

## CORPORATE UPDATE

SPRING 2008

### Capital Pool Companies

For private companies looking to take their company public, a Capital Pool Company (CPC) provides an excellent alternative to the traditional IPO. The CPC Program provides a proven process and framework for introducing experienced investors to entrepreneurs whose junior growth companies are looking for both capital and management experience.

A CPC is a clean shell company that is used by experienced investors to raise a pool of seed capital that will later be used to buy an operating business.

The mechanics of the process are relatively straightforward. The CPC conducts an initial public offering (“**IPO**”) to raise the needed seed money and after selling sufficient shares is permitted to list on the TSX Venture Exchange (the “**TSX-V**”). Once the CPC is listed, it has 24 months to identify and acquire a qualifying target business.

The CPC Program is administered by the TSX-V and incorporates regulatory safeguards, which provides important protection for both investors and private business owners throughout the going-public process.

#### IS A CPC THE RIGHT VEHICLE FOR YOU?

- you have 3-6 investors who have demonstrated a positive association as a director or officer with at least one public company, are Canadian or US residents, and are willing to incorporate the CPC and act as founding directors

- the proposed directors meet the minimum suitability requirements of the TSX-V, which includes the ability to identify and proceed with the acquisition of assets or a business that could qualify as the target business for the CPC’s qualifying transaction
- you have between \$100,000 and \$500,000 in total seed capital to put forth at the time of incorporation (each investor must contribute a minimum of \$5,000)
- you are willing and able to meet the qualifying transaction timeline, which requires that the acquisition take place within 24 months of the date of the CPC’s listing on the TSX-V

#### HOW DOES THE CPC GET LISTED ON THE TSX-V?

The CPC issues “seed shares” to the founding investors, which are priced at the greater of \$0.05 or 50% of the price at which the IPO shares will be offered (which is a minimum of \$0.10). The seed shares are subject to escrow, to be released over a three-year period that begins on the date that the qualifying transaction is completed.

The CPC prepares a prospectus outlining the intention of management to raise between \$200,000 and \$1,900,000 through the sale of additional CPC shares, and to use the proceeds to identify and evaluate potential acquisitions.

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This prospectus is filed with the appropriate securities commission(s) and the CPC applies for listing on the TSX-V.

The CPC's IPO shares must be sold to at least 200 arm's length purchasers, each purchasing at least 1,000 shares and the CPC must have at least 1,000,000 common shares issued and outstanding upon completion of its IPO.

The maximum number of shares any one purchaser can purchase pursuant to the IPO is 2% of the offering individually or 4% in combination with its associates or affiliates.

The CPC must enlist a qualified agent who is registered under the securities laws of the relevant offering jurisdictions and is a member of the Exchange. The agent's commission cannot exceed 10% of the gross proceeds raised pursuant to the IPO, and the agent's option cannot exceed 10% of the total number of IPO shares and must be exercised within 24 months from the date of listing the CPC shares on the TSX-V at an exercise price not less than the IPO share price.

Upon closing of the IPO, the CPC is listed on the TSX-V.

**HOW DOES THE CPC GO ABOUT ACQUIRING A BUSINESS?**

The CPC has 24 months from the date of its listing on the TSX-V to identify an appropriate business as its "qualifying

transaction"— the business that it will acquire.

Once the target is identified, the CPC issues a comprehensive news release announcing it has entered into an "agreement in principle" to acquire the target business and disclosing the principal terms of the agreement.

The CPC then prepares and files either a filing statement (if a shareholder vote is not required to complete the qualifying transaction) or information circular (if a shareholder vote is required, due to fundamental changes in the corporate structure, for example a name change, or when the CPC and target are amalgamating), with the TSX-V and the relevant commission(s) for approval within 75 days of the announcement, which provides prospectus level disclosure on the target company.

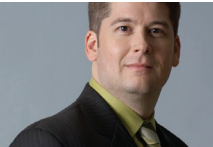
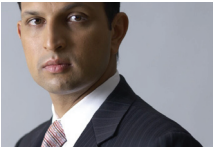
The TSX-V reviews the disclosure document to ensure that the resulting company following the qualifying transaction meets the minimum listing requirements of the TSX-V. Providing the TSX-V finds all the documentation satisfactory, they will issue a final Exchange Bulletin indicating the company now trades as a regular TSX-V listed company.

**WHAT ARE THE BENEFITS OF THE CPC PROGRAM?**

The CPC Program can provide significant benefits to both experienced investors

and entrepreneurs seeking capital through a public listing.

- allows emerging private companies to get past the cost and time required to go public, as the CPC raises the necessary funds
- gives entrepreneurs with a business that becomes a "qualifying transaction" the opportunity to maintain a greater degree of control over their company and the going public process
- provides the acquired business with access to seasoned management and financiers who have experience with and understanding of public markets
- provides a public vehicle with a clean record, providing an attractive takeover option for private companies
- provides an efficient way to raise significant sums through the qualifying transaction stage and provides a broader investor base, including venture capital companies and angel investors
- provides an attractive opportunity for investors, as shares can be sold publicly, which provides an "exit strategy" should their position change

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|---|--|--|---|
| AUTHOR  | <b>Michael Dolphin</b>   | AUTHOR   | <b>Sanjay Joshi</b>   |
|  | Michael is an Associate and his practice includes public and private financings, mergers and acquisitions, corporate re-organizations and reverse-take-over transactions. Michael has acted as issuer's counsel to TSX and TSX Venture Exchange-listed corporations with respect to regulatory compliance issues, including shareholder rights plans, stock option plans listing applications and continuous disclosure obligations. Contact Michael at 416.947.5005 or mdolphin@weirfoulds.com. |  | Sanjay is a Partner and practises corporate and securities law, with an emphasis on financing transactions. Sanjay is called to the Bar in Ontario and British Columbia. He was recognized as one of Canada's 2007 LEXPERT® "Rising Stars - Leading Lawyers Under 40"; and is listed as a "Lawyer to Watch" in the 2008 LEXPERT® Directory of the "Top US Cross Border Corporate Lawyers in Canada". Contact Sanjay at 416.947.5013 or sjoshi@weirfoulds.com. |

## HOW CAN WEIRFOULDS HELP?

### Phase One: CPC Prospectus and Exchange Listing

WeirFoulds will:

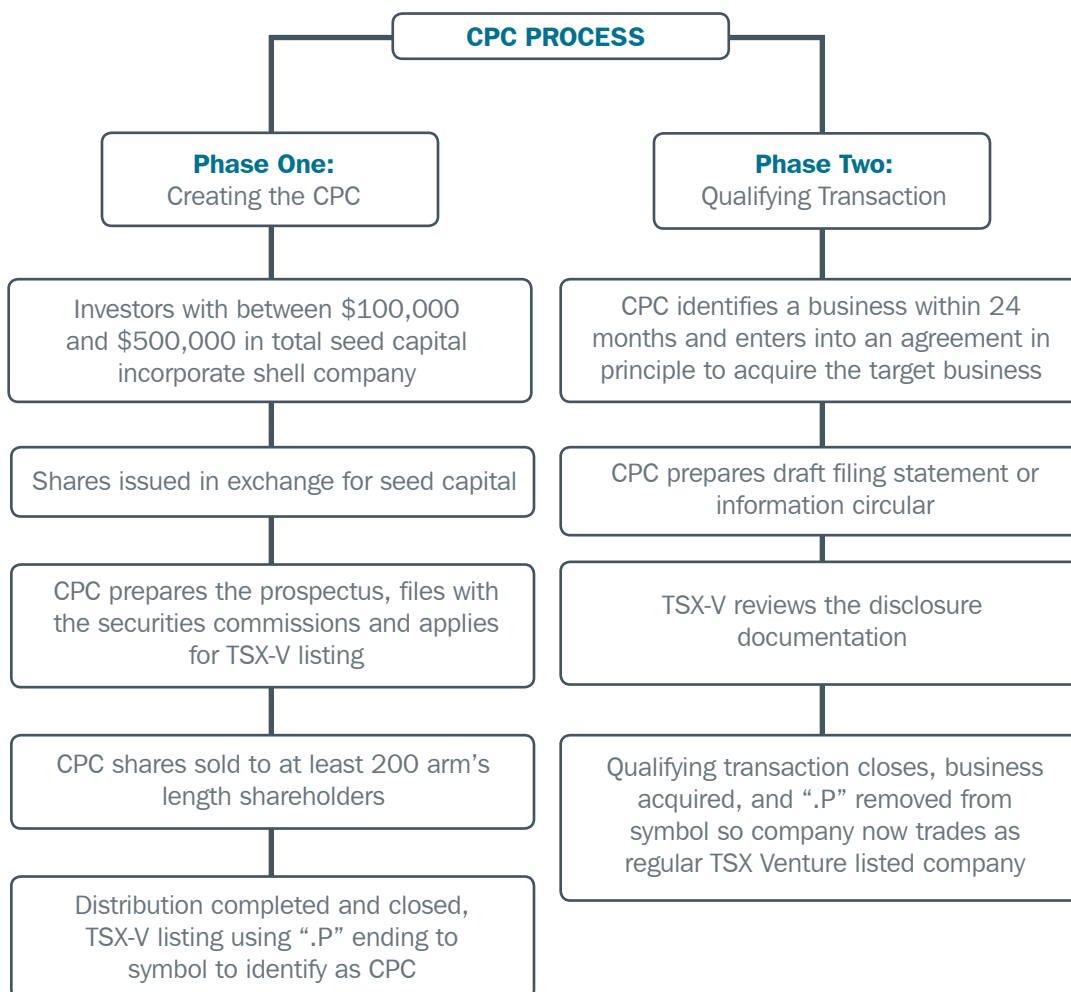
- ☑ incorporate the company
- ☑ complete the prospectus and supporting documents
- ☑ make all filings with the securities commission(s) and the TSX-V
- ☑ complete the listing application to the TSX-V
- ☑ address and resolve comments made by the TSX-V and securities commission(s) in response to the listing application and filing of prospectus
- ☑ close the IPO transaction
- ☑ file the final listing documentation with TSX-V

### Phase Two: Completion of the Qualifying Transaction

WeirFoulds will:

- ☑ evaluate prospective businesses to identify if they meet the minimum listing requirements
- ☑ negotiate and draft the letter of intent and relating agreements with the target company
- ☑ draft and issue the comprehensive news release
- ☑ complete due diligence and draft the Information Circular or Filing Statement
- ☑ prepare all documents relating to the closing of the qualifying transaction
- ☑ complete all forms required by TSX-V and securities commission(s)

### GENERAL OVERVIEW OF WHAT'S INVOLVED



## WEIRFOULDS CORPORATE PRACTICE

WeirFoulds provides comprehensive corporate and commercial legal services to a wide range of clients—from public companies and major institutions requiring sophisticated legal services to entrepreneurs who wish to start a new business.

Our lawyers thrive on difficult, unique transactions that are critical to our clients' business objectives, but also act on routine transactions with equal care and attention. In order to provide the highest possible level of care and responsiveness, we seamlessly integrate our services with our clients' business teams. For this reason, we traditionally become trusted long-term advisors to our clients.

We have a broad public markets and securities practice that prides itself on being at the forefront of recent developments in securities law. As legal advisors who understand business issues, we help our local, national and international clients in all aspects of securities law including public offerings, private placements, takeover bids, issuer bids, going-private transactions and disclosure and reporting requirements relevant to the day-to-day needs of public companies and companies seeking to go public.

We advise securities dealers on the underwriting of offerings, registration of Canadian and foreign investment dealers, limited market dealers, portfolio managers and advisors, representation at broker-dealer disciplinary hearings and Ontario Securities Commission compliance.

Our extensive experience enables us to

advise on the operation and regulation of markets, both in Canada and abroad. We represent local and national issuers, securities dealers and advisors, underwriting syndicates, financial institutions, boards of directors, special committees and lenders, investors and venture capitalists as well as foreign issuers and investors in the Canadian and US financial markets.

## WHAT WE DO...

### Public and Private Company Financings

- prepare offering documents for the distribution of securities, including equity and debt
- prepare prospectus disclosure for initial public offerings

### Mergers and Acquisitions

- provide strategic advice for structuring and implementing transactions
- provide advice on reverse take-over transactions

### Stock Exchanges

- prepare listing applications and related documents
- provide advice and support for ongoing compliance

### Regulatory Matters

- advise clients on compliance with all securities legislation, regulation and policy
- represent clients before regulatory organizations

### Shareholder Issues

- prepare materials for shareholder meetings
- act as mediators and advisers (or represent clients) in shareholder disputes

## Take-Over and Issuer Bids

- advise clients on take-over bids and defences and complete such transactions
- provide advice on poison pills, regulatory and other strategic issues concerning take-over bids

## Mutual Funds

- prepare offering documents for the distribution of mutual fund securities

## Registration of Dealers and Advisors

- assist clients in preparing registrations as mutual fund dealers, portfolio managers, or other applicable categories

## HOW TO REACH US...

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## ABOUT THIS NEWSLETTER

Information contained in this publication is strictly of a general nature and readers should not act on the information without seeking specific advice on the particular matters which are of concern to them. WeirFoulds LLP will be pleased to provide additional information on request and to discuss any specific matters.

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