WeirFoulds LLP

Capital Pool Companies

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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 "TS X-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 TS X-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.

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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Michael Dolphin practises corporate and securities law, focusing on financings, public offerings, mergers and acquisitions, and corporate reorganizations. He is Chair of the firm's Securities & Public Companies Practice Group and Co-Chair of the Corporate Practice Group.

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