NOTICE – QUALIFYING TRANSACTION SHARE STRUCTURES

Référence : Bulletin de l'Autorité : Non disponible

Purpose

This notice is published by the Corporate Finance Staff of the Autorité des marchés financiers (**We)** following the publication of the Canadian Securities Administrators Staff Notice 41-305 – *IPO Share Structure Issues* (**CSA Staff Notice**). The purpose of the CSA Staff Notice is to explain the factors considered when assessing whether a proposed share structure in an initial public offering (**IPO**) is contrary to the public interest. We believe that similar regulatory concerns arise when a capital pool company (**CPC)** conducts its qualifying transaction (**QT**).

The purpose of this notice is to outline the approach and factors considered when we review a draft filing statement or a draft circular submitted to the Autorité des marchés financiers (**AMF**) upon a CPC acquiring a target company or some or all of its assets (**Target Company**). The QT generally allows the Target Company to be listed on the TSX Venture Exchange (**TSXV**) as if it was conducting an IPO.

Background Information

The TSXV has been administering the CPC program (**Program**) since March 1, 2000. Certain jurisdictions in Canada (other than Québec) have entered into an agreement with the TSXV entitled the *CPC Operating Agreement*, pursuant to which those jurisdictions rely primarily on the review and analysis of QTs carried out by the TSXV.

Recognizing the merits of the Program, the AMF allowes in Québec, since October 29, 2002, through blanket orders 2002-C-0408 (now 2003-C-0015 and 2004-C-0048) (**Blanket Orders**), companies to participate therein on the condition that such companies comply notably with the terms and conditions of the Program and of the Policy Statement 41-601Q *Capital Pool Companies* (**Policy Statement 41-601Q**). Policy Statement 41-601Q provides a framework for CPCs based in Québec when conducting their IPOs and QTs.

The Program and Policy Statement 41-601Q provide specifically that CPCs reaching an agreement in principle in respect of a QT prepare and submit for review to the AMF and the TSXV simultaneously, a draft filing statement or a draft circular, in the following circumstances: (i) the CPC's head office is located in Québec, (ii) the IPO prospectus is only filed in Québec; or (iii) the IPO is principally conducted in Québec. Staff of the TSXV reviews such document to ensure compliance with the Program and the applicable TSXV policies and guidelines regarding QTs (**TSXV Policies**) and we review the same to ensure compliance with the Blanket Orders and Policy Statement 41-601Q.

We acknowledge that all QTs must comply with the TSXV Policies and we believe that such requirements and guidelines generally provide an adequate regulatory framework to support the share structure of a Resulting Issuer (as defined below). However, there may be some cases where we will object on public interest grounds to share structures which otherwise comply with the TSXV Policies.

For example, a CPC conducting a QT in which the Founders (as defined below) of the Target Company receive an unusually large percentage of ownership of the resulting issuer (**Resulting Issuer**) in exchange for shares issued by the Target Company for nominal cash consideration (or for assets and/or business development efforts where the value is not readily supportable) may raise public interest concerns related to the Resulting Issuer's capital structure. Generally, these concerns are heightened when:

- the business of the Resulting Issuer has a limited history of operations or development for which there are no other clear proxies for valuation; or

- the Concurrent Financing (as defined below) is relatively small.

We refer issuers and their counsel to Policy Statement 41-601Q for specific requirements otherwise applicable to CPCs in Québec.

General Principles

This notice is intended to clarify the qualitative and quantitative factors we consider in our analysis and review of QTs, which are similar to those set out in the CSA Staff Notice.

For the factors described below, the following definitions are relevant:

- ***Concurrent Financing***: means any equity financing (under a prospectus or by private placement) made or to be made by the CPC or the Target Company concurrently or in connection with the QT.

- ***Concurrent Financing Price***: means the average equity security price paid or to be paid by investors in the Concurrent Financing.

- ***Founders***: generally, means anyone who is a director, officer, promoter or insider of the Target Company. In some instances, Founders may be a subset of this group.

- ***Founders' Average Share Price***: means the total capital and/or value of the assets contributed by the Founders in the Target Company divided by the total number of shares of the Resulting Issuer to be issued to the Founders in connection with the QT.

At the time of review of the filing statement or the circular, we consider how the Concurrent Financing Price compares to the Founders' Average Share Price. We may raise concerns when the Concurrent Financing Price significantly exceeds the Founders' Average Share Price. We are preoccupied with structures in which the Founders receive a large block of shares of the Resulting Issuer in exchange for shares of the Target Company subscribed by the Founders for nominal cash consideration (or for assets and/or business development efforts where the value is not readily supportable).

We also assess the proportion of capital proposed to be contributed by the Concurrent Financing investors in the Resulting Issuer in comparison to the percentage of ownership that they will receive in return. We may raise concerns when the Concurrent Financing investors are being invited to contribute an amount of capital to the Resulting Issuer that will be significantly disproportionate to their equity interest in the Resulting Issuer upon completion of the QT.

In certain circumstances, when assessing the proposed share structure of a Resulting Issuer, we may include in this calculation the capital contributed by the CPC public investors and the number of shares issued by the CPC.

We compare the average capital contributed per share for all issued and outstanding shares of the Resulting Issuer upon completion of the QT with the Concurrent Financing Price. We may have concerns if the average capital per share is significantly lower than the Concurrent Financing Price.

We may also be preoccupied in situations where a large portion of the Concurrent Financing is raised with investors not dealing at arm's length with the CPC or the Target Company.

This notice is not meant to impose on parties participating in QTs in Québec obligations in excess of those contained in the Program and Policy Statement 41-601Q. Rather it is intended to provide some insight regarding factors that we have, in the past, considered and may consider when reviewing documentation and evaluating proposed share structures relating to QTs. We invite issuers and their advisers to contact us with any questions prior to submitting a draft filing statement or circular.

We will continue to monitor this issue and consider what further guidance or policy changes may be appropriate.

Questions

Please refer your questions to any of the following people:

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