

Proposed TSX Listing Rules for Special Purpose Acquisition Corporations

[Derek Sigel](#)

Closely following the example of regulators in the United States, the Toronto Stock Exchange (TSX) has published proposed rules that would allow the listing of special purpose acquisition corporations (SPACs). A SPAC is a shell corporation that is taken public with the intention of completing an undetermined future acquisition (Qualifying Acquisition). While SPACs are similar to capital pool companies (CPCs) currently listed on the TSX Venture Exchange, SPACs are generally much larger than CPCs and typically complete much larger transactions. According to the TSX, an aggregate of \$18.6 Billion has been raised by SPACs in the United States who have yet to consummate a Qualifying Acquisition as at April 30th, 2008. SPACs are currently listed on the Amex and NYSE, and listing will soon be available on NASDAQ. Comments on the TSX proposal are due by September 15th, 2008. The proposed rules will also be subject to approval of the Ontario Securities Commission.

SPAC ROADMAP

Typically, a SPAC is set up by a small group of founders consisting of industry executives and sophisticated investors, who will become the management team of the SPAC. These founders acquire shares for nominal consideration (Founder Securities) prior to completing an IPO. Once public, the SPAC has 36 months in which to consummate a Qualifying Acquisition. The SPAC must distribute a circular containing prospectus level disclosure regarding the Qualifying Acquisition, and the transaction must be approved by a majority of securityholder votes, excluding votes of the founders. In the event that a Qualifying Acquisition is not consummated within 36 months, the SPAC is liquidated and proceeds distributed rateably among securityholders (other than Founder Securities).

THE INITIAL PUBLIC OFFERING

In order to qualify the listing of SPAC securities, a prospectus must be filed with the relevant

securities regulator and a listing application filed with the TSX. The proposed rules require a minimum of \$30 million be raised in the IPO, at a minimum IPO issue price per security of \$5.00.

Under the proposed rules, founders are required to hold an equity interest of at least 10%. Typically this interest is purchased in advance of the IPO at a price which may be significantly less than the IPO price. Consequently, these securities may not be transferred prior to the completion of the Qualifying Acquisition, may not vote on the Qualifying Acquisition and will not be permitted to receive proceeds from any liquidation distribution.

At the time of listing, a SPAC must not be engaged in active business and may not have entered into any agreement in respect of a Qualifying Acquisition.

IPO PROCEEDS AND COMMISSIONS HELD IN TRUST

In order to protect the capital invested by public investors, the proposed rules require that a minimum of 90% of the gross proceeds raised in the IPO be held in trust. In addition, 50% of any commissions paid to a dealer in respect of the IPO must also be placed in trust, and are only to be released to the dealer upon completion of a Qualifying Acquisition.

CONVERSION AND LIQUIDATION FEATURES

Securities issued by the SPAC in the IPO must include both a conversion right and a liquidation distribution feature. The conversion right allows public securityholders who vote against a proposed Qualifying Acquisition to convert their securities into a pro rata portion of the proceeds held in trust if the Qualifying Acquisition is completed. The liquidation distribution feature returns a pro rata portion of the proceeds held in trust to securityholders if a Qualifying Acquisition is not completed within 36 months. The Founder Securities are not entitled to participate in the liquidation distribution.

QUALIFYING ACQUISITION

A Qualifying Acquisition must be approved by a majority of public securityholders votes, excluding the founders. The value of the Qualifying Acquisition must be at least 80% of the proceeds held in trust (not including any commission). The 80% threshold can be met through more than one acquisition, however each acquisition must receive securityholder approval and the acquisitions must close concurrently.

The SPAC must provide securityholders with prospectus level disclosure regarding the Qualifying Acquisition. The SPAC must prepare an information circular containing prospectus level disclosure and obtain approval of the TSX prior to distribution of the circular to securityholders. In addition, the SPAC must file and obtain a receipt from applicable securities regulators for a non-offering prospectus that provides full, true and plain disclosure about the resulting issuer, assuming the completion of the Qualifying Acquisition.

Once a Qualifying Acquisition has been completed, the resulting issuer will be subject to all continued listing requirements of the TSX.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation.

If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.

Wildeboer Dellelce LLP

Wildeboer Dellelce Place
365 Bay Street, Suite 800
Toronto, ON M5H 2V1
Phone: (416) 361-3121
Fax: (416) 361-1790

72 Victoria Street South, Suite 401
Kitchener, Ontario N2G 4Y9
Phone: (519) 741-8708
Fax: (519) 741-9576



wildlaw.ca