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CNSX vs. TSX-V

By Tiffany Walsh

The Toronto Stock Exchange Venture (TSX-V) and the Canadian National Stock Exchange (CNSX) are both public capital markets that cater to small cap companies that wish to expand their equity financing opportunities.¹ There are many listing requirements to be complied with and several advantages/disadvantages for each market that are analyzed below.

Methods go to Public

A company can list on the TSX-V or CNSX by an Initial Public Offering (IPO), a Reverse Take-Over (RTO) – which is also known as a reverse merger, by a private placement or direct listing. A company can also get access to the TSX-V through its Capital Pool Company (CPC) program.

An IPO is the traditional method of going public and has traditionally been viewed as the “pinnacle of success.”² First, a preliminary prospectus must be filed with the TSX-V or CNSX, as well as the corporation’s province securities commission³ and any other jurisdictions where the securities will be sold.⁴ Once the regulatory authorities review the prospectus and have no further comments, the company must file an amended prospectus correcting the deficiencies in final form.⁵ Once the prospectus is approved, the company may begin selling securities in the province where a final receipt has been issued⁶ through an investment dealer.⁷

Another way to list a company on the TSX-V or CNSX is via a RTO. This means, the private company that wishes to go public is injected into an existing company that has minimal operations and assets but maintains its reporting issuer status (commonly called ‘a shell company’).⁸ The private company’s shares are exchanged for the shares of the public shell,⁹ so the new owners of the public shell are now shareholders from the private company. The operating business of the private company stays intact,

¹ See http://www.tmx.com/en/listings/listing_with_us/benefits/index.html [hereinafter TSXV Benefits]; see also http://www.cnsx.ca/Page.asp?PageID=122&ContentID=491&SiteNodeID=162&BL_ExpandID=1393.

² William Woods, CNSX managing director, Raising Capital and Going Public the CNSX way (July 6, 2011) [hereinafter CNSX Woods].

³ http://www.tmx.com/en/listings/listing_with_us/ways/initial_offering.html [hereinafter IPO] (Note: You must first receive the provincial commission’s approval before the exchange will sign off on you.).

⁴ *Id.*, <http://www.gopublicincanada.com/going-public-in-canada.html> [hereinafter CNSX Methods] (stating, There is an offering prospectus and non-offering prospectus. An offering prospectus is issued when a company offers to sell its shares to the public and a non-offering prospectus is for a company that will not offer to sell its shares to the public. The primary purpose of the non-offering prospectus is to become a reporting issuer. Each prospectus must contain full, true and plain disclosure to the public about the company.).

⁵ See IPO.

⁶ *Id.*

⁷ CNSX Woods.

⁸ See CNSX Methods.

⁹ DAVID N. FELDMAN, REVERSE MERGERS; AND OTHER ALTERNATIVES TO TRADITIONAL IPOs 44 (Bloomberg Press 2009) (2006).

and the business of the shell company ceases to exist.¹⁰ RTOs provide the quickest means for companies to access the public markets, that's why 44% of companies that went public on the TSX-V in 2010 did so via RTO.¹¹ The transaction only takes a few weeks to complete but can end up being quite costly.

A private placement is similar to the IPO process however it is not a public offering, so a non-offering prospectus is used instead.¹² The private placement typically happens right before the company will go public but can also happen when the company is already public and listed on the exchange (through the secondary market).¹³ Because the securities are not offered under an offering prospectus, the company cannot sell to the general public like the IPO can; the company's offerings are limited to friends, family and accredited investors.¹⁴ After the private placement the company uses the non-offering prospectus to qualify the shares as free trading on the exchange. This method is typically cheaper and faster because the prospectus is more simplistic by not selling new shares.

If your company is currently listed on another exchange or market, such as the Over the Counter Bulletin Board in the United States, the company can qualify for a direct listing on the TSX-V.¹⁵ To dual-list the company, the issuer should first set-up an advisory meeting with TMX staff so they can review the listing suitability.¹⁶ Then the company must file the listing application and other listing documents¹⁷ with the TSX-V¹⁸ and wait for conditional approval¹⁹ (assuming the issuer has audited financial statements that comply with IFRS – International Financial Reporting Standards). “Following the submission of final listing documentation [and upon] satisfaction of all conditions, final approval is granted and trading commences.”²⁰

¹⁰ See generally *id.* at 45-46 (“[T]he newly formed subsidiary of the shell, as the nonsurviving corporation, disappears and the private company, as the surviving corporation, becomes a wholly owned subsidiary of the shell, with the owners of the formerly private company owning the majority of the shares of the shell following the deal’s closing.”).

¹¹ TMX, *A Capital Opportunity; Guide to Listing*, PROMOTIONAL MATERIAL, at 12, available at <http://www.tmx.com/en/pdf/InternationalGuidetoListing.pdf>.

¹² See CNSX Woods (A non-offering prospectus registers only the existing shareholder’s shares to trade publicly. An offering prospectus, which is used in a traditional IPO, registers the existing shareholder’s shares and issues new shares by selling them to the public through an investment dealer.).

¹³ See *id.*

¹⁴ *Id.*

¹⁵ See TMX, *supra* note 10, at 12. See generally TMX *supra* note 10, at 23 (Companies interlisted with TSX or TSX-V and a U.S. market: NYSE 93, NYSE Amex 72, OTCQX 63, NASDAQ 42).

¹⁶ See TMX, *TMX Dual-Listing Guide; for International Public Companies*, PROMOTIONAL MATERIAL, at 6, available at <http://www.tmx.com/en/pdf/DualListingGuide.pdf>.

¹⁷ TMX, *supra* note 16, at 7 (stating,

Listing documents required to be filed: Draft listing application and principal disclosure document, application fees, personal information forms, financial statements, articles or corporate by-laws, projected sources and uses of funds, sponsorship report (if applicable), technical reports for mining and oil and gas applicants, material contracts and other required documents.).

¹⁸ See generally *id.* at 8 (It is important to note that:

TSXV follows the prospectus requirements for financial statements in all listing scenarios [TSXV does not have any exemptions for dual listed companies]. TSX [does have exemptions for companies listed on another recognized market and it] requires applicants listed on another exchange to file audited financial statements for the most recently completed financial year and unaudited financial statements for the financial quarter (or half year statements), depending on the jurisdiction.).

¹⁹ *Id.* at 11.

²⁰ *Id.*

TSX-V exclusively offers a unique listing vehicle for companies through its CPC program.²¹ A CPC is listed on the exchange and is identified with a '.P' symbol to indicate its CPC status²². First, the CPC enters into an agreement with a business (the 'qualifying transaction') to acquire the business or assets.²³ Once the appropriate documentation is filed and everything is approved by the exchange, the TSX-V will remove the '.P' from the ticker symbol and the new business now trades as a regular TSX-V listed company.²⁴

TSX-V Listing Requirements

The TSX-V has 2 tiers. Tier one is for senior companies and tier two is for small cap companies.²⁵

²¹ http://www.tmx.com/en/listings/listing_with_us/ways/capital_company.html [hereinafter CPC].

²² See generally *id.* (Creating the CPC & listing it on the TSX-V:

- Requires 3-6 investors with an appropriate combination of business and public company experience to put up 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).
- These founders incorporate a shell company - the Capital Pool Company (CPC) - and issue shares to the founders which are priced at the greater of \$0.05 or 50% of the price at which the IPO shares will be offered. The seed shares are subject to escrow, to be released over a 3 year period that begins on the date that the qualifying transaction is completed.
- The CPC and its advisors prepare a prospectus that outlines management's intention to raise between \$200,000 and \$4,750,000 by selling CPC shares at typically twice the issuance price of the seed shares (minimum of \$0.10), and to use the proceeds to identify and evaluate potential acquisitions.
- The CPC files the prospectus with the appropriate securities commission(s), and applies for listing on TSX Venture Exchange.
- The broker sells the CPC shares, pursuant to the prospectus, to at least 200 shareholders, each purchasing at least 1,000 shares. 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 purchase 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 will sign the CPC Prospectus as the underwriter. The agent's commission cannot exceed 10% of the gross proceedings raised pursuant to the IPO or 10% of the total number of IPO shares.
- Once the distribution of the shares has been completed and closed, the CPC is listed for trading on TSX Venture Exchange. The symbol includes a .P to identify the company as a CPC.).

²³ *Id.* (A qualifying transaction could also be the CPC acquiring an asset like a mining property).

²⁴ See generally *id.* (Acquiring the business:

- The CPC must identify an appropriate business as its "qualifying transaction" within 24 months and then issue a news release to announce that it has entered an agreement in principle to acquire the business.
- The CPC prepares one of the following for approval by TSX-V within 75 days of the announcement, which provides prospectus level disclosure on the business that is to be acquired:
 - Draft filing statement (if a shareholder vote is not required to complete the qualifying transaction); or
 - Information circular (if a shareholder vote is required as a result of the changes in the corporate structure ex. Name change).
- If shareholder approval is not required, the CPC Filing statement must be filed on SEDAR at least 7 business days prior to the closing of the Qualified Transaction
- TSX Venture reviews the disclosure document and evaluates the business to ensure it meets minimum listing requirements. If everything is satisfactory, the TSX-V will remove the ".P" from the ticker symbol and the company now trades as a regular TSX-V listed company.).

²⁵ See <http://www.tmx.com/en/pdf/Policy2-1.pdf> [hereinafter TSXV Policy Manual], see also http://www.venturelawcorp.com/tsx_venture_exchange.htm [hereinafter TSXV Requirements].

Tier one companies must have a minimum IPO price of C\$.15 conducted concurrent to listing, a minimum free trading public float of 1,000,000 shares or 10% of all issued and outstanding shares to be listed (whichever is greater), and the public must hold at least 20% of it.²⁶ Industrial, technology and life science companies require C\$5,000,000 in net tangible assets or C\$5,000,000 in revenue,²⁷ real estate companies require C\$5,000,000 in net tangible assets, mining companies require \$2,000,000 in net tangible assets,²⁸ and investment companies require C\$10,000,000 in net tangible assets.²⁹ In addition, each company must have at least C\$200,000 additional working capital and 250 public board lot holders.³⁰

Tier two companies must have a minimum IPO price of C\$0.15 conducted concurrent to listing, a minimum free trading public float of 1,000,000 shares or 10% of all issued and outstanding shares to be listed (whichever is greater), and the public must hold at least 20% it.³¹ Industrial, technology and life science companies require C\$750,000 of net tangible assets, C\$500,000 in revenue, or C\$2,000,000³² arm's length financing.³³ Where as real estate and investment companies require C\$2,000,000 in net tangible assets, or C\$3,000,000 arm's length financing.³⁴ There is no a net tangible asset, revenue or financing requirement for mining or oil and gas companies.³⁵ In addition, each company must have at least C\$100,000 of additional working capital and 200 public board lot holders.³⁶

CNSX Listing Requirements

To list a company's shares on the CNSX, the company must be an active business that is fully reporting in at least one province in Canada.³⁷ It must have a minimum of

²⁶ *Id.*

²⁷ *Id.* (If there is no revenue for industrial, technology or life science companies then TSX-V requires a 2 year management plan demonstrating a reasonable likelihood of revenue within 24 months, however there must be a history of operations or a validation of the business.).

²⁸ TSXV Policy Manual (Mining companies also require "a work program with an initial phase of no less than \$500,000 as recommended in a Geological Report").

²⁹ *Id.*, TSXV Requirements (The cash in treasury must be adequate to carry out the stated work plan or to execute the business plan for 18 months following listing. Investment companies require a disclosed investment policy.).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (If there is no revenue, the company is required to produce a two year management plan demonstrating a reasonable likelihood of revenue within 24 months. The cash in treasury must be adequate to carry out the stated work plan or to execute the business plan for 18 months following listing. Also, the company must have a history of operations or a validation of the business.).

³³ TSXV Policy Manual ("Arm's Length Financing" is any financing from which no more than 25% of the proceeds are obtained from Non Arm's Length Parties.").

³⁴ *Id.*, TSXV Requirements (The cash in treasury must be adequate to carry out the stated work plan or to execute the business plan for 18 months following listing. Investment companies also need a disclosed investment policy and 50% of available funds must be allocated to at least 2 specific investments.).

³⁵ *Id.*

³⁶ *Id.* (The TSX-V will also review listing candidates to ensure good reputation among all directors, officers and majority stockholders, that there is a minimum of 2 independent directors, and adequate distribution and spread of the company stock (capital structure) for each tier.).

³⁷ http://www.venturelawcorp.com/listing_requirements_cnq.htm [hereinafter CNSX Requirements]. See generally CNSX Woods (Steps to listing on CNSX exchange:

150 public stockholders holding a minimum board lot of 100 shares each, and a minimum of 500,000 shares held publicly (which represents at least 10% of the issued share capital).³⁸ The total freely tradable shares must be worth at least C\$50,000 and the company must demonstrate revenue from operations or have working capital of \$100,000.³⁹ In addition, the company must have a letter from the broker dealer agreeing to act as the market maker for the securities of the company once the shares are approved for listing.⁴⁰ After approval, the company must post monthly progress reports, quarterly updates and yearly amendments to the listing statement on the CNSX website.⁴¹

TSX-V Advantages vs. Disadvantages

The TSX-V is Canada's junior listing market, which provides access to growth capital for early stage companies so they can further develop their business while offering investors a well-regulated market for making venture investments.⁴² Since 1999 when the TSX-V was created⁴³ trading volume and value has continued to increase. As of April 2011 trading volume had increased 51% compared to April 2010⁴⁴, while the total value of listed securities and yearly transactions have doubled from April 2010 to April 2011.⁴⁵ Given the increased popularity⁴⁶ of the TSX-V as a world-class market, it offers its listed companies greater access to capital, liquidity and visibility which ultimately creates a higher level of prestige and investing credibility.⁴⁷ The markets popularity has also enabled companies to create attractive employee incentive programs where the employees of the company are issued stock options.⁴⁸ Employees are then more motivated by participating in the ownership of the company and the company can provide compensation without depleting its cash resources.⁴⁹

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- Submit a preliminary application letter (Form 1A). CNSX will do a background check on the directors of the company. Need CNSX Personal Information Form (Form 3) and listing application (Form 1B), and C\$2,000 listing fee cheque to get everything going and have CNSX looking at the application. Note: that the company can reserve a stock symbol early on.
 - Satisfy the listing requirements set forth above.
 - Submit the final listing statements: Disclosure documents about the business (Form 2A), the listing summary (Form 2B), and the listing agreement indicating that will comply with the rules and regulations (Form 4). The CNSX requires these forms along with the supporting documentation and the final C\$8,000 cheque toward the listing fee. The issuer can get conditional approval with all this done.)

³⁸ CNSX, *The Stock Exchange of the Future – Now*, PROMOTIONAL MATERIAL, July 6, 2011, at 2. See CNSX Requirements.

³⁹ See CNSX Requirements (Operating companies must have achieved revenue and non-operating companies must have a reasonable plan to develop an active business and the financial resources to carry out that plan.)

⁴⁰ *Id.*

⁴¹ CNSX, *supra* note 37, at 3.

⁴² http://www.tmx.com/en/about_tsx/.

⁴³ See <http://www.finweb.com/investing/the-tsx-venture-exchange.html>.

⁴⁴ TMX Group, *Consolidated Trading Statistics April 2011*, PROMOTIONAL MATERIAL, May 3, 2011, at 12, available at http://tmx.com/en/pdf/month_stats/TradingStats_Apr11.pdf.

⁴⁵ See *id.* (April 2011 value was C\$5,757,640,113 compared to C\$2,885,389,772 in April 2010. April 2011 transactions were 1,520,966 compared to 745,168 in April 2010.)

⁴⁶ See generally <http://infoventure.tsx.com/> (“With more than 3,600 listed issuers, TSX and TSXV are second in the world for number of listed issuers.”).

⁴⁷ See TSXV Benefits.

⁴⁸ *Id.*

⁴⁹ *Id.*

The TSX-V caters to oil and gas, real-estate, investment, industrial, technology and life science companies, but is most highly regarded for its emerging mining companies.⁵⁰ From exploration to production, the Toronto exchanges are home to 55% of the world's publicly traded mining companies.⁵¹ This is partially because companies that start on the TSX-V have the benefit of graduating to the TSX once they are more developed.⁵²

Another benefit the TSX-V offers is their CPC Program which provides significant benefits to experienced investors and to the company seeking capital through a public listing.⁵³ This program allows emerging private companies to get past the cost and time required to go public because the CPC raises the necessary funds.⁵⁴ The CPC process also has more certainty because the public vehicle (CPC) has a clean record and thus the company that wishes to go public will not have to worry about acquiring a potentially dirty shell.⁵⁵

Unfortunately, many of the TSX-V benefits come at quite a cost. To list on the TSX-V it will cost a company between C\$7,500 and C\$40,000.⁵⁶ Accounting and auditing fees may cost the company C\$25,000 – C\$100,000⁵⁷ depending on the company's size, revenues and organization. Legal fees will cost at least C\$75,000 and the company can expect future ongoing expenses such as a C\$5,500 yearly sustaining fee and filing costs of periodic, quarterly and annual reports with the securities commissions.⁵⁸

As the TSX-V popularity continues to increase so do its listing benefits. From increased prestige and credibility to increased liquidity for founders and shareholders alike, the TSX-V is a great exchange for small cap companies to list on. However,

⁵⁰ See TSXV Policy Manual.

⁵¹ http://www.cbj.ca/features/february_11_features/the_advantages_of_resource-based_exchanges_the_tsx_and_tsx-ventu.html?print.

⁵² http://www.tmx.com/en/listings/venture_issuer_resources/graduation_to_tsx/index.html (Companies that graduate to the TSX have their 10k application fee waived).

⁵³ See CPC; see also TMX Group, *Capital Pool Company Program*, PROMOTIONAL MATERIAL, at X, available at <http://www.tmx.com/en/pdf/CPCBrochure.pdf>.

⁵⁴ *Id.* (stating,

At least 3 individuals with an appropriate combination of business and public company experience put up the greater of \$100,000 or 5% of the total funds raised. These founders incorporate a shell company (CPC) and issue shares in exchange for seed capital at a minimum price of C\$.05 or 50% of the price at which subsequent shares are to be sold via prospectus (whichever is greater).).

See generally Robert Munroe, *The Chrysalis Capital, The Capital Pool Company Program: Canada's Alternative Listing Option*, Reverse Merger Conference, Toronto (June 29, 2010) (transcript available on the Reverse Merger Conference CD Rom 2010) (stating,

In contrast, an IPO is generally more expensive and riskier than a CPC because the company is putting all of its power in the hands of investment bankers and the IPO can be cancelled at anytime after the company spends a fortune in legal costs.).

⁵⁵ *See generally* Feldman, *supra* note 8, at 162

(Due diligence is as important for shell owners as for private companies – in fact, in some ways more important. Directors of a shell have a fiduciary responsibility to the shell's public shareholders to carefully review the private company, especially when shareholder approval of the proposed transaction will not be obtained.).

⁵⁶ http://www.tmx.com/en/listings/listing_with_us/costs/index.html [hereinafter TSXV Costs].

⁵⁷ *Id.*

⁵⁸ *Id.*

because of the large associated costs, a company must consider its financial means to do so beforehand.

CNSX Advantages vs. Disadvantages

CNSX, formerly known as the CNQ, started in 2003 and was rebranded as the CNSX in 2008 with the intention of serving the underserved and overcharged junior market.⁵⁹ Although the CNSX statistics are less impressive than the TSX-V,⁶⁰ the CNSX is a full service stock exchange that provides a much cheaper and efficient procedure to get listed. CNSX listed companies have no filing fees, no transaction based fees and the companies do not need to seek exchange approval before completing acquisition or financing transactions.⁶¹ Also, the total listing fee for the CNSX is C\$10,000 with only a C\$3,600 yearly sustaining fee.⁶² In comparison, the TSX-V listing fee is anywhere from C\$7,500 – C\$40,000,⁶³ and its yearly sustaining fee is C\$5,500.⁶⁴

CNSX listed companies have less stringent guidelines to get listed compared to other exchanges. For example, the TSX-V specifies that a mining company must raise as much money as its geologist requires to list on the exchange⁶⁵ but the CNSX doesn't do that, it only requires the company have C\$100,000 in working capital.⁶⁶

The main advantage that the CNSX has over the TSX-V is the disclosure model. The CNSX does not review disclosures; there is absolutely no review process to ensure existing rules are being complied with. The company's only obligation is to post monthly updates on the CNSX website, along with their quarterly and annual statements. This means CNSX companies have more efficiency by eliminating the wait for review, and have lower costs by eliminating the associated filing charges.⁶⁷ "CNSX listed companies can close a financing transaction within 24 hours simply by posting the appropriate form on the CNSX website and if the transaction is material, issuing a press release."⁶⁸ Furthermore, the monthly disclosures provide investors with adequate information about company goals and current progress, and also provides a venue for the company to market itself for free.

⁵⁹ James Black, CNSX Business Development, Raising Capital and Going Public the CNSX way (July 6, 2011) [hereinafter CNSX Black].

⁶⁰ See generally CNSX Woods (There are 154 companies listed on the CNSX as of July 6, 2011. Expect 175 companies to be listed by the end of the year).

⁶¹ CNSX, *supra* note 37, at 2-3.

⁶² <http://www.gopublicincanada.com/cnq-advantage.html> [hereinafter CNSX Advantages].

⁶³ TSXV Costs.

⁶⁴ CNSX Advantages.

⁶⁵ See TSXV Policy Manual (stating,

Tier 2 initial listing requirements for prior expenditures/work program require a sufficient evidence of no less than \$100,000 of approved expenditures by issuer on qualifying property within 36 months period preceding application for listing and a work program with an initial phase of no less than \$200,000 as recommended in a geological report.).

⁶⁶ See CNSX Woods; see also http://www.venturelawcorp.com/listing_requirements_cnq.htm.

⁶⁷ See CNSX Black.

⁶⁸ CNSX Advantages.

The CNSX statistics are not as impressive as the TSX-V, as the CNSX is a new market still in the phase of growth. As of July 6, 2011, there were only 154 companies listed on the CNSX and an expected total of 175 companies to be listed by the end of 2011.⁶⁹ Because the CNSX market is less active, the access to capital and liquidity is more limited. This means that companies that are listed on the CNSX typically have less equity financing opportunities to grow their business and a smaller investor base.

Overall, the CNSX provides a micro-cap company with a cost-efficient and less rigorous means of going public. Although if the CNSX is the market a company is prepared to enter, its issuer must consider the company's future growth objectives and if immediate access to capital will be required.

⁶⁹ See CNSX Woods.