

ALBERTA SECURITIES COMMISSION
NOTICE
CAPITAL POOL COMPANIES

May 6, 2002

Publication for Information Purposes

Today, Commission staff published the following documents related to the TSX Venture Exchange's (the "Exchange") Capital Pool Company ("CPC") program:

1. the CPC Operating Agreement (the "CPC Operating Agreement") among the Exchange, the British Columbia Securities Commission ("BCSC"), the Commission, the Saskatchewan Securities Commission ("SSC"), the Manitoba Securities Commission ("MSC") and the Ontario Securities Commission ("OSC");
2. the Exchange's proposed Policy 2.4 *Capital Pool Companies* (the "Policy");
3. the Exchange's proposed Form 3A *Information Required in a CPC Prospectus* (the "Prospectus Form");
4. the Exchange's proposed Form 3B *Information Required in an Information Circular for a Qualifying Transaction* (the "QT Circular Form").

The documents are published for information purposes only. The documents are expected to become effective on June 15, 2002. Each of the parties to the CPC Operating Agreement signed the agreement; however, to become effective in Ontario, the agreement also requires Ontario government consent.

Harmonization

The CPC Operating Agreement, the Policy and the forms are the product of the Exchange's negotiations with each of the BCSC, SSC, MSC, OSC and the Commission and reflect the Exchange's goal to implement a uniform CPC program in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (the "Participating Jurisdictions").

The Exchange Bulletin, issued on April 8, 2002, highlights the significant changes made to the CPC program in connection with this harmonization effort. This Notice is intended to clarify the roles of the Commission and the Exchange in relation to the new CPC program.

Transition

The CPC Operating Agreement and the new CPC program are to become effective June 15, 2002. The CPC Operating Agreement will replace the current letter agreement (the "letter agreement") between the Commission and the Exchange and will govern the Exchange's review of CPC prospectuses and qualifying transaction information circulars with regard to any CPC that files a preliminary CPC prospectus on or after June 15, 2002. With regard to any Alberta CPC or a junior capital pool company that has filed a preliminary prospectus prior to June 15, 2002, the current letter agreement between the Commission and the Exchange will continue to govern the Exchange's review of the CPC prospectus. The current letter agreement does not

impose obligations on the Exchange with regard to the review of qualifying transaction information circulars.

Form of CPC Prospectus and the OSC Rule

As part of its effort to create a uniform CPC program, the Exchange proposed that all CPC prospectuses be prepared in accordance with the requirements of OSC Rule 41-501 *General Prospectus Requirements* (the “OSC Rule”). In Alberta, ASC Rule 41-501 *Use of Prospectus Complying with Ontario Securities Commission Requirements* (the “ASC Rule”) allows an issuer to satisfy the requirements of Alberta securities laws in relation to a prospectus by fully complying with the OSC Rule. Accordingly, a CPC that prepares a prospectus in accordance with the OSC Rule (using the Exchange’s Prospectus Form as a guide) must fully comply with the other provisions of the OSC Rule. The one exception is that the ASC Rule exempts CPCs from the requirement to comply with the significant probable acquisition test in section 6.4(1) of the OSC Rule.

The Exchange’s Prospectus Form is not technically a form of prospectus prescribed under Alberta securities laws. The Exchange created its Prospectus Form to provide guidance to CPCs regarding how to concurrently comply with the OSC Rule and the Exchange’s Policy.

CPC Prospectus Filing and Review

- The CPC Operating Agreement imposes new SEDAR filing requirements.
 - CPC prospectuses (preliminary and final) and the accompanying documents must be filed via SEDAR with the Exchange and with each securities commission in a Participating Jurisdiction in which securities are being offered under the CPC prospectus.
 - All correspondence relating to a CPC prospectus must be filed via SEDAR. The correspondence must be filed not only with the Exchange but also with each of the securities commissions in the Participating Jurisdictions in which securities are being offered for sale under the CPC prospectus.
- Responsibility for reviewing the CPC prospectus and issuing receipts under the CPC Operating Agreement is generally the same as under the current letter agreement.
 - The Exchange is responsible for reviewing CPC prospectuses and providing comments.
 - The Executive Director retains the responsibility for determining whether to issue a receipt for a CPC prospectus filed in Alberta. However, before the Executive Director issues a final receipt for a CPC prospectus, the Exchange is required to confirm in writing to the Commission that it has complied with the terms of the CPC Operating Agreement.
 - When the Commission is the principal regulator (under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs*), Commission staff will conduct certain criminal records background checks on the principals of the CPC. In the event that material information of detriment is identified by a search, Commission staff will contact the CPC or the applicable individual directly rather than relaying the comment through Exchange staff.

Reviewing Information Circulars for Qualifying Transactions

- Under the terms of the CPC Operating Agreement, the Exchange is responsible for reviewing qualifying transaction information circulars. Although Commission staff may review an information circular as part of the Commission's continuous disclosure review program or in conjunction with an application to the Commission, Commission staff will not typically dual vet information circulars.
- Unless requested or required in connection with a concurrent application to the Commission, drafts of a CPC's qualifying transaction information circular generally should not be filed with the Commission.
- Similarly, correspondence relating to the Exchange's review of a qualifying transaction information circular should not generally be filed with the Commission.
- The final form of qualifying transaction information circular must be filed with the Commission via SEDAR. Issuers are reminded that section 168 of the ASC Rules also requires that all other material sent or delivered in connection with the meeting be filed with the Commission.

Form of Information Circular

The Exchange drafted the QT Circular Form to provide guidance regarding the disclosure required in relation to a CPC, the assets or business to be acquired by the CPC as a qualifying transaction, and the resulting issuer. The Exchange's QT Circular Form is not a form of information circular under Alberta securities law. Although the Exchange's QT Circular Form contains comprehensive disclosure of the parties to the qualifying transaction, it does not require disclosure of certain matters typically required in an information circular. For example, the Exchange's QT Circular Form does not specifically require disclosure regarding proxies and the revocability of proxies. Since all CPCs are reporting issuers in Alberta, they must comply with information circular requirements of Alberta securities laws. Accordingly, when preparing an information circular, in addition to referring to the Exchange's QT Circular Form, CPCs must refer to Part 13 of the *Securities Act* (Alberta), Part 12 of the ASC Rules and ASC Form 30 *Information Circular*. CPCs should also refer to the applicable requirements of the other jurisdictions in which they are reporting issuers or have reporting obligations.

No Delegation of Authority

The Commission has not delegated authority to the Exchange to issue receipts for prospectuses. Furthermore, the Commission has not delegated authority to the Exchange to waive any requirement of Alberta securities law. The Exchange can waive a requirement of its own policies; however, if there is a corresponding securities law requirement, the CPC (or applicable party) must also apply to the Commission to obtain a waiver or discretionary exemption order.

Significant Waivers

The CPC Operating Agreement requires that the Exchange prepare reports of certain waivers of Exchange requirements if the waiver constitutes a "Significant Waiver". Although the Exchange is required to report these Significant Waivers to the securities commissions in the Participating Jurisdictions, there is no requirement that the Exchange seek approval from any of the securities commissions prior to granting a Significant Waiver. Furthermore, unless the issuer requires a concurrent waiver of securities legislation, there is no requirement that the CPC seek approval

from any of the securities commissions before the Exchange grants a Significant Waiver. The Exchange is responsible for determining whether to grant a Significant Waiver.

Reporting Issuer Status

One of the ways an issuer can become a reporting issuer in a jurisdiction is by having its securities listed and posted for trading on an exchange that is recognized in that jurisdiction. The Exchange has only been recognized as an exchange in Alberta and British Columbia. Consequently, a CPC becomes a reporting issuer in Alberta and British Columbia upon having its securities listed on the Exchange, whether or not the CPC prospectus was filed in Alberta or British Columbia. CPCs will not automatically become reporting issuers in the other Participating Jurisdictions. CPCs will typically become reporting issuers in the other Participating Jurisdictions if they file a prospectus in those other jurisdictions or make an application for reporting issuer status to the securities commission in that Participating Jurisdiction.

Questions

If you have any questions, please contact:

Denise Hendrickson
Legal Counsel
Alberta Securities Commission
400, 300 – 5th Avenue S.W.
Calgary, Alberta, T2P 3C4

Phone: (403) 297-2648
E-mail: denise.hendrickson@seccom.ab.ca