



Bennett Jones

# Routes to the Public Markets in Canada

IPO, SPAC, CPC or RTO



---

<b>Introduction</b> .....	<b>1</b>
<b>Summary Comparison of IPOs, SPACs, CPCs and RTOs</b> .....	<b>2</b>
<b>General Disclosure Obligations for IPOs, SPACs, CPCs and RTOs</b> .....	<b>8</b>
<b>Initial Public Offering (IPO)</b> .....	<b>9</b>
Advantages and Disadvantages of an IPO	
Marketed Listing	
Steps of an IPO	
Direct Listing	
Advantages and Disadvantages Specific to a Direct Listing	
<b>Reverse Merger Transaction (RMT)</b> .....	<b>14</b>
<b>Special Purpose Acquisition Corporation (SPAC)</b> .....	<b>15</b>
Key Features of a SPAC	
Advantages and Disadvantages of a SPAC QA	
Steps of a SPAC QA	
Sourcing a SPAC	
NEO Pilot Program: Growth Acquisition Corporation (G-Corp)	
<b>Capital Pool Company (CPC)</b> .....	<b>19</b>
Key Features of a CPC	
Advantages and Disadvantages of a CPC QT	
Steps of a CPC QT	
Sourcing a CPC	
<b>Reverse Take-Over (RTO)</b> .....	<b>22</b>
Advantages and Disadvantages of a RTO	
Steps of a RTO	
Sourcing a RTO Candidate	
<b>Stock Exchanges</b> .....	<b>26</b>
Toronto Stock Exchange (TSX)	
TSX Venture Exchange TSXV)	
NEO Exchange Inc. (NEO)	
Canadian Securities Exchange (CSE)	
<b>Conclusion</b> .....	<b>32</b>
<b>Principal Legislation and Further References</b> .....	<b>33</b>



# Introduction

Much has been written about *when* a business should go public and the considerations that inform that choice. Assuming the decision to go public has been made, second in importance to that determination is *how* a private company (PrivateCo) should go public.

In general, two routes exist for a PrivateCo to go public:

1. via an initial public offering (IPO) of its securities; or
2. a negotiated reverse merger transaction (RMT) with an existing public company.

The IPO process centers on the creation of a public company from a PrivateCo. An IPO may be accomplished by either a marketed listing of securities of PrivateCo or a direct listing of PrivateCo's securities on a stock exchange. Alternatively, a RMT involves the acquisition of a PrivateCo by an existing public company (typically a shell or inactive company), resulting in the shareholders of the PrivateCo ultimately owning a majority of the shares of the resulting public issuer (resulting issuer), which subsequently carries on the business of the PrivateCo.

A RMT may be accomplished by one of three means:

1. an acquisition of PrivateCo (a QA or qualifying acquisition) by a special purpose acquisition corporation (SPAC);

2. (an acquisition of PrivateCo (a QT or qualifying transaction) by a capital pool company (CPC); or
3. a reverse takeover (RTO) of an existing public company.

Our *Routes to the Public Markets in Canada* guide:

1. compares the main elements to be considered by a PrivateCo in evaluating going public by way of an IPO, SPAC, CPC or RTO;
2. discusses the advantages and disadvantages of, principal components of, and the process to implement going public by way of, an IPO, SPAC, CPC and RTO; and
3. briefly describes the four principal stock exchanges in Canada—being the Toronto Stock Exchange (TSX), the TSX Venture Exchange (TSXV), the NEO Exchange Inc. (NEO) and the Canadian Securities Exchange (CSE)—and their respective listing requirements.

It is important that a PrivateCo engages and consults with legal counsel, professional auditors and financial advisors early in the go public process. Such parties can assist with creating and identifying a strategy that is best suited to the business (including identifying challenges to be addressed), with the ultimate objective being the completion of a successful and efficient go public transaction.



# Summary Comparison of IPOs, SPACs, CPCs and RTOs

The following chart provides a summarized comparison of the principal elements a PrivateCo should consider when evaluating whether to go public by way of an IPO, SPAC, CPC or RTO.

	IPO	RMT		
		SPAC	CPC	RTO
<b>PERCEPTION</b>	<ul style="list-style-type: none"> <li>Traditional method, most common and well known route to the public markets.</li> </ul>	<ul style="list-style-type: none"> <li>Relatively new method, limited success in Canada.</li> </ul>	<ul style="list-style-type: none"> <li>Well understood method; suitable for smaller issuers.</li> </ul>	<ul style="list-style-type: none"> <li>Historical successes in oil and gas and mining (primarily on the TSXV), with recent success in cannabis and <i>green</i> industries (primarily on the CSE).</li> </ul>
<b>TIMING</b>	<ul style="list-style-type: none"> <li>5–7 months.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>3–4 months.<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>3–4 months.<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>3–6 months.<sup>4</sup></li> </ul>
<b>STOCK EXCHANGES</b>	<ul style="list-style-type: none"> <li>TSX, TSXV, NEO, CSE.</li> </ul>	<ul style="list-style-type: none"> <li>TSX, NEO, CSE.</li> </ul>	<ul style="list-style-type: none"> <li>TSXV.</li> </ul>	<ul style="list-style-type: none"> <li>TSX, TSXV, NEO, CSE.</li> </ul>
<b>SIZE</b>	<ul style="list-style-type: none"> <li>The majority of new listings on the TSX (the exchange for senior issuers) are IPOs, with the market capitalization of new IPO listings ranging from ~\$44 million to \$7 billion (YTD December 2022).</li> </ul>	<ul style="list-style-type: none"> <li>In the past 10 years, 11 QAs have been completed on the TSX, with the market capitalization of the issuer ranging from ~\$68 million to \$1.5 billion (2022).</li> </ul>	<ul style="list-style-type: none"> <li>The majority of new listings on the TSXV are CPCs and the issuers resulting from CPC QTs, with the market capitalization of such resulting issuers being ~\$14 to \$189 million (YTD December 2022).</li> </ul>	<ul style="list-style-type: none"> <li>RTOs are completed on all exchanges, with the market capitalization of new RTO listings ranging from ~\$4 to \$44 million on the TSXV and ~\$2.4 to \$4 billion on the TSX (YTD December 2022).</li> </ul>

## Summary Comparison of IPOs, SPACs, CPCs and RTOs

	IPO	RMT		
		SPAC	CPC	RTO
<b>PRICING &amp; MARKETING</b>	<ul style="list-style-type: none"> <li>• Share price determined at time of the IPO between underwriters and PrivateCo.</li> <li>• Intensive marketing.</li> <li>• Price subject to market volatility.</li> <li>• Risk of IPO timing being rescheduled due to market volatility and underwriter timelines.</li> </ul>	<ul style="list-style-type: none"> <li>• Share price determined at beginning of transaction between principals of SPAC and PrivateCo as part of merger negotiations.</li> <li>• No marketing required unless concurrent financing undertaken.</li> <li>• SPAC QA success unrelated to market volatility.</li> </ul>	<ul style="list-style-type: none"> <li>• Share price determined at beginning of transaction between principals of CPC and PrivateCo as part of merger negotiations</li> <li>• No marketing required unless concurrent financing undertaken.</li> <li>• CPC QT success unrelated to market volatility.</li> </ul>	<ul style="list-style-type: none"> <li>• Share exchange ratio determined at beginning of transaction between RTO issuer and PrivateCo as part of merger negotiations.</li> <li>• No marketing required unless concurrent financing undertaken.</li> <li>• RTO transaction success unrelated to market volatility.</li> </ul>
<b>COSTS</b>	<ul style="list-style-type: none"> <li>• Full range of direct costs.<sup>5</sup></li> <li>• Typical underwriter fees: 4%-6% on the TSX and up to 12% on the TSXV, NEO and CSE.</li> </ul>	<ul style="list-style-type: none"> <li>• Lower direct costs than IPO, as the listed issuer (SPAC, CPC or RTO issuer) is already publicly listed.<sup>5</sup></li> <li>• Higher indirect costs associated with due diligence of the PrivateCo or RTO issuer and negotiating and implementing the RMT.</li> <li>• Financial advisory fees depend on the size and structure of the transaction.</li> <li>• Sponsor fees (if required).</li> <li>• Agency fees if a concurrent financing is undertaken.</li> </ul>		

## Summary Comparison of IPOs, SPACs, CPCs and RTOs

	IPO	RMT		
		SPAC	CPC	RTO
<b>PROCESS</b>	<ul style="list-style-type: none"> <li>• Comprehensive diligence and preparation of documentation disclosing all relevant information about the PrivateCo's business.</li> <li>• Extensive engagement with underwriters and market analysts.</li> <li>• Stringent securities commissions review.</li> </ul>	<ul style="list-style-type: none"> <li>• SPAC undertakes IPO to raise capital for a QA.</li> <li>• Merger is completed through a QA post-listing of the SPAC, with shareholders of SPAC approving the QA, if required.</li> <li>• Comprehensive diligence and preparation of documentation disclosing all relevant information about the PrivateCo's business.</li> </ul>	<ul style="list-style-type: none"> <li>• CPC undertakes IPO to raise capital for a QT.</li> <li>• Merger is completed through a QT post-listing of the CPC, with shareholders of the CPC approving the QT, if required.</li> <li>• Comprehensive diligence and preparation of documentation disclosing all relevant information about the PrivateCo's business.</li> </ul>	<ul style="list-style-type: none"> <li>• Merger is completed through a RTO transaction, with shareholders of RTO issuer approving the RTO.</li> <li>• Additional financing and other corporate transactions possible (which may require PrivateCo and RTO issuer approvals).</li> <li>• Comprehensive diligence and preparation of documentation disclosing all relevant information about the PrivateCo's business and the RTO issuer.</li> </ul>

## Summary Comparison of IPOs, SPACs, CPCs and RTOs

	IPO	RMT		
		SPAC	CPC	RTO
<b>DISCLOSURE REQUIREMENTS</b>  (see also “General Disclosure obligations for IPOs, SPACs, CPCs and RTOs”)	<ul style="list-style-type: none"> <li>Preliminary Prospectus and Final Prospectus.</li> </ul>	<ul style="list-style-type: none"> <li>RMT merger agreement between PrivateCo and listed issuer (SPAC, CPC or RTO issuer) (i.e., share acquisition, plan of arrangement, amalgamation, etc.).</li> </ul>		
		<ul style="list-style-type: none"> <li>Information circular (if shareholder approval required), which would include prospectus level disclosure.</li> <li>Non offering prospectus or IPO prospectus in respect of the QA.</li> </ul>	<ul style="list-style-type: none"> <li>Information circular (if shareholder approval required) and/or filing statement, which would include prospectus level disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>Information circular (if shareholder approval required) and/or filing statement, which would include prospectus level disclosure.</li> </ul>
<b>REVIEWING AUTHORITIES</b>	<ul style="list-style-type: none"> <li>Securities commissions (for preliminary and final prospectus).</li> </ul>	<ul style="list-style-type: none"> <li>Primarily stock exchanges (subject to limitations imposed by securities commissions under applicable securities laws and review by securities commissions of a non-offering prospectus or IPO prospectus of a SPAC).</li> </ul>		
<b>SPONSORSHIP</b>		<ul style="list-style-type: none"> <li>Sponsorship may be required.</li> </ul>		
<b>DUE DILIGENCE/ CONTINGENT LIABILITIES</b>	<ul style="list-style-type: none"> <li>Extensive diligence is required to provide disclosure of all material facts in prospectus.</li> <li>Liabilities and litigation risks that existed while private continue through the going public event.</li> </ul>	<ul style="list-style-type: none"> <li>Diligence of SPAC shell limited given SPAC has no operating business (and limited litigation risk).</li> <li>Fulsome diligence must be completed by SPAC on target PrivateCo.</li> </ul>	<ul style="list-style-type: none"> <li>Diligence of CPC shell limited given CPC has no operating business (and limited litigation risk).</li> <li>Fulsome diligence must be completed by CPC on target PrivateCo.</li> </ul>	<ul style="list-style-type: none"> <li>Fulsome diligence must be conducted on both the PrivateCo and the RTO issuer.</li> <li>PrivateCo will need to consider any existing RTO issuer liabilities, including litigation.</li> </ul>

## Summary Comparison of IPOs, SPACs, CPCs and RTOs

	IPO	RMT		
		SPAC	CPC	RTO
<b>DIRECTOR, MANAGEMENT AND EMPLOYEE MATTERS</b>	<ul style="list-style-type: none"> <li>• Success of the going public transaction is partly dependent on the creation of market goodwill (which is typically enhanced by the involvement of directors/senior management with capital market experience and industry experts).</li> <li>• Directors and management of the new or resulting issuer are subject to review and approval by applicable securities commissions and exchanges (and each new director/senior management must file a “personal information form”).</li> </ul>			
	<ul style="list-style-type: none"> <li>• Management and employee teams stay consistent following the IPO.</li> <li>• PrivateCo may need to add additional members with experience in public companies to their boards and management teams to comply with applicable securities laws and exchange requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Management of the resulting issuer is primarily comprised of PrivateCo management but may include experienced management from the SPAC.</li> <li>• Ability to expand/ diversify PrivateCo’s management by involving sponsors in management of the business.</li> <li>• SPAC sponsors often represented on board of resulting issuer.</li> </ul>	<ul style="list-style-type: none"> <li>• Management of the resulting issuer is primarily comprised of PrivateCo management but may include experienced management from the CPC.</li> <li>• Ability to expand/ diversify PrivateCo’s management by involving sponsors in management of the business.</li> <li>• CPC founders often represented on board of resulting issuer.</li> </ul>	<ul style="list-style-type: none"> <li>• Management of the resulting issuer is primarily comprised of PrivateCo but may include experienced management from the RTO issuer.</li> <li>• PrivateCo may need to add additional members with experience in public companies to their boards and management teams to comply with applicable securities laws and exchange requirements.</li> <li>• Special consideration must be given to treatment of legacy employees of RTO issuer (i.e., termination issues), and transition of legacy personnel to new board and management.</li> </ul>



## Summary Comparison of IPOs, SPACs, CPCs and RTOs

	IPO	RMT		
		SPAC	CPC	RTO
<b>OTHER</b>	<ul style="list-style-type: none"> <li>• Non Canadian PrivateCos may have supplemental requirements imposed upon them in going public transactions by the applicable stock exchange.</li> <li>• PrivateCos that have their principal business or operating assets in emerging markets will need to comply with additional securities laws disclosure requirements and may also be subject to additional stock exchange requirements.</li> <li>• PrivateCos that have material assets in other jurisdictions may be subject to additional due diligence.</li> </ul>			

1. From preliminary prospectus drafting to close of IPO.

2. From Letter of Intent between SPAC shell and PrivateCo to closing of QA.

3. From Letter of Intent between CPC shell and PrivateCo to closing of QT.

4. From Letter of Intent between RTO issuer and PrivateCo to closing of RTO. Although a RTO can be completed in 3–4 months, the process more often takes up to 6 months.

5. Costs include legal advisors (for PrivateCo and, if applicable, the listed issuer), auditors, financial advisors/underwriters, sponsors, other industry experts (oil and gas, mining), exchange listing fees, securities filings, transfer agent, roadshow costs, investor relations fees, printing and mailing, director and officer liability insurance.



# General Disclosure Obligations for IPOs, SPACs, CPCs and RTOs

Regardless of the route the PrivateCo chooses to go public, securities commissions and stock exchanges impose certain disclosure requirements. In particular, PrivateCo must provide prospectus level disclosure in the applicable disclosure document to effect each type of transaction. The disclosure document may be a long-form prospectus, a non-offering prospectus, an information circular or a filing statement, depending on the structure of the going public transaction and the stock exchange in which the resulting issuer's securities will be listed.

Notably, the information required to be included in each of these disclosure documents is substantially similar. The resulting issuer must, in accordance with applicable securities laws, include the following information:

- the corporate structure;
- the business;
- business objectives and milestones of the business;
- technical report requirements in respect of oil and gas and mining activities; the form of transaction contemplated (including any financing);
- risk factors of the business and the transactions contemplated;
- capitalization; options to purchase securities; governance (including the board of directors and management);
- information regarding officers, directors, promoters and principal securityholders; interests of insiders in respect of material transactions (including the going public transaction);
- a description of material contracts; consents and approvals necessary to complete the transaction;
- material contracts; and
- financial information.

It is important to note that a PrivateCo must prepare historical financial statements and associated management discussion and analysis. Generally speaking, the financial statements of the issuer must include audited annual financial statements for the three most recently completed financial years and unaudited financial statements for the most recently completed interim period prior to the going public transaction. To the extent the going public transaction is implemented by a RMT, the PrivateCo and the listed issuer will likely be required to prepare pro forma information, including financial statements, in respect of the resulting issuer.



# Initial Public Offering (IPO)

An IPO is synonymous with going public and is the traditional method for a PrivateCo to access the public markets in Canada. The IPO process involves listing the PrivateCo's securities on a stock exchange and offering the public the opportunity to purchase those securities for the first time. To implement an IPO, issuers must prepare, file and obtain approval of a long-form prospectus with applicable securities commissions, and prepare and submit a listing application with the applicable stock exchange. The IPO process also requires considerable due diligence and disclosure of PrivateCo's business, future plans and inner workings.

The timeline for an IPO typically ranges between five to seven months. That said, the timeline largely depends on how long the PrivateCo takes to initially prepare for the IPO (including preparation and audit of required financial statements) and to address the comments of the applicable securities commissions on the prospectus and related documents.

An IPO may take one of two forms: a marketed public offering and a listing of newly issued PrivateCo securities, or a direct listing of previously issued PrivateCo securities. Which form is selected by the PrivateCo depends on the financial needs of PrivateCo's business.

## Advantages and Disadvantages of an IPO

### Advantages

- **Expertise:** Underwriters (investment bankers) are heavily involved in the IPO process. A PrivateCo that goes public via an IPO will likely receive strong strategic advice and industry expertise.

- **Identity and Culture:** IPOs generally allow for the preservation of a PrivateCo's vision and culture.
- **Flexibility:** Prospective issuers can choose between a marketed or a direct listing, thereby providing PrivateCos with the flexibility to determine what it values more: the publicity generated by a marketed listing or the cost savings associated with a direct listing (assuming the issuer does not require an immediate financing).
- **Publicity:** Marketed listings raise the public profile of PrivateCo and may provide value for PrivateCos which are not well known.

### Disadvantages

- **Expenses:** The IPO process is costly, in part, due to the strict due diligence and disclosure requirements required according to applicable securities laws. In particular, the PrivateCo must comply with applicable securities laws, stock exchange rules and institute internal controls and systems to monitor compliance with these requirements. Depending on the structure and size of the offering, additional costs may include costs for underwriters' commissions, fees for financing and marketing the securities, and other legal and filing costs.
- **Public Profile:** Whether the PrivateCo has a substantial public profile is a relevant consideration. Many successful financings conducted through a marketed listing IPO involve an established or well-known PrivateCo with a significant public profile. Thus, an IPO may not be the best route to the public market for PrivateCos that are not well-known to the investing public.

## Marketed Listing

A marketed listing is the most common route to an IPO. The process is managed by an investment bank (underwriter) and involves the issuance of new securities with the expectation that such securities will be sold to the public. Typically, the PrivateCo and the underwriter will agree that the IPO will be completed either on a best efforts basis (i.e., the underwriter uses its best efforts to sell the new securities of PrivateCo to the public, thereby limiting the bank's risk exposure) or on an underwritten basis (i.e., the underwriter commits to purchasing the entire offering of new securities of PrivateCo such that the underwriter assumes the risk that it may not be able to sell the securities to the public).

During a marketed listing offering, the underwriters and PrivateCo management and directors embark on a marketing roadshow. The roadshow is intended to promote and gauge the interest of investors in purchasing PrivateCo's newly issued securities.

## Steps of an IPO



## Preliminary Prospectus

The first public step in completing an IPO is filing a preliminary prospectus. A prospectus is the principal disclosure document which provides investors with the information necessary to make informed investment and valuation decisions regarding the securities to be offered pursuant to an IPO. The preliminary prospectus provides the items required by the prospectus form set out in National Instrument 41-101 – *General Prospectus Requirements*, as well as full, true, and plain disclosure of all material facts. The level of detail required in a preliminary prospectus depends on the level of materiality of the information and the significance of the information to investors. A prospectus serves as both a consumer protection and a marketing tool for prospective investors.

Particular industries have additional filing requirements. For instance, mining and oil and gas companies must file a technical report prepared by an expert detailing specific information relating to the mineral properties or reserves in conjunction with the preliminary prospectus.

Preparing a preliminary prospectus (and associated exchange listing application) involves significant due diligence by the underwriters and cooperation among PrivateCo's management, auditors, legal advisors and other experts. A preliminary prospectus typically excludes details of the proposed offering (i.e., the price and number of the securities, or the underwriters' fee), which is determined after the preliminary prospectus is filed during the marketing stage and disclosed in the final prospectus.

Once the preliminary prospectus is complete, it is filed with the relevant securities commissions and the stock exchange that will list the securities of PrivateCo. In Canada, securities commissions implemented the passport system. Multilateral Instrument 11-102 – *Passport System* creates a

single point of access to the markets in multiple Canadian jurisdictions. The passport system enables a PrivateCo to engage with a principal regulator to obtain deemed receipts in other jurisdictions (except Ontario) for a preliminary prospectus and prospectus. In other words, if an issuer obtains a receipt for a prospectus from its principal regulator (i.e., the securities regulatory authority or regulator of the jurisdiction where the issuer's head office is located), such receipt represents a receipt for a prospectus in other applicable jurisdictions. As a result, the issuer is not required to complete this process for every province/territory. PrivateCo and the underwriters will need to consider each jurisdiction (province and territory) in which securities will be offered to the public, noting that the prospectus will need to be filed with the securities commission in each such jurisdiction. If Québec is included in the offering jurisdictions, the PrivateCo will be required to translate the prospectus into French. Accordingly, the PrivateCo and the bank leading the IPO offering will need to weigh the costs of translation and filing the prospectus in Québec against the benefits of accessing prospective investors in Québec. When there has been substantial compliance with the filing requirements of securities laws, the principal regulator issues a receipt for the preliminary prospectus.

### Waiting Period

The period between the filing of the preliminary prospectus and the filing of the final prospectus with the securities commissions is referred to as the waiting period. This period differs for every issuer based on any deficiencies in the preliminary prospectus and any concerns the securities commissions raise in connection with the prospectus. During the waiting period, the preliminary prospectus is the sole document containing representations about PrivateCo and the securities to be offered and is publically filed on the

Canadian System for Electronic Document Analysis and Retrieval (SEDAR). Investors cannot purchase PrivateCo's securities during the waiting period. As such, the waiting period provides investors time to consider the essential features of the investment which the securities represent.

Though securities cannot be sold until after filing and receipt of the final prospectus, applicable securities laws allow management and underwriters to conduct limited marketing (i.e., road shows) and distribute a standard term sheet and limited marketing materials to potential investors in addition to an initial "testing of the waters" by underwriters to assess potential investor interest in an IPO. The term sheet and permitted marketing materials contain material facts relating to the PrivateCo, its securities, and the offering. All information included in the term sheet and marketing material must be disclosed in or derived from the preliminary prospectus and filed with the securities commissions prior to disclosure to potential investors.

The penalties for engaging in a marketing/promotional campaign contrary to applicable securities laws include a cease trade order, denial of a receipt of the prospectus, penal sanctions, or civil actions for recession or damages.

### Vetting the Preliminary Prospectus by Securities Commissions

After filing the preliminary prospectus, the securities commissions will review the preliminary prospectus and associated filings, and provide a comment letter outlining any deficiencies with the preliminary prospectus and concerns, if any, related to the proposed IPO. The process then enters the clearance period, which involves the PrivateCo and underwriters addressing the comments received from the securities commissions.

## Pricing

PrivateCo and the underwriters will finalize the terms of the offering (i.e., set the price and number of the securities to be offered under the IPO) prior to filing the final prospectus. After marketing the proposed offering, the underwriters will assemble a book of interested investors which provides an assessment of the expected demand for PrivateCo's securities. PrivateCo and the underwriters will collectively determine the number and price of the securities to be offered pursuant to the IPO. Such terms will be set out in the underwriting agreement and reflected in the final prospectus. Typically, the PrivateCo will want to maximize the price of the securities to be offered pursuant to the IPO; however, PrivateCo and underwriters need to set a price for the newly issued securities with an objective that the demand for the securities will be strong, resulting in a robust market for such securities.

## Final Prospectus

Once PrivateCo and the underwriters satisfy all of the concerns raised by the securities commissions in the comment letter, receive authorization from the securities commission to file the final prospectus, and price the offering, PrivateCo and the underwriters will approve the final prospectus. At this time, PrivateCo will file the final prospectus and associated documents, including the underwriting agreement and a letter from the underwriters demonstrating the issuer's sound financial stability, with the applicable securities commissions and the intended stock exchange.

PrivateCo will become a reporting issuer at the conclusion of the offering which is marked by the securities commission's issuance of a receipt. PrivateCo's securities are then listed on the stock exchange and sold to the underwriters, who proceed to confirm sales with investors and market the prospectus in the relevant jurisdictions.

## Listing on a Stock Exchange

The resulting issuer must satisfy the initial listing requirements of the relevant stock exchange and prepare and file a listing application and associated documentation in order to list its securities on a stock exchange. See "Stock Exchanges" below for additional information.

## Direct Listing

An alternative to a marketed listing is a direct listing IPO, which is completed by listing PrivateCo's securities on a stock exchange and filing a non offering prospectus (NOP) with the relevant securities commissions. A direct listing does not involve the offering of new securities prior to the listing of PrivateCo's securities on a stock exchange. Instead, PrivateCo's previously issued securities are qualified and listed on a stock exchange as part of the IPO.

The information contained in a NOP is the same as that contained in a prospectus for a marketed listing, except that details relating to a marketed offering of new securities are excluded. Further, the steps required to implement a direct listing are equivalent to those required for a marketed listing: PrivateCo must prepare and file a NOP containing full, true and plain disclosure with respect to PrivateCo's securities with the applicable securities commissions and prepare and submit a listing application to the relevant stock exchange. Again, the securities commission reviews and comments on the NOP. After addressing the securities commission's comments and obtaining approval for PrivateCo's listing application from the stock exchange, PrivateCo will file the final NOP on SEDAR. PrivateCo will receive a receipt from the securities commission and become a reporting issuer with its securities listed on the stock exchange.

## Advantages and Disadvantages Specific to a Direct Listing

The advantages and disadvantages of a direct listing IPO are generally similar to a marketed listing, with the following principal differences:

### Advantages

- **Capital, Speed and Simplicity:** A direct listing IPO allows a PrivateCo to go public without completing an offering and undertaking related marketing efforts. As a result, a direct listing IPO is more straightforward and cost effective (no underwriter fees associated with marketing, road shows, and pricing of PrivateCo's securities), and less risky (no risk of a failed offering) than a marketed IPO.

### Disadvantages

- **Not Available to Many PrivateCos:** A direct listing is only available to PrivateCos that do not require a marketed listing to satisfy the applicable stock exchange's listing requirements (e.g., sufficient funds to finance its business plan and a sufficient number of shareholders holding at least a board lot and public float).
- **Lack of Marketing:** Without the involvement of underwriters in marketing PrivateCo's securities to prospective investors, there is no guaranteed purchaser for PrivateCo's securities. Moreover, PrivateCo cannot take advantage of the underwriter's industry expertise. Considering the lack of marketing with a direct listing, this option is likely best suited to PrivateCos with existing and significant goodwill in the market.



## Reverse Merger Transaction (RMT)

As an alternative to an IPO, management of a PrivateCo may access the public markets in Canada through a RMT. A RMT involves the acquisition of a PrivateCo by an existing public company (typically an inactive company with seasoned management), with the result that the shareholders of a PrivateCo ultimately own a majority of the shares of the resulting public issuer that then carries on the business of the PrivateCo.

As noted above, a RMT may be accomplished through a:

1. qualifying acquisition with a SPAC;
2. qualifying transaction with a CPC; or
3. RTO of an existing public company.

SPACs and CPCs are pooled capital vehicles that complete an initial IPO financing under programs established by the TSX/NEO/CSE and TSXV, respectively. SPACs and CPCs function in

very similar fashions, with the primary difference being the amount of capital raised and the 'target' PrivateCo, being larger issuers in respect of the SPAC program and venture issuers in respect of the CPC program. In April 2021, NEO launched a 12 month pilot program for pooled capital vehicles referred to as a growth acquisition corporation (G Corp), which is focused on mid market growth PrivateCos. RTOs are more complex transactions completed on all stock exchanges involving a merger transaction with a listed issuer with an existing or historical business that is not simply a cash shell or blank check company.

A RMT may be implemented in a number of ways, including through a share acquisition, amalgamation or plan of arrangement, with the most appropriate RMT structure depending on a consideration of existing and desired corporate structures, timing, costs, shareholder interest and tax.





# Special Purpose Acquisition Corporation (SPAC)

A SPAC is a TSX, NEO or CSE listed pooled capital vehicle that has completed an initial IPO under the TSX's, NEO's or CSE's respective SPAC program. Stock exchanges adopted SPAC programs to permit the public to invest through an initial IPO offering in pooled capital vehicles with seasoned management (typically with certain industry expertise) who will use the proceeds from the offering to acquire a PrivateCo or its business via a QA that meets the applicable TSX, NEO or CSE listing requirements.

From the PrivateCo's perspective, it is not concerned with the establishment of, or initial IPO conducted by, the SPAC, but rather with the qualifying acquisition process as part of PrivateCo's going public analysis. Though the primary focus of this paper is on the QA, it is worthwhile to describe the basis for the SPAC and some of its more important limitations to help inform a PrivateCo as to whether or not a SPAC is a suitable go public vehicle.

## Key Features of a SPAC

A SPAC's key features include:

- A minimum initial IPO of at least \$30 million, 90% of which will be held in escrow to be used for a future QA.
- Any securities proposed to be listed on an exchange must contain (1) a redemption feature pursuant to which public shareholders may, if they are not in agreement with the QA, redeem their shares for an amount equal to their pro-rated share of the funds held in escrow; and (2) liquidation distribution feature pursuant to which, if the QA is not completed within the permitted timeframe, shareholders are entitled

to receive their pro-rated share of the funds held in escrow.

- Generally, the QA must be completed within 36 months of listing, or within 36 months of the distribution closing under the IPO prospectus in the case of a CSE-listed SPAC.
- The QA must have an aggregate fair market value of at least 80% of the value of the escrowed funds.
- The resulting issuer must meet either TSX's, NEO's or CSE's initial listing requirements for a senior issuer.

## Advantages and Disadvantages of a SPAC QA

### Advantages

- **Capital:** A SPAC QA allows PrivateCos to go public and access capital (i.e., proceeds raised from the SPAC's initial IPO) without raising capital as part of the going public process, thus avoiding costs and risks associated with marketing.
- **Speed and Cost:** SPACs have a shorter timeframe and comparatively lower transaction costs than IPOs.
- **Liquidity:** Allows PrivateCos which might not succeed through the IPO process to access public markets, increasing liquidity for private company investors.
- **Seasoned Management:** Provides PrivateCo with access to seasoned management (often with specific industry expertise) of the SPAC and financial advisors.

# Special Purpose Acquisition Corporation (SPAC)

## Disadvantages

**Post QA Trading:** Post QA trading can be subdued if too many pre acquisition securityholders redeem their securities at closing. As well, arbitrage investors (i.e., those who do not intend to become long term shareholders) may exit shortly after completion of the QA, thereby depressing trading prices.

**Underperformance:** SPACs have not gained traction in Canada. Econometric analyses indicate that SPAC issuers have often underperformed in the long run relative to resulting issuers who went public via a traditional IPO.

## Steps of a SPAC QA

IMPLEMENTING THE QUALIFYING ACQUISITION  
(LOI TO DEFINITIVE AGREEMENT)



SHAREHOLDER AND OTHER APPROVALS  
(INFORMATION CIRCULAR)



NON-OFFERING AND IPO PROSPECTUS  
REQUIREMENT FOR QUALIFYING ACQUISITION



COMPLETING A QUALIFYING ACQUISITION

Following the closing of the initial IPO by the SPAC and listing on the TSX, NEO or CSE, the SPAC's focus will be on identifying and completing a QA in accordance with the applicable stock exchange requirements. A QA is effectively a reverse takeover of a SPAC by an operating business (i.e., PrivateCo) that will access the capital, shareholders and management expertise of the SPAC to complete a listing on either the TSX, NEO or CSE. The QA purchase price may be funded through a combination of escrowed cash, debt financing and SPAC equity.

## Implementing the Qualifying Acquisition

The steps required to implement a QA are similar to those required for a typical merger and acquisition transaction, including:

- The principals of PrivateCo and the SPAC meet to understand each other's goals and discuss valuations (of both the SPAC and the PrivateCo).
- The parties enter into a letter of intent setting out the pertinent terms and conditions to the QA.
- Each party conducts due diligence on the other.
- The parties negotiate and enter into definitive purchase agreement including appropriate terms unique to the SPAC acquisition (i.e., redemption rights, regulatory approvals).
- If shareholder approval is required, an information circular must be prepared.
- A NOP or IPO prospectus containing disclosure regarding the SPAC and PrivateCo must be filed with and received by the applicable securities commissions.
- Unless 100% of the IPO proceeds have been deposited in escrow, the QA must be approved by a majority shareholder vote.

## Shareholder and Other Approvals

The QA must be approved by: (1) a majority of directors of the SPAC unrelated to the QA, and (2) where less than 100% of the IPO proceeds are held in escrow, a majority of the votes cast by shareholders of the SPAC. The SPAC may impose additional conditions on the approval of a QA (e.g., not to proceed with QA if a specific voting percentage is not received), provided that the conditions are set out in the information circular describing the QA.

Any information circular prepared by the SPAC must contain prospectus level disclosure of the resulting issuer assuming completion of the QA,

and must be pre cleared by the applicable exchange prior to mailing. In addition, the information circular may only be mailed once a receipt for the NOP or IPO prospectus (see below) has been obtained. The NOP is typically included as part of the information circular, to simplify disclosure and to ensure consistent delivery of information.

## Non-Offering Prospectus and IPO Prospectus Requirement for Qualifying Acquisition

The SPAC must prepare and file a NOP (TSX and NEO SPACs) or an IPO prospectus (CSE SPACs) containing disclosure regarding the SPAC and its proposed QA with the securities commissions in each jurisdiction in which the SPAC and the resulting issuer is and will be a reporting issuer assuming completion of the QA.

Each of the TSX and NEO require that the NOP includes information on whether a formal valuation was completed for the QA and, if so, whether the valuation was independent and the method used. Conversely, if there was no valuation, the NOP must disclose how the consideration paid for the QA was determined.

The SPAC must obtain a receipt for its final NOP or IPO prospectus from the applicable securities commissions prior to mailing the information circular to the SPAC shareholders. If a receipt for the final NOP or IPO prospectus is not obtained, completion of the QA will result in the delisting of the SPAC.

If shareholder approval is not required for the QA, a notice of redemption must be mailed at least 21 days prior to the redemption deadline and the NOP, or final prospectus, must be delivered at least two business days prior to the redemption deadline.

## Listing on a Stock Exchange

The resulting issuer from the completed QA must meet the minimum listing requirements of the applicable exchange. Once the QA has been completed, the shares of the resulting issuer will be traded on the applicable exchange and the resulting issuer will be subject to all maintenance listing requirements established by such exchange.

## Sourcing a SPAC

Finding the right SPAC is important to the success of the go public transaction and involves conducting due diligence on the available vehicles. A desirable SPAC candidate will be one with a concentration of ownership to facilitate any required shareholder approvals and a shareholder base that will be willing to continue as holders for some time. Most active public market investment banks will know of SPAC candidates and may also be aware of sponsor groups considering creating a SPAC. In addition, the TSX maintains a listing of SPACs that have not yet completed QAs (see [tsx.com/listings](https://www.tsx.com/listings)).

# Special Purpose Acquisition Corporation (SPAC)

## NEO Pilot Program: Growth Acquisition Corporation (G-Corp)

In December 2022, NEO announced the renewal of their pilot program for the G Corp until November 1, 2023. The G-Corp is a new type of publicly traded pooled capital vehicle that differs from other publicly traded investment vehicles. While SPACs and CPCs focus on mature and venture companies, respectively, the G Corp is designed to serve mid market growth PrivateCo's. In particular, the purpose of the G-Corp is to more easily enable mid-market growth companies to access capital and go public. NEO describes the niche as follows:

<b>ENTERPRISE VALUE OF PRIVATECO</b>	\$0↔	\$30M↔	\$500M↔
<b>CAPITAL SOUGHT TO GO PUBLIC</b>	\$0↔	\$5M↔	\$100M↔
<b>TYPE OF RESULTING COMPANY</b>	CPC	G-Corp	SPAC
<b>AVERAGE CAPITAL PROVIDED BY VEHICLE</b>	CA\$500k	CA\$10M	CA\$270M

\*Estimated

The G Corp program shares many features with NEO's existing SPAC program, with specific features designed to facilitate a workable alternative for mid market growth companies. The key features of the G-Corp program include the following:

- A minimum initial IPO of at least \$2 million, 100% of which must be held in escrow.
- A qualifying transaction identified within 24 months, completed within 27 months.
- A resulting issuer that has a market capitalization of at least \$30 million and meets NEO's initial listing standards for senior issuers.
- A prospectus in connection with the qualifying transaction.
- No redemption rights, however the G Corp is required to obtain approval of the qualifying transaction from a majority of shareholders (excluding founders and the sponsor).
- In the event the G Corp fails to complete a qualifying transaction within the permitted time, the escrowed funds will be returned to the investors on a pro rata basis.

To facilitate the G-Corp pilot program, NEO intends to leverage its existing SPAC rules and framework. However, NEO will also establish additional requirements and waivers specifically tailored for a G Corp. NEO states it will exercise its discretion on a case-by-case basis to determine what, if any, additional waivers or requirements are appropriate based on the specific features of each proposed G Corp.

At the conclusion of the G-Corp Pilot Program, NEO will assess whether sufficient interest in the G Corp structure/program exists to warrant permanent adoption by NEO.



# Capital Pool Company (CPC)

A CPC is a TSXV listed pooled capital vehicle that has completed an initial IPO under the TSXV's Capital Pool Company Program (CPC Program). Similar to a SPAC, a CPC's primary purpose is to support PrivateCos in go public events by way of a merger transaction. A QT is effectively a reverse takeover of a CPC by an operating business that will access the capital, shareholders and expertise of the CPC management to complete a listing on the TSXV.

From the PrivateCo's perspective, it is not concerned with the establishment of, or initial IPO conducted by, the CPC, but rather with the qualifying transaction process as part of PrivateCo's going public analysis. Though the primary focus of this paper is on the QT, it is worthwhile to describe the basis for the CPC and some of its more important limitations to help inform a PrivateCo as to whether or not a CPC issuer is a suitable go public vehicle.

## Key Features of a CPC

A CPC's key features include:

- A minimum initial IPO of at least \$300,000, with a maximum of \$10 million.
- All of the following securities must be deposited into escrow, releasable following the QU as per a defined schedule:
  1. seed shares issued below the IPO price;
  2. shares issued to non arm's length parties before the QT; and
  3. stock options (and shares issued on the exercise of stock options at a price below the IPO price) issued before the QT closes.
- The QT must be completed for the listed shell to move to a regular listing on the TSXV.

- The resulting issuer must meet TSXV's initial listing requirements.

## Advantages and Disadvantages of a CPC QT

### Advantages

- **Speed:** Completing a go public transaction via the CPC Program is faster than through a traditional IPO.
- **Liquidity:** Allow smaller companies which might not succeed through the IPO process to access the public markets, increasing liquidity for private company investors.
- **Connections:** Connect growth companies to a CPC's seasoned directors and investors.
- **Market Acceptance:** CPC transactions have high market acceptance for venture issuers and are the most common method to list on the TSXV.
- **Oversight:** The TSXV primarily regulates the qualifying transaction of a CPC as opposed to securities commissions.

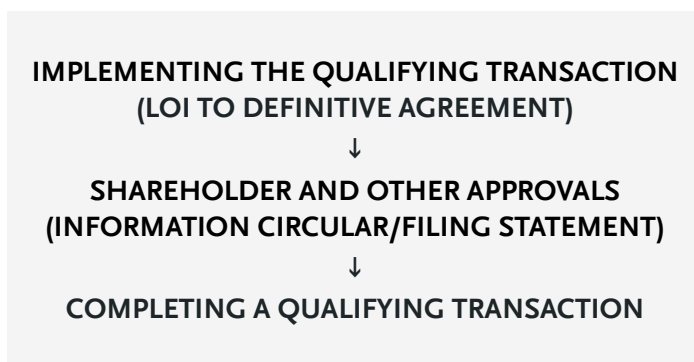
### Disadvantages

- **Size:** As the CPC Program operates on the TSXV, it is more restrictive than a traditional IPO in respect of the size of the issuer as well as the investor market. As a result, CPCs may be less attractive to bigger private companies and/or companies wishing to access a bigger public market.
- **Oversight:** While the QT is predominantly regulated by the TSXV, the TSXV cannot provide waivers involving securities laws, including financial statements in respect of any filing statement or any information circular filed in connection with a QT. Therefore, issuers may need to engage with applicable securities

commissions separately to obtain any needed waivers.

- **Corporate Structure:** The corporate structure of the resulting issuer may be more complicated because the QT can take various forms, which may be more challenging for growth companies to manage.

## Steps of a CPC QT



Following the closing of the initial IPO by the CPC and listing on the TSXV, the CPC's focus will be on identifying and completing a QT in accordance with the TSXV's requirements. A QT is effectively a reverse takeover of a CPC by an operating business that will access the capital, shareholders and management expertise of the CPC to complete a listing. The QT purchase price may be funded through a combination of escrowed cash, debt financing and CPC equity.

## Implementing the Qualifying Transaction

The steps required to implement a QT are similar to those required for a typical merger and acquisition transaction, including:

- The principals of PrivateCo and the CPC meet to understand each other's goals and discuss valuations (of both the CPC and the PrivateCo).
- A pre filing conference between parties and TSXV occurs.

- The parties enter into a letter of intent setting out the pertinent terms and conditions to the QT.
- The prescribed news release announcing the QT is issued.
- Each party conducts due diligence on the other.
- A sponsorship is obtained, if required.
- The parties negotiate and enter into a definitive purchase agreement.
- Concurrent financing is obtained if needed to satisfy closing payments to sellers or initial listing requirements related to working capital and financial resources (usually by way of subscription receipt financing).
- Preparation of an information circular (if shareholder approval is required for a non arm's length transaction) or a filing statement, both providing prospectus level disclosure in respect of the QT.

## Shareholder and Other Approvals

Where the proposed QT is a non arm's length transaction, the CPC must obtain the approval of a majority of the minority of shareholders of the CPC. In this case, the CPC must prepare an information circular and hold a shareholders' meeting. Where the proposed QT is not a non arm's length transaction, the TSXV will not require the CPC to obtain shareholder approval of the QT provided it submits a filing statement or a prospectus. In both cases, the specific disclosure document must provide prospectus level disclosure about the resulting issuer and is subject to review and approval by the TSXV.

Where the proposed QT is not a non arm's length transaction but shareholder approval is otherwise required by law (including under the CPC's governing jurisdiction legislation in connection with a proposed change of auditor, election of new directors, or in an amalgamation situation), the

CPC may restrict the shareholder approval to those transactions for which shareholder approval is required by law.

If the TSXV is satisfied that the resulting issuer will meet the listing requirements for the particular industry sector and accepts the QT and the information circular (or filing statement, if applicable), such document is required to be filed on SEDAR for public disclosure at least seven business days before closing of the QT.

### Listing on a Stock Exchange

The resulting issuer from the completed QT must meet the minimum listing requirements of the TSXV. Once the QT has been completed, the shares of the resulting issuer will be traded on the TSXV and the resulting issuer will be subject to all continued listing requirements established by the TSXV.

### Sourcing a CPC

Finding the right CPC is important to the success of the go public transaction and involves conducting due diligence on the available vehicles. A desirable CPC candidate will be one with some cash, a concentration of ownership to facilitate any required shareholder approvals and a shareholder base that will be willing to continue as holders for some period of time. Most active public capital market investment banks will know of CPC candidates and may also be aware of founder groups considering creating a CPC. In addition, the TSXV maintains a listing of CPCs that have not yet completed their QT (see [tsx.com/listings](https://www.tsx.com/listings)).



# Reverse Take-Over (RTO)

A RTO—also known as a *back door listing* or *reverse merger*—refers to a reverse take-over of an existing public company already listed on a stock exchange with few or no assets or operations (an RTO issuer). The RTO issuer acquires a PrivateCo in exchange for shares of the RTO issuer, resulting in the PrivateCo indirectly becoming listed on a stock exchange and, generally speaking, PrivateCo's former shareholders holding a majority of the resulting issuer's shares.

The implementation of a RTO is similar in many respects to other merger and acquisition transactions involving public and private companies. However, unlike SPAC and CPC transactions, the structure of a RTO and process to be followed is flexible, essentially a 'bespoke' transaction, that may achieve many objectives.

## Advantages and Disadvantages of a RTO

### Advantages

- **Speed:** Completing a go public transaction via a RTO transaction is faster than through a traditional IPO because the PrivateCo does not need to complete the full IPO process and listing application.
- **Cost:** The RTO issuer is not subject to the same direct IPO costs as it is already a public company listed on an exchange.
- **Reduced Execution Risk:** A RTO transaction's success is unrelated to market volatility as the RTO issuer and the PrivateCo determine the share price exchange ratio early in the process. No marketing is required to complete the RTO transaction, unless a concurrent financing is undertaken, with the financing typically completed prior to the closing of the RTO transaction. In addition, a RTO transaction is

less susceptible to market swings because the RTO issuer already possesses some liquidity.

- **Oversight:** A RTO transaction is predominantly regulated by the applicable stock exchange rather than securities commissions.
- **Liability:** A RTO transaction does not typically involve prospectus liability for the directors and officers of the RTO issuer or PrivateCo.
- **Benefits From the RTO Issuer:** As the RTO issuer is already listed with an existing shareholder base, certain minimum listing requirements (e.g., public float) may be easier to satisfy and may facilitate a concurrent financing.

### Disadvantages

- **RTO Structure:** While a RTO transaction allows for flexibility to structure, as the RTO issuer is a pre-existing operating company (albeit with limited assets/operations), the structure of the RTO transaction may be complicated and involve further post-closing restructuring.
- **Due Diligence:** Each of the RTO issuer and PrivateCo must complete significant due diligence in respect of each other, as the RTO issuer (unlike a SPAC and CPC) has conducted business operations and will have potential liabilities associated with its past operations.
- **Lack of Marketing:** Certain aspects of a RTO transaction, such as the fact that it may be completed without the marketing and review process required when completing a traditional IPO, may result in the resulting issuer underperforming relative to issuers that go public through a traditional IPO. The resulting issuer may not be as prepared as an IPO issuer or may not have the market acceptance of an IPO issuer.



- **Dilution:** The PrivateCo shareholders' interests in the business will be diluted.
- **Oversight:** Notwithstanding that RTO transactions are predominantly regulated by the applicable stock exchanges, issuers are required to comply with all securities laws and issuers may need to obtain exemptions from applicable securities commissions.
- **Increased Regulatory Scrutiny:** RTO transactions are becoming subject to increased scrutiny by stock exchanges due to a few notable governance failures.

## Steps of a RTO



### Implementing the RTO

The implementation of a RTO is similar in many respects to other merger and acquisition transactions, along with additional requirements to satisfy specific stock exchange requirements associated with a RTO of the RTO issuer and includes:

#### 1. Pre-Public Announcement

- The principals of PrivateCo, along with financial advisors, identify and select a potential RTO issuer listed on a desired exchange with few or no assets and operations.
- PrivateCo and the RTO issuer commence negotiations to understand each other's goals

and discuss valuations (of both the RTO issuer and the PrivateCo).

- The parties enter into a letter of intent setting out the pertinent terms and conditions of the RTO.
- The parties participate in a pre filing conference with the relevant stock exchange to identify and manage concerns so as to expedite the exchange's review of the RTO.
- The parties conduct extensive due diligence, consistent with other merger and acquisition transactions involving the exchange of shares of two companies (one of which is a private company without public disclosure). Financial advisors or agents will conduct additional due diligence in respect of any sponsorship or concurrent financing.
- The parties negotiate and enter into a definitive purchase agreement to implement the RTO, which may be completed pursuant to a share acquisition, amalgamation, plan of arrangement or asset acquisition, depending on various tax and other considerations. The purchase agreement will include substantially similar provisions to typical merger and acquisition agreements and will likely include support agreements from key securityholders and management of each of the RTO issuer or PrivateCo.
- Concurrent financing is obtained if needed to satisfy closing payments to sellers or initial listing requirements related to working capital and financial resources (usually by way of subscription receipt financing).
- Sponsorship may be required by the exchange, especially in the event the RTO transaction does not include a concurrent financing.

#### 2. Post-Public Announcement

- The parties issue a news release announcing the RTO transaction and, if applicable, the

concurrent financing. The RTO issuer's shares will be halted in connection with such announcement and may be halted until completion of the RTO.

- The RTO issuer may obtain bridge financing or a credit facility with banks or other financial institutions to provide sufficient resources to complete the RTO transactions or provide additional financing to satisfy exchange listing requirements or support the business strategy of the resulting issuer.
- Each of the RTO issuer and PrivateCo may be required to hold a shareholders' meeting to obtain shareholder approval of the RTO transactions and prepare an information circular in respect of the RTO transaction.
- The parties will close the RTO transaction following receipt of the requisite shareholder and exchange approval.

### Stock Exchange and Shareholder Approvals

#### Exchange Approval

Stock exchange approval is typically required to complete a RTO transaction, whether as a "reverse takeover", a "change of business" or a "fundamental change", and the resulting issuer must satisfy the applicable exchange's minimum listing requirements. Accordingly, a RTO issuer and the PrivateCo must prepare and complete notices/ applications and associated documentation with the stock exchange as it relates to the RTO transaction, including any concurrent financing.

The specific requirements will vary depending upon the exchange, however, the exchange will generally require:

- RTO issuer to obtain shareholder approval of the RTO transaction (such approval may be obtained by way of written consent);
- RTO issuer to provide the exchange with the

information circular / filing statement prior to finalization and mailing;

- the parties to provide detailed information to the exchange regarding the RTO transaction, the ability of the resulting issuer to satisfy listing requirements (including detailed business plans and financing of such plans), proposed management and directors, etc.;
- PrivateCo shares to be subject to escrow; and
- the parties to not close the RTO until the exchange has provided its acceptance of the RTO transaction.

#### RTO Issuer Approval

The RTO issuer must obtain shareholder approval of the RTO transaction, meaning the RTO issuer must hold a shareholders' meeting and prepare an information circular in respect of the transactions contemplated by the RTO. The RTO issuer may obtain shareholder approval by written consent of the shareholders, in which case, the RTO issuer will be required to prepare a filing statement in respect of the RTO transaction. The RTO transaction may also trigger the obligation to obtain shareholder approval under the RTO issuer's governing legislation (i.e., approve an amalgamation or arrangement) in connection with additional transactions contemplated by the RTO, such as a name change of the RTO issuer to reflect the new business post-closing or certain 'clean up' changes to the structure of the RTO issuer or the articles or bylaws of the RTO issuer.

#### PrivateCo Shareholder Approval

A RTO will typically trigger the obligation to obtain PrivateCo shareholder approval under PrivateCo's governing legislation (i.e., approve an amalgamation or arrangement). In this instance, PrivateCo will be required to hold a special meeting of shareholders and prepare an information circular regarding the transactions contemplated by the

---

RTO. The information included in the PrivateCo information circular would be substantially similar to the information included in the RTO issuer's information circular or filing statement, as applicable.

### Disclosure Requirements

Unlike an IPO, a RTO and associated disclosure documents of the RTO issuer will be reviewed by the applicable exchange as part of the requisite exchange approval of the RTO, rather than applicable securities commissions. Any information circular or filing statement to be prepared in connection with a RTO (and any other matters) must contain prospectus level disclosure, i.e., full, true and plain disclosure of all material facts, in respect of each of the RTO issuer and PrivateCo and pro forma information (including financial statements) of the resulting issuer. The exchange will require the RTO issuer to file a draft of the disclosure document with the exchange for the exchange's review before finalization. While the exchange may provide exemptions from certain disclosure requirements, such ability is limited. The issuers may need to apply to the applicable securities commission for an exemption or waiver from certain securities laws.

### Completing a RTO

Upon closing of the RTO, the resulting issuer will issue shares to the (former) shareholders of PrivateCo in exchange for the shares of PrivateCo in accordance with the purchase agreement, which shares will be listed on the applicable exchange. The shares of the resulting issuer will continue to be traded on the applicable exchange as a public corporation (likely under a new ticker symbol) and the resulting issuer will continue to be subject to all continued listing requirements designated by such exchange.

### Sourcing a RTO Candidate

Finding the right RTO issuer "purchaser" is critical to the success of a RTO. Generally speaking, an ideal RTO issuer is listed on a desired stock exchange with minimal existing liabilities, a significant concentration of ownership to facilitate shareholder approval, and sufficient cash to complete the RTO process and possibly to finance the business post-closing. Most active capital market investment banks will know of available RTO candidates, with possible candidates including SPACs or CPCs. Further, various groups exist that source RTO candidates and simplify the RTO issuer's corporate structure and balance sheet to facilitate a RTO transaction.



# Stock Exchanges

Regardless of the route a PrivateCo chooses to go public, issuers must meet (either as an IPO candidate or together with the acquiring listed issuer through a RMT) the original listing requirements of the exchange upon which they intend to list their securities. The four major exchanges in Canada are the TSX, the TSXV, the NEO and the CSE. Each of these exchanges possesses certain attributes which may accommodate the unique needs of a PrivateCo. As such, PrivateCos should carefully review each stock exchange to determine which is the most suitable and strategic choice for their listing.

## Toronto Stock Exchange (TSX)

The TSX, administered by TMX Group Limited, is Canada's senior equities exchange and is suitable for established businesses and management teams with experience in public markets. As the third largest stock exchange in North America, the TSX has 1,812 companies listed with a combined market capitalization of \$4 trillion (current to February 2023). PrivateCos can access the public markets and obtain a listing on the TSX by way of an IPO (marketed or direct), a SPAC or a RTO.

### Listing Requirements

TSX has original listing requirements consisting of certain financial tests, working capital, public distribution, market capitalization, work programs, property valuations, management and board composition requirements that must be met; according to the following individual industry sectors:

- mineral exploration and mining;
- oil and gas;
- industrial;
- research and development;

- technology; and
- investment funds and structured products.

TSX divides certain industry segments into two categories based on the stage of development, historical financial performance and financial resources of the issuer. TSX refers to its more established listed issuers as exempt companies and less established ones as non exempt companies. Notably, the TSX has a reduced regulatory burden for their more established and senior issuers. The TSX requires all companies that apply to list as a non-exempt company to obtain a sponsorship from a participating organization of the TSX. Sponsors are required to prepare and submit a report to the exchange providing commentary on, amongst other things, the company, its financial position and history, its business plan, its managerial expertise, any material transactions and the likelihood of future profitability. Exemptions to the sponsorship requirements are available in circumstances where there is significant involvement of a bank or other major financial institution in components of the transaction leading to the listing.

For more information regarding the original listing requirements of the TSX, please refer to the *TSX Company Manual*.

The documentation required to support a listing application varies depending on whether the listing transaction is a:

- listing application made concurrently with an IPO;
- direct listing;
- SPAC IPO;
- QA; or
- RTO.

Once listed, an issuer must meet both the quantitative and qualitative continued listing requirements of the TSX including: public distribution and market level of shares, net assets, annual revenues, listing capital and activity, and various corporate governance practices. Please refer to the TSX Company Manual for the TSX's maintenance listing requirements.

### TSX Venture Exchange (TSXV)

The TSXV is an early-stage business focused exchange with less onerous listing requirements than the TSX. As a TSXV issuer grows, it may become eligible for listing on the TSX. Conversely, if a TSXV issuer falls below the continuous listing requirements, then they are moved to the NEX, a separate board of the TSXV. There are 1,992 issuers listed on the TSXV with a combined market capitalization of \$77.7 billion (current to February 2023). PrivateCos can access the public markets and obtain a listing on the TSXV by way of an IPO (marketed or direct), a CPC or a RTO.

### Listing Requirements

TSXV has original listing requirements consisting of certain financial tests, working capital, public distribution, market capitalization, work programs, property valuations, management and board composition requirements that must be met according to the following individual industry sectors:

- mineral exploration and mining;
- oil and gas;
- industrial;
- research and development;
- technology; and
- investment funds and structured products.

TSXV divides industry segments into two tiers based on the stage of development, historical financial performance, and financial resources of the issuer. TSXV refers to its more established listed issuers as Tier 1 issuers and less established ones as Tier 2 issuers. The TSXV may require sponsorship of the issuer by a participating organization of the TSXV to ensure an applicant meets minimum listing requirements. However, the TSXV may waive a sponsorship requirement if the issuer meets certain profitability tests, is filing a suitable disclosure document, completes a brokered financing in connection with the listing or where there is significant involvement of a bank or other major financial institution in a component of the transaction leading to the listing.

For more information regarding the original listing requirements of the TSXV, please refer to the *TSX Venture Exchange Corporate Finance Manual*.

The documentation required to support a listing application varies depending on whether the listing transaction is a:

- listing application made concurrently with an IPO;
- direct listing;
- CPC IPO;
- QT; or
- RTO.

Once listed, an issuer must meet both the quantitative and qualitative continued listing requirements of the TSXV, including public distribution and market capitalization, listing capital and activity, and various corporate governance practices. The continuous listing requirements for the TSXV can be found in the *TSX Venture Exchange Corporate Finance Manual*.

## NEO Exchange Inc. (NEO)

NEO is the other senior Canadian exchange, representing roughly 10% of all trading volume on Canadian exchanges and hosting almost 270 listings (current to December 2023). PrivateCos can access the public markets and obtain a listing on the NEO by way of an IPO (marketed or direct), a SPAC, a G Corp, or a RTO.

### Listing Requirements

While NEO does not have industry sectors, an applicant must demonstrate in its listing application that it meets or will, at the time of listing, the requirements of at least one of the following categories:

#### Equity Standard

- shareholders' equity of at least \$5 million;
- an operating history of at least two years; and
- expected market value of public float of at least \$10 million, or

#### Net Income Standard

- net income of at least \$750,000 from continuing operations in the last fiscal year or in two of the last three fiscal years;
- shareholders' equity of at least \$2,500,000; and
- expected market value of public float of at least \$5 million, or

#### Market Value Standard

- market value of all securities of at least \$50 million based on either:

- the market value of securities listed on a recognized exchange or an accepted foreign exchange or both, or
- the amount derived from combining the market value of securities listed on a recognized exchange or an accepted foreign exchange or both and an additional offering of securities concurrent with the listing application, where the market value of the securities on the other exchange(s) under both of the above must have been maintained for at least 90 consecutive trading days before the date of the application to list on NEO;
- shareholders' equity of at least \$2,500,000, if the market value standard is met;
- expected market value of public float of at least \$10 million, or

#### Assets and Revenue Standard

- total assets and total revenues of at least \$50 million each in the last fiscal year or in two of the last three fiscal years; and
- expected market value of public float of at least \$5 million.

Please refer to the *NEO Exchange Listing Manual* for NEO's additional listing requirements.

Once listed, an issuer must meet the continuous listing requirements of NEO as set out in Part III of the Listing Manual including distribution (number of securities in public float and number of holders), minimum public float value and minimum standards.

## Canadian Securities Exchange (CSE)

The CSE, administered by CNSX Markets Inc., is an exchange targeted at emerging and micro cap issuers. There are 826 listings on the CSE (current to March 2023) with more than \$2 billion total capital raised in 2022. PrivateCos can access the public markets and obtain a listing on the CSE by way of an IPO (marketed or direct) or a RTO.

### Listing Requirements

The CSE promotes itself as having a streamlined regulatory model with no transactional reviews/ approvals, instead relying on the issuer complying with applicable securities laws. An issuer is eligible to list on the CSE if it is not in default of any requirements of securities legislation in any jurisdiction in Canada and if it: (1) has filed and received a receipt for a preliminary prospectus and a final prospectus in a jurisdiction in Canada, and (2) is reporting issuer or the equivalent in a jurisdiction in Canada.

The CSE sets out the minimum requirements that prospective CSE-listed issuers must meet to list their securities on the CSE, which apply irrespective of the listing method and to both new applicants and listed issuers. Such minimum requirements are not exhaustive, and the CSE may impose additional requirements as it determines appropriate, including requirements relating to promoting the public's interest in markets.

Each issuer submitting a listing application must:

- prepare and file with the CSE a listing statement and prescribed documentation;
- execute a Listing Agreement; and
- remit the applicable listing fees, based on the type of securities to be listed, in accordance with the CSE's fee schedule.

To qualify for listing an issuer must be:

- an operating company with revenue from the sale of goods or services; or
- a non operating company with financial resources to carry out a proposed work plan or achieve stated objectives for 12 months following listing, subject to a minimum of \$200,000 in working capital at the time of listing, and have advanced to a stage of development at which additional financing is typically available to the companies in the industry.

An operating company must have achieved revenue from the sale of goods or the delivery of services to customers. These revenues must appear on its audited financial statements or an interim financial statement supported by a comfort letter from the company's auditor. Moreover, such companies must have the financial resources and a business plan demonstrating a reasonable likelihood that the company can sustain its operations and achieve its objectives for 12 months following listing.

A non operating company must have:

- a significant interest in its primary business or asset;
- a history of development of the business or asset; and
- specific objectives and milestones and the financial resources necessary to achieve them.

### Non-Venture Issuer Listing Requirements

The CSE issuers qualifying or designated as Non-Venture Issuers (NV Issuer) are required to meet the above initial listing criteria, and must also meet one of the following four listing standards:

- equity standard:
  - shareholders' equity of at least \$5,000,000; and

- expected market value of public float of at least \$10,000,000; or
- net income standard:
  - net income of at least \$400,000 from continuing operations in the most recent fiscal year or in two of three of the most recent fiscal years;
  - shareholders' equity of at least \$2,500,000; and
  - expected market value of public float of at least \$5,000,000; or
- market value standard:
  - market value of all securities, including the class(es) to be listed and any class convertible into the class(es) to be listed, but excluding warrants and options, of at least \$50,000,000;
  - shareholders' equity of at least \$2,500,000 including the value of any offering concurrent with listing; and
  - expected market value of public float of at least \$10,000,000; or
- assets and revenue standard:
  - total assets and total revenues of at least \$50,000,000 each in the most recent fiscal year or in two of three of the most recent fiscal years; and
  - expected market value of public float of at least \$5,000,000.

The CSE may, in its sole discretion, designate an issuer as a NV Issuer if the issuer is sufficiently advanced in capitalization or operations that it is near the thresholds of at least two of the four above tests, or the CSE determines it would be in the public interest to do so.

These additional qualifications are intended to reflect those of the senior Canadian exchanges—the TSX and NEO.

## Industry Listing Requirements

The CSE also sets out industry-specific listing requirements for investment or real estate companies and natural resource companies.

An investment or real estate company must have an appropriate balance between income and activity depending on the nature of its investments. A holding company that is not active in the management of investee companies should own majority interests or have effective control in businesses that can generate returns that will flow to the securityholders through distributions or have prospects for growth through the reinvestment of earnings. Such companies must have:

- minimum net assets of:
  - \$2 million, at least 50% of which has been allocated to at least two specific investments; or
  - \$4 million; and
- management with a track record of acquiring and divesting interests in arm's length enterprises in a manner that can be characterized as conducting an active business; and
- a clearly defined investment policy disclosed in the listing statement.

At a minimum, a mineral exploration company is required to meet the following:

- must have title to a property that is prospective for minerals and on which there has been exploration previously conducted including qualifying expenditures of at least \$150,000 by the issuer during the most recent 36 months. If the company does not have title to the property, it must have the means and ability to acquire an interest in the property upon completion of specific objectives or milestones within a defined period;



- must have obtained an independent report that meets the requirements of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and that recommends further exploration on the property, with a budget for the first phase of at least \$250,000; and
- if meeting the minimum listing requirements with a single exploration project, include disclosure of its objectives to pursue additional exploration projects or opportunities or to otherwise remain in the mineral exploration business.

An energy resource company must have:

- title to a property on which measurable quantities of conventional energy resources have been identified or the means and ability to acquire an interest in the property upon meeting specific objectives or milestones within a defined period; or

- title to an unproven property with prospects or the means and ability to acquire a significant interest in the property upon completion of a fully financed exploration program. The company must also submit a qualifying report on the property in accordance with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

Please refer to the *CSE Policies* for additional listing considerations and requirements.

Once listed, an issuer must meet the continued listing requirements of the CSE including distribution (number of shares in public float and number of shareholders), financial resources, assets and activity. In addition to meeting the general continued listing requirements, NV Issuers must also meet public distribution criteria and net income or market value standards criteria on an annual basis.



# Conclusion

This *Routes to the Public Markets in Canada* guide provides a comparative overview and assessment of the two principle routes to go public: via an IPO, either by way of a marketed listing or a direct listing, or via a RMT, by way of a qualifying acquisition by a SPAC, a qualifying transaction by a CPC or a RTO with an existing public issuer. It should be noted that the going public process is complex and involves many considerations in addition to a decision as to the route to the public markets, including: when a business should go public, the applicable securities laws and stock exchange listing requirements applicable to a going public transaction, business considerations

(i.e., management, the needs of the business, including the financial requirements of the business, etc.), whether a financing / marketing is necessary to complete a going public transaction, and ongoing securities and stock exchange listing requirements once public. It is important that a PrivateCo engages and consults with legal counsel, professional auditors and financial advisors early in the go public process. Such parties can assist with creating and identifying a strategy that is best suited to the business (including identifying challenges to be addressed), with the ultimate objective being the completion of a successful and efficient go public transaction.

## Principal Author



**Darrell Peterson**

Partner

403.298.3316

[petersond@bennettjones.com](mailto:petersond@bennettjones.com)

## Co-Authors



**Kristopher Hanc**

Partner,  
Co-Head of Capital  
Markets Practice

416.777.7395

[hanck@bennettjones.com](mailto:hanck@bennettjones.com)



**Kwang Lim**

Partner

604.891.5144

[limk@bennettjones.com](mailto:limk@bennettjones.com)

For more information on Bennett Jones' Capital Markets group, please visit [bennettjones.com/CapitalMarkets](https://www.bennettjones.com/CapitalMarkets)



# Principal Legislation and Further References

## IPO

- *National Instrument 41-101 - General Prospectus Requirements*
- *National Instrument 43-101 - Standards of Disclosure for Mineral Projects*
- *National Instrument 51-101 - Standards of Disclosure for Oil and Gas Activities*
- Bennett Jones' Initial Public Offering Guides:
  - *Renewable Energy & Clean Technology*
  - *Oil & Gas Exploration & Production*
  - *Mining*
  - *Cannabis*
- *TSX Company Manual*
  - Part III – Original Listing Requirements
- *TSX Venture Exchange – Corporate Finance Manual*
  - Policy 2.1 – Initial Listing Requirements
- *NEO Exchange Listing Manual*
  - Part II – Initial Listing Requirements
- *CSE Policies*
  - Policy 2 – Qualifications for Listing

## SPAC

- *TSX Company Manual – Part X – Special Purpose Acquisition Corporations*

- *TSX – Guide to Special Purpose Acquisition Corporations*
- *TMX Group – Currently Available SPACS*
- *NEO Exchange Listing Manual – Part II – Initial Listing Requirements*
- *CSE Policies – Policy 2 – Qualifications for Listing*

## G-Corp

- *NEO Exchange Listing Manual – Part II – Initial Listing Requirements*

## CPC

- *TSX Venture Exchange Corporate Finance Manual – Policy 2.4 – Capital Pool Companies*
- *TSX Venture Exchange – Capital Pool Company Program*
- *TSX Venture Exchange – Currently Available CPCs*

## RTO

- *TSX Company Manual – Part VI – Changes in Capital Structure of Listed Issuers*
- *TSXV Corporate Finance Policies – Policy 5.2 – Changes of Business and Reverse Takeovers*
- *NEO Exchange Listing Manual – Part IX – Reverse Takeover Transactions*
- *CSE Policies – Policy 8 – Fundamental Changes and Change of Business*

## Disclaimer

This publication is not intended to provide legal advice but to provide a practical overview of key determinants to be considered in assessing the route a private company may take to access the public markets in Canada.



# Bennett Jones

The firm that businesses trust  
with their most complex legal matters.