

**POLICY STATEMENT 41-601Q RESPECTING CAPITAL POOL COMPANIES****PART I GENERAL INFORMATION****1.1. Context**

The TSX Venture Exchange (“TSX Venture”) administers a capital pool company (“CPC”) program (the “Program”) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and New Brunswick (collectively, the “Securities Commissions”). The Securities Commissions and TSX Venture have adopted the Program and have reached an operating agreement in respect thereof. The *Autorité des marchés financiers* (the “AMF”) is not a party to this agreement; however, it allows Québec CPCs to participate in the Program provided they comply with the Program’s terms and conditions as well as the provisions set forth in this Policy Statement.

**1.2. Program objectives and summary**

The main terms and conditions of the Program are as follows:

(1) **Initial Public Offering.** The Program provides CPCs with the opportunity to obtain financing earlier in their development than might be possible with an initial prospectus distribution. The Program permits a newly created company that has no assets, other than the cash from the subscription of seed shares, and has not commenced commercial operations, to conduct an initial public offering (IPO) and become listed on the TSX Venture.

A CPC can therefore 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 regular Tier 1 or Tier 2 Issuer on TSX Venture (“Qualifying Transaction”). Under the Program, a Qualifying Transaction must be completed within 24 months after the CPC’s listing date, or within a longer period with the approval of TSX Venture.

(2) **Qualifying Transaction.** As soon as the CPC reaches an agreement in principle in respect of the Qualifying Transaction, it must, in accordance with the terms and conditions of the Program, issue a comprehensive news release and file a material change report describing the terms and conditions of the agreement (the “Material Change Report”). If the Qualifying Transaction is an arm’s length Qualifying Transaction, the CPC must prepare and file a filing statement in accordance with the form prescribed by TSX Venture (the “Filing Statement”). If the Qualifying Transaction is not an arm’s length Qualifying Transaction, the CPC must prepare and send its shareholders an information circular in accordance with the form prescribed by 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 assets and company, the terms and conditions of the Qualifying Transaction and the resulting issuer.

**1.3. Scope**

This Policy Statement is intended for any CPC benefiting from the Program whose head office is in Québec and which seeks to conduct an IPO by way of a prospectus filed with the AMF, as well as for any CPC conducting a Qualifying Transaction whose head office is in Québec, or was in Québec at the time of its IPO. It outlines the AMF’s position on the Program, in particular with regard to compliance with Québec regulatory requirements. Certain terms used in this Policy Statement are defined in the Program or in Regulation 14-101 respecting Definitions.

**1.4. Interpretation**

This Policy Statement should be read in conjunction with TSX Venture Policy 2.4 – *Capital Pool Companies* (“Policy 2.4”) and any subsequent amendments thereto. Policy 2.4

should be read in conjunction with certain other TSX Venture policies,<sup>1</sup> including Policy 2.2 – *Sponsorship and Sponsorship Requirements* (“Policy 2.2”), as well as AMF Notice “Qualifying Transaction Share Structures” dated October 8, 2010.

## **PART 2 PROGRAM OPERATION IN QUÉBEC**

### **2.1. CPC’s IPO**

(1) Policy 2.4 provides that the CPC must file a preliminary prospectus with the securities regulatory authorities in those jurisdictions where the IPO is conducted and with TSX Venture. Where the CPC’s prospectus is filed solely in Québec or in Québec and in other jurisdictions where the AMF acts as principal regulator pursuant to Regulation 11-102 respecting Passport System (“Regulation 11-102”), the AMF considers it necessary to review the CPC’s prospectus.

In such cases:

(a) The CPC’s prospectus must comply with the requirements of the *Securities Act* (Québec) (the “Act”) and its regulations, in particular, Regulation 41-101 respecting General Prospectus Requirements (“Regulation 41-101”);

(b) CPCs that are filing a prospectus can use TSX Venture Form 3A – Information Required in a CPC Prospectus as a guide to ensure compliance with prospectus requirements;

(c) The prospectus will be submitted to the AMF for a receipt, which receipt may be contingent on the fulfilment of an undertaking by the CPC with respect to, in particular, the concurrent filing with the AMF and TSX Venture of the draft Filing Statement or, as the case may be, the draft Circular, prepared in connection with its Qualifying Transaction (the “Undertaking”).

(2) To be eligible for the Program, the CPC must not have reached an agreement in principle, as defined under Policy 2.4, in respect of a potential Qualifying Transaction before conducting its IPO. If the CPC has entered into negotiations related to a proposed Qualifying Transaction, the CPC prospectus must detail the material facts relating to this proposed Qualifying Transaction and the related negotiations.

(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. Under the Program, the CPC must have a minimum number of shareholders upon completion of the IPO, 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 companies 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. Until the completion of the Qualifying Transaction, the CPC may not use more than the lesser of 30% of the gross proceeds from the sale of securities it issued and \$210,000 for purposes other than as described above.

Policy 2.4 also provides that, subject to TSX Venture’s authorization, an advance may be made to the vendor of the assets or to the target company (this advance may be a refundable deposit or secured loan). However, in this case, the Qualifying Transaction must be sponsored by a TSX Venture member, pursuant to Policy 2.4 and Policy 2.2.

A maximum of \$25,000 in aggregate (as a non-refundable deposit, an unsecured deposit or an advance) may be advanced without TSX Venture’s authorization, to preserve the target assets, pursuant to Policy 2.4.

<sup>1</sup> CPCs must refer to the TSX Venture Corporate Finance Manual for information on the policies that apply to them.

(6) During an IPO conducted in Québec, CPC shares can only be distributed by dealers duly registered in Québec.

(7) CPCs and dealers must comply with Regulation 33-105 respecting Underwriter 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 eligible 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 and 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 per common share under these stock options cannot be less than the greater of the IPO share price and the discounted market price, as defined under Policy 1.1 – *Interpretation* (“Policy 1.1”).

(3) The granting of stock options by the CPC must comply with the provisions of the Act and its regulations, in particular Regulation 45-106 respecting Prospectus and Registration Exemptions.

## **2.3. Qualifying Transaction, CPC Circular and CPC Filing Statement**

(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 news release, as described in Policy 2.4, as well as a Material Change Report.

(2) The Filing Statement or the Circular must provide full, true and plain disclosure of all material facts relating to the CPC, the target assets and company, the terms and conditions of the Qualifying Transaction and the resulting issuer.

(3) Pursuant to the Undertaking, the CPC must file, simultaneously with the AMF and TSX Venture, the draft Filing Statement or, as the case may be, the draft Circular, for analysis and approval by the AMF, where both of the following conditions apply:

(a) the CPC's head office is in Québec;

(b) the CPC filed an IPO prospectus only in Québec, or in Québec and in other jurisdictions where the AMF is the principal regulator pursuant to Regulation 11-102.

(4) The Filing Statement must be prepared in accordance with TSX Venture Form 3B2 – Information Required in a Filing Statement for a Qualifying Transaction (“Form 3B2”) and the other provisions of Policy 2.4.

(5) The Circular must:

(a) comply with the Act and the Securities Regulation (Québec);

(b) disclose the information required in Form 51-102F5 Information Circular of Regulation 51-102 respecting Continuous Disclosure Obligations;

(c) present the information required by TSX Venture Form 3B1 – Information Required in an Information Circular for a Qualifying Transaction<sup>2</sup> (“Form 3B1”).

(6) The CPC must comply with the provisions of Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions.

<sup>2</sup> Certain requirements of Regulation 41-101 have been integrated into TSX Venture Forms 3B1 and 3B2, in particular, the requirement to present the financial statements of both the target company and the resulting issuer.

#### 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 and through a person registered with the AMF or benefiting from a prospectus and registration exemption set out in the Act and its regulations. If they cannot obtain a statutory exemption, they must file an application for an exemption under section 263 of the Act and the provisions of its regulations.

#### 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

All parties should note that, in Québec, linguistic requirements prescribed by Québec law must be complied with.

### PART 3 AMF'S POSITION REGARDING THE PROGRAM

#### 3.1. Protection of investors

The AMF 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 their investment.

(2) The risk factors must be 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) Exempt distributions concluded before the Qualifying Transaction are strictly governed by Policy 2.4. As such, prior to the announcement of the Qualifying Transaction, exempt distributions are not authorized if the proceeds of such distributions, added to the proceeds of the seed shares and the IPO, exceed the amount set in Policy 2.4. Exempt distribution shares are in escrow in certain circumstances provided for in Policy 2.4.<sup>3</sup>

(5) The number of shares which may be acquired 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 IPO 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 TSX Venture before the completion of the Qualifying Transaction:<sup>4</sup>

- (a) All seed shares issued at a price lower than the price of the IPO shares;
- (b) All shares acquired upon exercise of stock options prior to the Qualifying Transaction;

<sup>3</sup> Policy 2.4 is supplemented by TSX Venture Policy 5.4 – *Escrow, Vendor Consideration and Resale Restrictions*, which was harmonized with Policy Statement 46-201, *Escrow for Initial Public Offerings* and TSX Venture Policy 4.1 – *Private Placements*.

<sup>4</sup> Policy 2.4 is supplemented by TSX Venture Form 2F – *CPC Escrow Agreement*.

(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);

(d) All shares acquired by a control person<sup>5</sup> on the secondary market prior to completion of the Qualifying Transaction.

(7) Pursuant to Policy 2.4, all shares held by principals of the resulting issuer upon completion of the Qualifying Transaction must be escrowed, subject to an exemption for certain exempt distribution shares.

(8) In the event that a Qualifying Transaction is not completed within the prescribed time period, the seed shares purchased by 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 TSX Venture. All seed shares are cancelled ten years after delisting.<sup>6</sup>

(9) When the CPC reaches an agreement in principle in respect of a Qualifying Transaction, the shares are suspended until a comprehensive news release describing the Qualifying Transaction is published and the services of a sponsor are retained or are exempt from the terms and conditions of Policy 2.2.<sup>7</sup>

(10) The Investment Industry Regulatory Organization of Canada oversees transactions on CPC shares.

The AMF is of the opinion that the Program contains sufficient elements to ensure investor protection and considers that it is not contrary to the public interest to enable CPCs to raise funds from Québec investors, provided that CPCs comply with the Program, this Policy Statement, as well as the Act and its regulations.

#### **PART 4 PROGRAM REVIEW**

The AMF may review the Program's terms and conditions if it deems it necessary.

<sup>5</sup> Under Policy 1.1, "control person" means any person that holds or is one of a combination 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 except where there is evidence showing that the holder of those securities does not materially affect the control of the issuer.

<sup>6</sup> Subject to the transfer of a CPC to NEX, as per section 14.13 of Policy 2.4.

<sup>7</sup> Policy 2.2 requires sponsorship for any application for a new listing within the context of a Qualifying Transaction. Under this policy, TSX Venture may, subject to a pre-filing conference, exempt an issuer from the sponsorship requirement.