

POLICY STATEMENT 41-601Q

CAPITAL POOL COMPANIES

PART I

GENERAL INFORMATION

1.1 CONTEXT

- 1) The Canadian Venture Exchange Inc., operating as the TSX Venture Exchange ("TSX Venture") (formerly "CDNX") administers a capital pool company program (the "Program") in British Columbia, Alberta, Saskatchewan and Ontario. The *Commission des valeurs mobilières du Québec* (the "Commission") allows Québec companies to participate in the Program provided they comply with its terms and conditions as well as the provisions set forth in this Policy Statement.
- 2) TSX Venture has been administering the Program since March 1, 2000. The securities commissions of British Columbia, Manitoba, Alberta, Saskatchewan and Ontario and TSX Venture reached an operating agreement on June 15, 2002 (the "CPC Operating Agreement"). The Commission is not a party to the CPC Operating Agreement.

1.2 PROGRAM SUMMARY

- 1) The Program provides capital pool companies ("CPCs") the opportunity to obtain financing earlier in their development than might be possible with an initial public offering ("IPO") by way of a prospectus. The Program permits a newly created company that has no assets, other than cash, and has not commenced commercial operations, to conduct an IPO and become listed on the TSX Venture.

A CPC can use the funds raised from the distribution of seed shares and from its IPO to identify and evaluate assets or businesses which, once acquired, qualify the CPC for listing as a Tier 1 or Tier 2 Issuer on the TSX Venture. This acquisition is designated by TSX Venture as being a qualifying transaction. qualifying transactions must be completed within 18 months, or, at the TSX Venture's discretion, 24 months after the CPC's listing date.

- 2) As soon as the CPC reaches an agreement in principle in respect of the qualifying transaction, it must issue a comprehensive news release and file a material change report describing the terms and conditions of the agreement. If the qualifying transaction is an arm's length qualifying transaction, the CPC prepares and files a filing statement in accordance with the form prescribed by the TSX Venture (the "Filing Statement"). If the qualifying transaction is not an arm's length qualifying transaction, the CPC prepares and sends its shareholders an information circular, in accordance with the form prescribed by the TSX Venture (the "Circular"). The Filing Statement and the Circular must provide full, true and plain disclosure of all material facts relating to the CPC, the target company, the terms and conditions of the qualifying transaction and the resulting issuer.

1.3 PURPOSE

- 1) This Policy Statement applies to CPCs conducting an IPO by way of a prospectus filed with the Commission, as well as CPCs conducting qualifying transactions in which a

Québec company is the target company. It outlines the Commission's position on the Program, in particular with regard to compliance with Québec regulatory requirements.

- 2) This Policy Statement sets forth the parameters of the blanket exemption from certain provisions of the *Securities Act* (R.S.Q., chap. V-1.1) (the "Act"), the *Regulation Concerning Securities* (R.R.Q., chap. V-1.1, r.1) (the "Regulation") and certain policy statements (the "blanket exemption") granted to CPCs by the Commission (*Décision n° 2002-C-0407*, rendered on October 29, 2002, and any subsequent amendments thereto).

1.4 INTERPRETATION

This Policy Statement must be read in conjunction with the TSX Venture's Policy 2.4, *Capital Pool Companies* ("Policy 2.4"), and any subsequent amendments thereto. Policy 2.4 must be read in conjunction with some of the TSX Venture's other policies¹ and, in particular, Policy 2.2, *Sponsorship and Sponsorship Requirements* ("Policy 2.2").

PART 2

PROGRAM OPERATION AND COMPLIANCE WITH QUÉBEC'S REGULATORY REQUIREMENTS

2.1 CPC'S INITIAL PUBLIC OFFERING

- 1) Policy 2.4 provides that the CPC file a preliminary prospectus with the Commissions in those jurisdictions where the IPO is conducted and with the TSX Venture. The CPC prospectus filed in Québec will be reviewed by the Commission according to the principles of the Mutual Reliance Review System and by the TSX Venture. The CPC prospectus must:
 - A. comply with the requirements of the Act, the Regulation and, subject to the blanket exemption, Policy Statement Q-28, *General Prospectus Requirements* ("Policy Statement Q-28");²
 - B. include the certificates set forth in the Regulation; and
 - C. contain the information required by the TSX Venture's Form 3A, *Information Required in a CPC Prospectus* ("Form 3A").
- 2) To be eligible for the Program, the CPC must not have reached an agreement in principle in respect of a potential qualifying transaction within the meaning of Policy 2.4³ before

1 CPCs must refer to the TSX Venture's *Corporate Finance Manual* for information on the policies that apply to them.

2 If the distribution is only made in Québec and if the CPC does not want to take advantage of the provisions of Policy Statement Q-28, the prospectus shall, subject to the blanket exemption, comply with the relevant provisions of the Regulation. A prospectus that is only filed in Québec includes the text providing purchasers with the right to withdraw from an agreement in accordance with the second paragraph of section 29 of the Regulation. Refer to *Décision n° 2000-C-0708* rendered on November 14, 2000 (*Bulletin hebdomadaire of the Commission des valeurs mobilières du Québec, vol. XXXII n° 4*) concerning Policy Statement Q-28's coming into effect.

3 An agreement in principle is defined in Policy 2.4 as being: "any enforceable agreement or any other agreement or similar commitment which identifies the fundamental terms upon which the parties agree or intend to agree which: a) identifies assets or a business to be acquired which would reasonably appear to constitute Significant Assets and the acquisition of which would reasonably appear to constitute a Qualifying Transaction; b) identifies the parties to the Qualifying Transaction; c) identifies the consideration to be paid for the Significant Assets or otherwise identifies the means by which the consideration will be determined; and d) identifies the conditions to any further formal agreements to complete the transaction." Such an agreement does not provide any material conditions to closing, the satisfaction of which is dependent upon third parties and beyond the reasonable control of the non arm's length parties to the CPC or the non arm's length parties to the qualifying transaction. The approval of CPC shareholders and the acceptance of the TSX Venture do not constitute such conditions.

conducting its IPO. If the CPC has entered into negotiations related to a proposed qualifying transaction, the CPC prospectus must detail the material facts related to this proposed qualifying transaction.

- 3) Policy 2.4 provides the minimum and maximum price at which the IPO shares can be issued as well as the gross proceeds of the distribution. After the IPO, the CPC must have a minimum number of public shareholders, not including any non arm's length parties to the CPC.
- 4) Under Policy 2.4, the CPC prospectus must also detail certain specific risk factors.
- 5) Under Policy 2.4, the gross proceeds of the IPO, and of any previous distribution, may only be used to identify and evaluate assets or businesses that may constitute a qualifying transaction, such as fees related to valuations or appraisals, business plans, feasibility studies, geological reports and fees for legal and accounting services. Pending the completion of the qualifying transaction, the CPC cannot use more than 30% of the gross proceeds for purposes other than those provided above.

Policy 2.4 provides that, subject to the TSX Venture's acceptance, assets may be advanced to a vendor or to the target company (this advance may be a refundable deposit or secured loan). However, in this case, the qualifying transaction⁴ will have to be sponsored by a member of the TSX Venture.

An advance (a non-refundable deposit or an unsecured deposit) may also be made without prior acceptance of the TSX Venture, in order to preserve the target assets.

- 6) During an IPO, CPC shares can only be distributed by dealers duly registered in Québec.
- 7) CPCs and dealers must comply with the conditions of the blanket exemption from sections 236.1 and 236.2 of the Regulation granted on December 11, 2001⁵ and which applies the principles of National Instrument 33-105, *Underwriting Conflicts*.

2.2 STOCK OPTIONS ISSUED BY CPCs

- 1) Policy 2.4 provides the conditions governing the granting of stock options by the CPC. These options can be granted to the dealer acting as agent to offer and sell the IPO shares to the CPC's directors, officers or technical consultants as well as to charitable organizations.
- 2) The total number of common shares reserved for issuance upon the exercise of all the options granted to the CPC's directors, officers, technical consultants as well as to eligible charitable organizations may not exceed 10% of the shares to be outstanding as at the closing of the IPO. The exercise price of these options cannot be less than the greater of the IPO share price and the discounted market price.⁶

4 Policy 2.4 is supplemented, in particular, by Policy 2.2 with regard to the sponsorship of the qualifying transaction by a member of the TSX Venture. Capital pool companies must therefore refer to Policy 2.2 for information on sponsorship requirements and exemptions.

5 *Décision n° 2001-C-0565*, which came into effect on January 1, 2002, *Bulletin hebdomadaire of the Commission des valeurs mobilières du Québec*, vol. XXXII n° 51.

6 The expression "discounted market price" is defined in the TSX Venture's Policy 1.1, *Interpretation* ("Policy 1.1"). It is the market price less a discount, which shall not exceed the amounts set forth in the table found in Policy 1.1, subject to a minimum price of \$0.10.

- 3) The granting of stock options by the CPC must comply with the provisions of the Act, the Regulation and Policy Statement Q-3, *Options*. However, the blanket exemption allows the granting of options to a dealer acting as agent.
- 4) A CPC wanting to grant stock options to technical consultants and charitable organizations must apply for an exemption under section 263 of the Act.

2.3 QUALIFYING TRANSACTION AND CPC INFORMATION CIRCULAR

- 1) As soon as the CPC enters into an agreement in principle in respect of a qualifying transaction, it is required to file a comprehensive press release, as described in Policy 2.4, as well as a material change report.
- 2) The Filing Statement or, if the qualifying transaction is not an arm's length qualifying transaction, the Circular must provide full, true and plain disclosure of all material facts related to the CPC, the target company, the terms and conditions of the qualifying transaction and the resulting issuer.
- 3) The CPC must submit the draft Filing Statement or, as the case may be, the draft Circular to the Commission and the TSX Venture simultaneously in the following cases:
 - A. its head office is in Québec;
 - B. it only filed an IPO prospectus in Québec; and
 - C. it conducted its IPO principally in Québec.
- 4) The Filing Statement must present the information required by the TSX Venture's Form 3B2, *Information Required in a Filing Statement for a Qualifying Transaction*.
- 5) The Circular must:
 - A. comply with the Act and the Regulation;
 - B. disclose the information required in Schedule VIII of the Regulation, subject to the blanket exemption; and
 - C. present the information required by the TSX Venture's Form 3B1, *Information Required in an Information Circular for a Qualifying Transaction*.⁷
- 6) The CPC must comply with the provisions of Policy Statement Q-27, *Protection of Minority Shareholders in the Course of Certain Transactions* ("Policy Statement Q-27"). However, under the blanket exemption, CPCs are exempt, subject to certain conditions, from the valuation requirement set forth in section 5.5 of Policy Statement Q-27.

2.4 DISTRIBUTIONS MADE IN QUÉBEC AND FROM QUÉBEC

The CPC, the target company and the resulting issuer must ensure that all the distributions of their securities in Québec and from Québec are carried out by way of a prospectus or that they benefit from a prospectus and registration exemption set forth in the Act. If they cannot obtain a statutory exemption, they must file an application for an exemption under section 263 of the Act.

⁷ Certain requirements of Policy Statement Q-28 have been integrated into the TSX Venture's Forms 3B1 and 3B2, in particular, the requirement to present the financial statements of both the target company and the resulting issuer.

2.5 REVERSE TAKE-OVERS

TSX Venture does not allow a resulting issuer to conduct a reverse take-over for a period of one year following completion of the qualifying transaction.

2.6 LANGUAGE OF DOCUMENTS

The Commission reminds you that, in Québec, linguistic obligations and rights prescribed by Québec law must be complied with.

PART 3

COMMISSION'S POSITION REGARDING THE PROGRAM

The Commission acknowledges that the Program includes several provisions aimed at protecting investors, more specifically, the following:

- 1) TSX Venture takes the appropriate steps to ensure that the CPC's executive officers have the necessary experience to manage a public company and to complete a qualifying transaction. The executive officers' experience must also be detailed in the CPC prospectus in order to enable investors to make an informed decision regarding the distribution.
- 2) The risk factors are clearly described in the CPC prospectus.
- 3) The CPC's directors and officers must invest a minimum of funds in the form of seed shares prior to the IPO.
- 4) Private placements concluded before the qualifying transaction are strictly governed by Policy 2.4. As such, prior to the announcement of the qualifying transaction, private placements are not authorized if the proceeds of these private placements added to the proceeds of the seed shares and the IPO, exceed the amount set in Policy 2.4. Private placement shares are in escrow in certain circumstances provided for in Policy 2.4⁸. If the CPC has announced a proposed qualifying transaction, it can undertake private placements for an additional \$125 000; however, in this case, a member of the TSX Venture will be required to sponsor the qualifying transaction.
- 5) The number of shares which may be purchased by a purchaser pursuant to the IPO is limited to 2% of the CPC's IPO shares and may not exceed 4%, whether the shares are purchased directly or indirectly by a purchaser and that purchaser's associates and affiliates during the placement period.
- 6) Policy 2.4 provides for the escrow of most shares distributed by the CPC to non arm's length parties to the CPC. Therefore, the following shares are held in escrow according to the escrow agreement, whose terms and conditions are prescribed by the TSX Venture before the completion of the qualifying transaction:⁹
 - A. All seed shares issued at a price lower than the price of the IPO shares;

8 Policy 2.4 is supplemented by the TSX Venture's Policy 5.4, *Escrow, Vendor Consideration and Resale Restrictions*, which was harmonized with Draft Regulation 46-201, *Escrow for Initial Public Offerings* and the TSX Venture's Policy 4.1, *Private Placements*.

9 Policy 2.4 is supplemented by the TSX Venture's Form 2F, *CPC Escrow Agreement*.

- B. All shares acquired upon exercise of stock options prior to the qualifying transaction;
- C. Most shares held by non arm's length parties to the CPC (seed shares, IPO shares and shares distributed prior to the qualifying transaction); and
- D. All shares acquired by a control person¹⁰ on the secondary market prior to completion of the qualifying transaction.

These shares are released in equal parts of 15% in six-month intervals over a period of three years and 10% of shares are released as soon as the TSX Venture gives notice that it accepts the qualifying transaction.¹¹

- 7) All shares held by principals¹² of the resulting issuer upon completion of the qualifying transaction are required to be escrowed, subject to an exemption for certain private placement shares, pursuant to Policy 2.4. These shares are released over a period of three to six years (18 months for Tier 1 Issuers) according to the terms and conditions prescribed by the TSX Venture.
- 8) In the event that a qualifying transaction is not completed within the prescribed time period, the seed shares acquired by the non arm's length parties to the CPC at a discount to the IPO price are cancelled as soon as the CPC shares have been delisted from the TSX Venture. All seed shares are cancelled ten years after delisting.
- 9) When the CPC reaches an agreement in principle in respect of a qualifying transaction, the shares are suspended until a press release is published describing the qualifying transaction in detail and the services of a sponsor are retained or are exempt from the terms and conditions of Policy 2.2.¹³
- 10) RS Inc. oversees the transactions on CPC shares.

As a result, the Commission is of the opinion that the CPC Program contains a sufficient amount of elements that ensure investor protection and it considers that it is not contrary to public interest to enable CPCs to raise funds from Québec investors, provided that CPCs comply with the Program and with this Policy Statement.

10 Within the meaning of the TSX Venture's Policy 1.1, *Interpretation*, i.e. any person or group of persons that holds a sufficient number of any of the securities of an issuer so as to affect materially the control of that issuer or that holds more than 20% of the outstanding voting shares of an issuer.

11 The shares of the capital pool company or of the resulting issuer are released in equal parts of 25% over an 18-month period if the capital pool company is a Tier 1 Issuer of the TSX Venture.

12 A "principal" is defined in the TSX Venture's Policy 1.1, *Interpretation* as being a promoter, a director or senior officer, a person that holds securities carrying more than 20% of the voting rights attached to the issuer's outstanding securities immediately before and immediately after the issuer's IPO or immediately after the TSX Venture publishes its final exchange bulletin for non IPO transactions as well as a person that holds securities carrying more than 10% of the voting rights attached to the issuer's outstanding securities according to the above-mentioned terms and conditions and a person that has elected or appointed, or has the right to elect or appoint, one or more directors or senior officers of the issuer or any of its material operating subsidiaries.

13 The TSX Venture's Policy 2.2, *Sponsorship and Sponsorship Requirements* requires sponsorship for any application for a new listing within the context of a qualifying transaction. Policy 2.2 sets forth that the TSX Venture may, subject to the holding of a pre-filing conference, exempt an issuer from the sponsorship requirement. This exemption may be granted by the TSX Venture if all the following conditions are met: a) the issuer is not a foreign issuer; b) the management of the issuer meets a high standard such that the directors and senior officers of the issuer collectively possess appropriate experience, qualifications and history including positive experience as directors or senior officers with public companies in Canada or the United States, as evidenced by the growth of such companies and/or the listing of such companies on Tier 1 of the TSX Venture or on a senior exchange or quotation system such as the TSX, NASDAQ or NYSE; c) the issuer is a mining or oil and gas issuer that satisfies at least the Tier 2 Minimum Listing Requirements of the TSX Venture and that has a current geological report for each of the issuer's qualifying and principal properties. The TSX Venture can also grant an exemption from sponsorship when it considers that the granting of such an exemption would not be contrary to the public interest.

PART 4

REVIEW OF THE PROGRAM

The Commission intends to review the Program's terms and conditions in three years or sooner if it deems it necessary.

PART 5

DELEGATION

The Commission delegates the enforcement of this Policy Statement to the Director of Capital markets.