisition (this

will be a non-offering prospectus unless additional securities are being offered). The receipt for this prospectus must be issued prior to mailing the information circular describing the qualifying acquisition.

Investor Protections

The SPAC Rules offer several protections to public shareholders, including:

- the right to vote on each acquisition proposed for the SPAC,
- the right to have their shares converted into their proportionate share of the proceeds held in escrow if they vote against the transaction (such proceeds to be paid 30 days after the transaction is completed),
- the right to receive their proportionate share of the proceeds held in escrow upon a liquidation if an acquisition is not completed within three years (such proceeds to be paid 30 days after the three year limit to complete an acquisition),
- the requirement to file a prospectus regarding the resulting issuer assuming completion of the qualifying acquisition, and
- the requirement that the acquisition be approved by a majority of the directors of the SPAC that do not have an interest in the transaction.

Contact Goodmans LLP

Goodmans LLP has detailed knowledge of the SPAC Rules and has extensive experience advising issuers and underwriters on the IPO process (together with the merger and acquisition issues raised in connection with a qualifying acquisition). For further information, contact:

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