# Guide to going public in Canada

2024

GOWLING WLG

# Gowling WLG at a glance

**Gowling WLG is an international law firm built on the belief that the best way to serve clients is to be in tune with their world, aligned with their opportunity, and ambitious for their success. Around the globe, our 1,500-plus legal professionals and dedicated business support teams do just that. We bring our deep sector knowledge to understand and support clients' businesses, and see the world through their eyes.**

Gowling WLG clients have access to experience in key global sectors and a suite of legal services. With offices around the world, we're positioned to help clients achieve their objectives, wherever their business takes them. We're proud to be recognized as a top employer, and actively encourage diversity and inclusion in our workplaces.

## Our capital markets team

Whether you're obtaining or maintaining your listing, looking for financing or providing it, you need legal advice you can rely on from seasoned lawyers who've been through the process and know how to make it work.

At Gowling WLG, we have vast experience in fundraising ventures and have acted for capital markets participants in Canada and around the world. We take great pride in what we help our clients achieve.

## Industry recognition

*Chambers Canada 2024*
Recommended as a leading law firm in 36 practice areas, including Cannabis Law, Corporate/Commercial, Information Technology, Life Sciences, and Startups & Emerging Companies, with additional individual rankings, including in Energy & Natural Resources.

*Canadian Legal Lexpert Directory 2023*
Earned 338 individual rankings across 46 practice areas, including Corporate Commercial Law, Corporate Finance & Securities, Corporate Mid-Market, Mergers & Acquisitions, Mining and Technology Transactions.

*The Best Lawyers in Canada™ 2024*
Peers in Canada recognized 243 Gowling WLG lawyers, with a total of 429 rankings across 58 practice areas, including Cannabis Law, Corporate Governance Practice, Corporate Law, Fintech Practice, Information Technology Law, Mergers & Acquisitions Law, Mining Law, Natural Resources Law, Oil & Gas Law, Securities Law, Technology Law and Venture Capital Law.

*Among leading law firms for Canadian and UK M&A, Ranked #25 globally*
Gowling WLG is recognized as a leading law firm for the number of M&A deals that it advises on. For the first three quarters of 2023, Refinitiv credited the firm with 134 transactions worldwide for a #25 global ranking.

In terms of the regional league tables, the firm was credited with:

- 91 Canadian deals for a #3 ranking among law firms advising on Canadian deals
- 42 UK mid-market deals for a #7 ranking among law firms advising on UK deals
- 55 European mid-market deals for a #23 ranking among law firms advising on European deals



## Strength in diversity

We embrace diversity and strive for inclusivity because we know there's real strength in our differences.

Our diverse teams bring fresh perspectives, apply unique approaches to problems, and generate better, more creative solutions for our clients.

## A passion for innovation

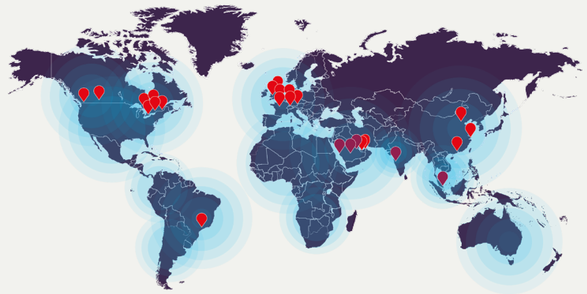
We've developed a strong reputation as an innovator in the legal industry by implementing a number of tools that deliver enhanced value and increased efficiency to our clients.

Over
**3,000**
people worldwide

**30+**
country desks in major and emerging markets

**40+**
languages spoken by our people

Global
**100**
law firm



**150+**
individual & firm Chambers rankings

# Introduction

## Why consider going public in Canada?

Canada is a stable country with a liquid and well-regulated secondary market and direct access to the United States capital markets. Canada's banks are well-managed, well-regulated and well-capitalized. Canada's strong and stable banking system is fundamental to the stability of the country's financial markets. By going public in Canada, companies can achieve healthy valuations and raise funds from a deep and knowledgeable pool of institutional and retail investors.

*Going Public in Canada* was developed by Gowling WLG to help business executives, investors and foreign counsel navigate their initial going-public transaction in Canada and the process for obtaining a listing on a Canadian stock exchange.

This guide is current as of September 2023 and is for general information purposes only. It does not constitute a legal opinion or other professional advice.

If you are planning a going-public transaction in Canada, it is highly recommended that you seek detailed and specific advice from experienced professionals. Offerings of securities in Canada are subject to detailed regulation and should be undertaken only with qualified legal counsel.

To learn more about going-public transactions and the range of services that Gowling WLG provides, please visit us at **gowlingwlg.com/capital-markets-canada**





# Canadian stock exchanges

Canada has a number of exchanges on which a company's securities may be listed. Choosing an exchange will be influenced by various factors, such as the size of the company and the industry in which the company operates.

The Toronto Stock Exchange (TSX) is Canada's main senior equities exchange, providing domestic and international investors access to the Canadian marketplace. The TSX Venture Exchange (TSX-V) is Canada's main junior exchange, providing companies at early stages of growth the opportunity to raise capital. Both the TSX and the TSX-V are owned and operated by the TMX Group. With over 3,400 listed issuers, the TSX and TSX-V rank among the world's leading stock exchanges and are home to the largest number of issuers in North America.

Cboe Canada (formerly NEO Exchange) is the other senior recognized exchange in Canada. According to its website, having launched in 2015, Cboe Canada consistently represents close to 15% of all volume traded in Canadian-listed securities.

The Canadian Securities Exchange (CSE) is an alternative Canadian exchange for micro-cap and emerging companies. It has simplified listing and continuous reporting requirements as compared to the other exchanges.

# Stock exchange listing

## What are the requirements to list on the TSX, TSX-V, Cboe Canada, and CSE?

The TSX, Canada's main senior stock exchange, is designed for well-established issuers. To list on the TSX, a company generally must have at least 1,000,000 freely tradeable shares having an aggregate market value of C$4 million, held by at least 300 public (i.e., independent) holders, each holding one board lot or more. The minimum listing requirements vary depending on the categorization of the company (i.e., industrial, mining and oil & gas). There are also separate requirements for SPACs and non-corporate issuers.

The TSX-V is designed for more junior issuers. To list on the TSX-V, a company generally must have a public float of 1,000,000 shares for Tier 1 (500,000 for Tier 2), held by at least 250 public (i.e., independent) shareholders for Tier 1 (200 for Tier 2), each holding one board lot (and having no resale restrictions) and in aggregate holding at least 20% of the issued and outstanding shares. The minimum listing requirements vary depending on the categorization of the company (i.e., mining, oil & gas, industrial or technology or life sciences and real estate or investment), as well as the Tier it is classified under (which is based on historical financial performance, stage of business development and financial resources). Many TSX-V issuers also graduate to the TSX, and many TSX and TSX-V issuers are inter-listed on U.S. or European stock exchanges.

Cboe Canada is a senior stock exchange and lists equity and debt securities. The exchange has created separate listing requirements for corporate issuers (including SPACs), closed-end funds, exchange traded funds (ETFs) and structured products. To list on Cboe Canada, a corporate issuer must have a public float of 1,000,000 securities with an expected market value of the public float of at least C$10 million, held by at least 150 public (i.e., independent) securityholders, each holding at least one board lot. The minimum listing requirements vary depending on the listing standard that the company falls under.

The CSE is an independent Canadian stock exchange that is an alternative to the TSX-V. To list on the CSE, an issuer must have a public float of at least 1,000,000 freely tradeable shares held by at least 150 public (i.e., independent) holders, each holding at least one board lot and in aggregate holding at least 20% of the issued and outstanding shares. NV issuers (an issuer that has met additional qualifications and been identified as such by the CSE) must have at least 300 public (i.e., independent) holders, each holding at least one board lot. The minimum listing requirements vary depending on the categorization of the company (i.e., natural resources, investment or real estate, closed end funds and ETFs).





# Methods of listing

Companies wishing to access the Canadian capital markets by going public and listing their shares on a Canadian stock exchange may do so by one of the following methods:

## Initial public offering

The conventional method of obtaining a Canadian stock exchange listing is through an initial public offering (IPO) of securities. This generally involves the preparation and filing of a prospectus with securities regulators in one or more Canadian jurisdictions. The prospectus serves as the principal listing document for the purposes of the company's application for listing.

## Reverse take-over

An alternative to an IPO is a reverse take-over (RTO) of a company already listed on a stock exchange in Canada. A reverse take-over transaction can be accomplished in a variety of ways, including a statutory amalgamation or court approved arrangement or through the issuance of shares in exchange for other shares or assets of the company being acquired. For more details, see "Alternatives to an IPO."

## Capital pool company / Special purpose acquisition corporation

Canadian exchanges have specialized listing categories which allow the listing of a shell company (with no operating business) that has a sole purpose of raising capital in an IPO to later merge with a target company. These shell companies will not have any assets, other than cash, before they are listed and, in some cases, must complete the acquisition of the operating business within a prescribed period of time. For more details, see "Alternatives to an IPO."

# IPO overview

## What can you expect?

An issuer wishing to go public by way of an IPO does so by preparing and filing a preliminary prospectus with Canadian securities regulators and the exchange.

After the comments of Canadian securities regulators and the exchange have been addressed, the issuer files a final prospectus and obtains a decision document that allows shares to be qualified for sale to the public. The prospectus performs two functions: first, it is used by the issuer and the underwriters as a marketing document for the offering; second, it is required to provide potential investors with "full, true and plain disclosure of all material facts" relating to the securities offered.

## How long is the process and what are the different steps?

Bringing an IPO to market typically takes several months, depending on how organized the issuer is, the size of the offering and the experience of the significant players in the IPO process. Generally speaking, pre-marketing of an IPO is prohibited. However, there is a "testing of the waters" exemption under which an issuer may, before filing a preliminary prospectus, solicit expressions of interest from accredited investors through an investment dealer to ascertain if there would be sufficient interest in an IPO. The availability of the exemption is subject to certain record keeping and other requirements, including the requirement to ensure that communications are made on a confidential basis.

**The IPO process can be broken down into five phases**

### 1. Initial preparation

- Creation or updating of a business plan
- The selection of lawyers, auditors and underwriters/agents
- Review of and, if necessary, strengthening of internal controls and procedures
- Review of accounting policies and financial records, and preparation of financial statements to be included in the preliminary prospectus and final prospectus (see more detailed discussion under "Financial statements")
- Preparation of a technical report if the issuer is a mining or oil & gas company (see more detailed discussion under "Technical reports")
- Tax planning and corporate restructuring
- Review of the makeup of the board and management team to ensure that the governance structure of the issuer meets all applicable corporate and securities law requirements as well as exchange requirements
- Review of executive compensation
- Review of material contracts and compilation of materials for due diligence and filing purposes
- Identification of the appropriate stock exchange for listing (see more detailed discussion under "Stock exchange listing")

A pre-filing conference with the exchange is encouraged.

### 2. Preliminary prospectus

The issuer and its counsel should commence preparation of the preliminary prospectus several months in advance of the targeted date for filing. Once underwriters or agents are selected, due diligence should begin with the input of the issuer and underwriters/agents and their counsel. Over this period, a number of drafts will be circulated to all members of the working group for comments and revisions.

Before filing a preliminary prospectus publicly, an issuer may submit the preliminary prospectus for a confidential review by Canadian securities regulators. Following the filing of the preliminary prospectus, whether confidentially or publicly, it is reviewed by Canadian securities regulators, and the regulators' comments are issued. The duration of this review varies with each issuer. It can be as short as four weeks if the issuer has complied fully with all disclosure requirements, including those relating to financial statements.

Comments issued by Canadian securities regulators are addressed and a draft of the final prospectus is prepared, which is essentially the preliminary prospectus modified to reflect the regulators' comments.

Contemporaneous with receiving and responding to comments from Canadian securities regulators, a similar process takes place with the exchange, which will review the listing application and supporting documents to ensure they meet all applicable requirements.

### 3. Waiting period

Once the preliminary prospectus is filed with Canadian securities regulators and a decision document has been issued, the issuer and underwriters/agents can market the IPO. The period between the filing of the preliminary prospectus and the final prospectus is known as the "waiting period."

Also during this phase, the underwriting or agency agreement is negotiated and finalized.

### 4. Final prospectus

Once all comments have been resolved with the Canadian securities regulators and the exchange, clearance is obtained to file final materials with the regulators. By this point, the issuer will want to ensure that the exchange has issued its conditional letter of approval for the listing of the issuer's shares, subject to conditions itemized in the letter. With respect to timing, it is best to reach this point when the market is most receptive to the offering, as this is the point at which the issuer and the underwriters/agents finalize the price and size of the offering, enter into the underwriting or agency agreement, and file the final prospectus.

### 5. Closing

Closing occurs approximately five business days following the date on which the final prospectus is filed, and a decision document for the final prospectus is issued by the Canadian securities regulators.

At the closing, the securities offered under the prospectus are issued, the proceeds from the issue are delivered to the issuer and the issuer's shares begin to trade on the exchange.

> In general, the issuer and parties preparing the prospectus are liable for misrepresentations

### What is the standard of disclosure for the prospectus?

Every prospectus must contain a certificate signed by the chief executive officer, chief financial officer and, on behalf of the board, two directors, and any person or company who is a promoter of the issuer, certifying that the prospectus contains full, true and plain disclosure of all material facts relating to the securities being offered by the prospectus.

The prospectus must contain a similar certificate signed by the underwriters or agents, except that their statement is qualified by the phrase "to the best of our knowledge, information and belief."

A high onus is placed on companies accessing the Canadian capital markets and their underwriters or agents to ensure that the prospectus contains adequate disclosure. Should the prospectus contain a misrepresentation, the issuer, its directors, its officers, the underwriters/agents and experts could face civil liability and penalties. In preparing the prospectus, the issuer works closely with its professional advisers, including lawyers and accountants as well as the underwriters/agents, to ensure that proper and accurate disclosure is made.

### What can be expected in terms of due diligence to be conducted by underwriters/agents?

In general, the issuer and parties preparing the prospectus are liable for misrepresentations in the prospectus, subject (other than for the issuer) to a "due diligence" defence. Accordingly, the due diligence process is taken seriously by all parties, and generally involves a thorough review of corporate records, financial information and material agreements, an inspection of operating facilities, an investigation of management backgrounds, as well as oral due diligence sessions. In essence, every fact in the prospectus must be verified, and detailed records of the due diligence process must be maintained.

### In what language must the prospectus be filed?

For an offering of securities in every province and territory of Canada, other than the province of Québec, a prospectus can be filed in English. Under the *Securities Act* (Québec), every prospectus (and any documents incorporated therein by reference) must be drawn up in French or in both official languages. If an issuer wishes to distribute its securities in the province of Québec, the IPO prospectus (inclusive of the financial statements) must be translated into French.

### Are shares held by principals escrowed or subject to any resale restrictions following completion of an initial going-public transaction?

Securities regulators and stock exchanges may impose escrow requirements on the securities of the issuer held by the directors, officers, principal shareholders and promoters of the issuer, providing for a timed release of securities over a period of 18 to 36 months after the IPO. The purpose of the escrow requirements is to restrict individuals who are key to the success of the issuer from selling their securities immediately following completion of the transaction. This ensures that the interests of such individuals are aligned with the interests of the public investors that have invested in the issuer. There are certain exemptions to escrow requirements. For example, an issuer that lists on the TSX with a market capitalization of at least C$100 million is exempt from escrow requirements.

In addition to mandated escrows, underwriters/agents typically request that key individuals contractually agree to restrict resale of their securities for a defined period of time following completion of an IPO.

# Financial statements

## What financial statements must be included in the prospectus?

In general, the preliminary prospectus and the final prospectus must include a statement of income, changes in equity and cash flow for each of the three most recently completed financial years (or two years for companies intending to list on the TSX-V or CSE), and a statement of financial position as of the end of the two most recently completed years, accompanied by an auditor's report.

The required annual financial statements are for years that ended more than 90 days before the date of the prospectus. If an issuer chooses to include financial statements for a more recent financial year, the issuer may be allowed to omit older historical financial statements.

For any quarterly period that has ended subsequent to the most recent financial year, the preliminary prospectus and final prospectus must also include quarterly financial statements with comparative statements for the corresponding interim period in the immediately preceding financial year. Quarterly financial statements are required for periods ending more than 45 days before the date of the prospectus.

## Which of the financial statements included in a prospectus must be audited?

Annual financial statements included in a prospectus must be audited. Exceptions to this are the second and third most recently completed financial years, if the issuer is a "junior issuer."

### An issuer is deemed a "junior issuer" if:

- Total consolidated assets in its most recent statement of financial position included in the preliminary prospectus are less than C$10 million
- Consolidated revenue in its most recent annual statement of comprehensive income included in the preliminary prospectus is less than C$10 million; and
- Shareholders' equity as at the date of its most recent statement of financial position included in the preliminary prospectus is less than C$10 million.

Financial statements that are not audited must still be reviewed by an auditor.

## What accounting principles and auditing standards are acceptable for the financial statements included in the prospectus?

Adopted by the International Accounting Standards Board, International Financial Reporting Standards (IFRS) became the basis of financial reporting for all public companies in Canada as of January 1, 2011. Accordingly, financial statements included in prospectuses and prepared for continuous disclosure following completion of an IPO will typically have to comply with IFRS. Limited exceptions to this requirement exist, such as for reporting companies under the U.S. Securities Exchange Act of 1934.





## What auditors are acceptable?

An auditor's report filed by an issuer must be prepared and signed by an auditor that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction. An auditor for a public company in Canada must be a participant in the Canadian Public Accountability Board's oversight program.

## Are there special requirements for financial statements if we have made an acquisition prior to the IPO?

An issuer must include the financial history for any business acquired within the relevant look-back period if a reasonable investor would regard the primary business of the issuer to be the business acquired. This could be the case if, for example, the assets of the acquired business exceed the assets of the issuer. Other "significant acquisitions" made since the beginning of the issuer's most recently completed financial year could also trigger additional financial statement disclosure requirements. For an issuer intending to list on the TSX or Cboe Canada, an acquisition is generally considered to be "significant" if it meets at least two of the following tests:

a. the Asset Test, whereby the assets of the acquired business exceed 30% of the issuer's assets;

b. the Investment Test, whereby the issuer's investments in and advances to the acquired business as at the date of the acquisition exceed 30% of the assets of the issuer (excluding any pre-existing investment in or advances to the acquired business); and

c. the Profit or Loss Test, whereby the profit or loss from continuing operations (excluding income taxes) of the acquired business exceeds 30% of the issuer's profit or loss from continuing operations (excluding income taxes).

In addition to historical financial statements of the acquired business, the prospectus may need to include pro forma financial statements of the issuer giving effect to the acquisition. In all cases, the issuer will need to consider what financial information is necessary for the prospectus to contain full, true and plain disclosure. In cases of uncertainty, issuers and their advisors are encouraged to consult with securities regulatory staff on a pre-filing basis.

# Technical reports

## We are a mining company. Is there a requirement for a technical report on the properties?

Yes, a technical report must be filed with Canadian securities regulators for each mineral property that is material to the issuer.

This technical report must be prepared by one or more "qualified persons" who are independent of the issuer. A "qualified person" is an engineer or geoscientist with at least five years of relevant experience and one who is in good standing with a specified professional association.

The form of the technical report is prescribed by National Instrument 43-101 of the Canadian Securities Administrators. Moreover, for exploration or development-stage mining companies, one of the key listing requirements of the TSX or TSX-V is a technical report prepared in compliance with National Instrument 43-101 that contains a recommended work program. For mining companies that are producing, one of the key listing requirements is a technical report prepared in compliance with National Instrument 43-101 that supports three years of proven and probable reserves.

## We are an oil & gas company. Is there a requirement for a technical report on the properties?

Yes, any information disclosed in a preliminary prospectus or final prospectus in respect of oil & gas reserves, resources or related information must be supported by a technical report filed with Canadian securities regulators. The report must be prepared by one or more "qualified reserves evaluators or auditors," in accordance with the form prescribed by National Instrument 51-101 and in accordance with the "Canadian Oil and Gas Evaluation Handbook." A "qualified reserves evaluator or auditor" is a person independent of the issuer who possesses professional qualifications and experience appropriate for the estimation, evaluation and review (and audit, if applicable) of reserves data, resources and related information, and who is in good standing with a specified professional organization. Furthermore, the qualified evaluator or auditor must have evaluated or audited at least 75% of the future net revenue (calculated using a discount rate of 10%) attributable to proved plus probable reserves, and must also have reviewed the balance of that future net revenue of the issuer in preparing the report.

# Corporate governance

## How should our board and management be constituted in order to ensure we meet Canadian governance standards? What corporate governance rules apply?

Baseline governance standards are set out in the statute under which the company is incorporated, but additional standards apply to public companies under Canadian securities laws and will vary based on the exchange on which a company lists its shares.

A public company in Canada must have an audit committee composed of at least three directors. For a company intending to list on the TSX or Cboe Canada, each member of the audit committee must be independent and financially literate. A director of the company who has no other direct or indirect material relationship with the company and receives no compensation from the company other than remuneration for acting as a member of the board is independent for audit committee purposes. For a company intending to list on the TSX-V or the CSE, the financial literacy requirements do not apply (except as set out below), and the independence requirements are relaxed. For a TSX-V issuer, a majority of its audit committee members must not be officers, employees or control persons of the issuer or any of its associates or affiliates. For a CSE issuer, a majority of its audit committee members must not be executive officers, employees or control persons of the issuer or of an affiliate of the issuer. If the CSE issuer is an issuer with principal business operations or operating assets in emerging markets, then its audit committee must have three financially literate members. Every audit committee must have a written charter.

No other board composition requirements are mandated by securities regulators. However, securities laws in Canada set out a list of non-binding corporate governance guidelines which reporting issuers are encouraged to consider in developing their own practices. While compliance with the guidelines is voluntary, mandatory disclosure is imposed on reporting issuers with respect to whether or not their corporate governance practices comply (although disclosure requirements for companies listed on the TSX-V and CSE are less stringent than those imposed on TSX and Cboe Canada-listed companies). Such corporate governance guidelines include:

- A board consisting of a majority of independent directors with an independent chair or lead director, and with the independent directors holding regularly scheduled meetings at which non-independent directors and members of management are not in attendance
- Written board and board committee mandates
- Clear position descriptions for the chair of the board, the chair of each board committee and the chief executive officer
- A written code of business conduct and ethics
- Nominating and compensation committees composed entirely of independent directors
- Regular assessments of the effectiveness of the board, its committees and individual directors

Securities laws also require an issuer listing on the TSX or Cboe Canada to make certain disclosure relating to the representation of women on the board and in senior management, including whether the issuer has adopted a written gender diversity policy and has adopted a target relating to women on the board and in executive officer positions. Public companies incorporated under the *Canada Business Corporations Act*, regardless of the exchange on which they list, have similar diversity disclosure requirements. However, under that statute, the categories of diversity extend beyond gender to include Indigenous peoples, persons with disabilities and members of visible minorities.

In addition, stock exchanges may impose corporate governance requirements. For example:





- A key listing requirement of the TSX and TSX-V is that management, including the board of directors, has adequate experience and technical expertise relevant to the issuer's business and industry as well as public company experience in Canada or in a similar jurisdiction.
- TSX and Cboe Canada-listed issuers, other than issuers that are majority controlled, are required to adopt majority voting policies for director elections at uncontested shareholders' meetings, or to amend their constating documents in order to give effect to these requirements. TSX rules require directors to resign if they are not elected by at least a majority (50% + 1) of votes cast at an uncontested shareholders' meeting. Boards of directors are required to accept such resignations unless there are "exceptional circumstances."

Public companies incorporated under the *Canada Business Corporations Act*, regardless of the exchange on which they list, are also subject to majority voting requirements. Director candidates are elected only if the number of votes cast in their favour represents a majority of the votes cast for and against them by the shareholders who are present in person or represented by proxy, unless the articles require a greater number of votes.

Assembling a board and management team, and establishing corporate governance practices, requires careful consideration. Beyond the legal and exchange requirements, companies may need to take into account other factors such as the recommendations of the Canadian Coalition for Good Governance and the policies of proxy advisory firms such as Institutional Shareholder Services and Glass Lewis.

## For companies incorporated under the laws of Canada, are there Canadian residency requirements for directors?

Canadian residency requirements for directors vary based on the statute under which a company is incorporated. A corporation governed by the *Canada Business Corporations Act* must have resident Canadian directors comprising at least 25% of the total number of directors. There are no Canadian residency requirements for directors of corporations governed by the corporate statutes of Alberta, British Columbia, Ontario or Québec. Under Canadian securities laws, all directors of an issuer who reside outside of Canada are required to file a submission to jurisdiction and to appoint an agent for service of process.

> “Foreign issuers are encouraged to have a strategy to develop relationships with the investment community in Canada”

## Is there a requirement that we have an office in Canada? Or that we be incorporated in Canada?

There is no listing requirement that an issuer have an office in Canada, and there is no requirement that an issuer be incorporated in Canada. However, foreign issuers that do not have an office in Canada are required to file a submission to jurisdiction and to appoint an agent for service of process. The same requirement applies to certain others connected to the foreign issuer, such as directors who reside outside of Canada. Foreign issuers are also encouraged to have a strategy to develop relationships with the investment community in Canada, and a plan to satisfy all of their reporting and public company obligations in Canada. This may be achieved by having a member of the board of directors or management, an employee, or a consultant of the issuer situated in Canada.

# Costs

### What costs are incurred to complete an IPO in Canada?

In addition to the time commitment of management, the following is a list of some of the expenses that can be anticipated in completing an IPO in Canada:

- Underwriters' or agents' fees (typically 4 to 7% of gross IPO proceeds)
- Legal fees
- Fees of auditors
- Fees for preparing a technical report (for mining and oil & gas companies)
- Filing fees paid to Canadian securities regulators (approximately C$20,000 assuming the filing of a prospectus in all provinces, plus an amount based on size of offering in certain provinces)
- Listing fees paid to the exchange
- Printing costs for the prospectus and road show materials
- Costs associated with marketing initiatives
- Translation fees (if offering is made in the province of Québec)
- Transfer agency fees

# Ongoing reporting obligations

### Once we complete an IPO, what is the nature of our ongoing reporting obligations?

Once an issuer completes an IPO, the issuer is subject to all requirements applicable to a “reporting issuer” under Canadian securities legislation, including continuous disclosure obligations. Also, insiders of the issuer become subject to reporting and other obligations and restrictions. Moreover, in order to maintain a listing, the exchange must be notified and approve of any proposed change in capital structure and other specified events.

# Alternatives to an IPO

## Reverse Take-over (RTO)

In an RTO, a publicly listed issuer (typically a dormant company with minimal assets) acquires a private issuer (the company attempting to go public) and the private issuer becomes a subsidiary of the listed issuer. Shareholders of the private issuer become the controlling shareholders of the publicly listed issuer following completion of the RTO. An RTO can be structured in a number of ways, including a merger or share exchange. The RTO is subject to the approval of the shareholders of the public company. Although the proxy circular distributed to the shareholders of the public company to obtain such approval is not reviewed by Canadian securities regulators, it must contain prospectus-level disclosure of the public company, private issuer and the issuer resulting from the RTO. Moreover, the transaction is subject to the review and approval of the exchange the public company is listed on, and the issuer resulting from the RTO must still meet the original listing requirements of that exchange.

The financial statements of the private company required to be included in the proxy circular are similar to financial statements that would be required in a prospectus for an IPO. The time and costs of completing an RTO are similar to the time and costs of completing an IPO. An additional factor in an RTO is that the private issuer must conduct due diligence on the public shell company to ensure that it is "clean" (i.e., that it has no undisclosed liabilities from a prior business). Moreover, the existing shareholders in the public shell company remain in place (although their equity interest in the public shell company is significantly diluted by the equity issued to the shareholders of the private issuer).

Generally, a financing transaction (typically one or more private placements at the public company or private company level) will be conducted concurrently with and conditional on the completion of the RTO. This ensures that the resulting issuer is able to meet applicable stock exchange listing requirements and has sufficient working capital to conduct its business.

> "The time and costs of completing an RTO are similar to the time and costs of completing an IPO"





The advantages and disadvantages of an RTO versus an IPO are as follows:

### Advantages of an RTO

- **No prospectus.** No prospectus is required and the disclosure document relating to the RTO will not be subject to review by the securities commissions.
- **Strategic alliance.** There may be strategic reasons for combining the business or assets of the private company and public company.
- **Shareholder base.** The pre-existing shareholders of the public company will become shareholders of the private company, which will assist in meeting the applicable stock exchange's public float and distribution requirements.
- **Liquidity.** The private company will be able to leverage off the public company's existing stock exchange listing and liquidity.
- **Leverage management.** The private company will be able to leverage off the public company's relationships and experience as it progresses through the RTO transaction process, including communications with the stock exchange, other regulators and investors.
- **No capital raise**. There is no need to go through the lengthy and costly process of attracting underwriters and marketing to investors that is required for an IPO prospectus.
- **Exit strategy.** An RTO provides a possible exit strategy for the public company, its management and security holders.

### Disadvantages of an RTO

- **Less cash**. The capital raised by a private placement financing in conjunction with an RTO is generally less than the capital raised by an IPO.
- **Shareholder approval.** The public company will likely need to convene a shareholders' meeting and obtain shareholder approval in order to complete the RTO. The proxy circular will also need to contain prospectus-level disclosure.
- **Public disclosure.** The disclosure document for an RTO transaction is required to include prospectus-level disclosure with respect to the private company.
- **Due diligence.** The private company will have to undergo rigorous due diligence and publicly disclose information which it previously had not made public. The private company will also need to conduct due diligence on the public company to ensure that it is not inheriting any material unknown or unforeseen liabilities as a result of the RTO transaction.
- **Timing.** The timing for an RTO is generally comparable to an IPO as a result of shareholder approval and stock exchange filing requirements.



## Capital pool company (CPC) / Special purpose acquisition corporation (SPAC)

The TSX-V offers a capital pool company (CPC) program, which allows founders to form a shell company with the objective of raising capital in an IPO to later complete an RTO or similar qualifying transaction. The CPC can raise up to a maximum of C$10 million, and there is no deadline by which its qualifying transaction must be completed (provided however the TSX-V may suspend from trading or delist the listed shares of a CPC where the TSX-V has not issued a final exchange bulletin to the CPC within 24 months after the date of listing).

From the perspective of the target (i.e., the private company), the CPC program may provide some advantages over the traditional IPO process. First, the private company can generally go public at an earlier stage in its development than it can by completing a traditional IPO. Second, the CPC program may also provide access to public capital markets without having to incur the significant upfront costs required before a traditional IPO may be marketed to potential investors.

An advantage of completing a qualifying transaction with a CPC over a regular reverse take-over transaction is that approval of the shareholders of the CPC is not required unless the parties are not at arm's length, or the qualifying transaction is structured in a manner requiring shareholder approval under applicable corporate or securities laws. In most cases, the required disclosure document is a filing statement or, if shareholder approval is required, a proxy circular.

Either way, however, prospectus-level disclosure is required. Due diligence of the public shell company is typically more straightforward for a qualifying transaction with a CPC than for a regular reverse take-over in that the CPC will not have carried on any active business prior to the completion of the qualifying transaction. The financial statements of the private company required to be included in the filing statement or proxy circular for a qualifying transaction are similar to financial statements required for an issuer completing an IPO. Time and costs in completing a qualifying transaction may be less than for a reverse take-over if it is structured such that shareholder approval is not required.

Both the TSX and Cboe Canada have similar programs for larger cap companies. In those programs, the shell company is called a special purpose acquisition corporation (SPAC). A SPAC is required to raise a minimum of C$30 million and to complete the acquisition of the target business within 36 months of the IPO.

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