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TSX APPROVES SPECIAL PURPOSE ACQUISITION CORPORATIONS ("SPACS")

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The Toronto Stock Exchange ("TSX") has adopted a new rule that provides for the listing of special purpose acquisition corporations ("SPACs"). SPACs were developed by stock exchanges in the U.S. as a new means to efficiently finance acquisitions of existing business entities that previously were mainly financed only in private equity markets. Like capital pooling companies ("CPCs") on the TSX Venture Exchange, SPACs are characterized by the fact that, at the time of their initial public offering ("IPO"), they have no business operations but intend to acquire a yet unidentified operating business. Unlike CPCs, SPAC IPOs must raise a minimum of $30 million. The new rule, Part X of the TSX Company Manual ("Part X"), stipulates SPAC listing requirements similar to those adopted in the United States but makes key changes based on the size of the Canadian marketplace and existing TSX listing requirements.

Overview of SPACs

The listing of a SPAC is a two-stage process. The first step involves preparing a prospectus to qualify the shares of a new shell company, the SPAC, for sale to the public. The second phase involves using the proceeds of the SPAC IPO to acquire an operating business.

To commence stage one, a SPAC is set up by a small group of securityholders (the "Founders"), who must purchase equity interests in the SPAC aggregating at least 10% but not exceeding 20% of the SPAC's fully diluted equity after completing its IPO. Once a long form prospectus has been filed and cleared with the relevant securities regulators, the IPO is conducted at a minimum price of $2.00 per share with aggregate proceeds of at least $ 30 million. Part X also requires that at least 1,000,000 freely tradable securities be held by a minimum of 300 public holders of at least one board lot. To address the major risks associated with raising equity financing before actually acquiring a business, SPAC securities have a number of "fundamental investor protections" which are discussed below. Additionally,

the TSX will give specific consideration in granting or refusing the listing to i) the experience and record of the directors and officers of the SPAC; ii) directors' and officers' compensation; iii) the level of the Founders' aggregate equity interest; iv) the planned time to complete a qualifying acquisition as detailed below; and v) the gross proceed to be raised in the IPO.

When stage one is completed, at least 90% of the IPO proceeds must be placed in escrow with an escrow agent that is unrelated to the transaction and acceptable to the TSX. In addition, 50% of the underwriter's commission in respect of the IPO must also be deferred and placed in escrow pending acquisition of the operating business to be financed, also referred to as completion of a qualifying transaction ("QT"). The escrow agent must invest the escrowed funds in "permitted investments" as defined in the SPAC's IPO prospectus and hold the funds in escrow until such time as the SPAC completes the QT.

Phase two of the SPAC process involves completion of the QT. This must be accomplished within 36 months of the date of closing of the distribution under the IPO prospectus. While a SPAC may be evaluating various operating businesses at the time the SPAC is listed, the SPAC must neither be carrying on an operating business nor have entered into any form of binding acquisition agreement with respect to a potential qualifying acquisition. A statement confirming this must be made in the IPO prospectus. Prior to completing the QT, the qualifying acquisition must be approved by both a majority of directors unrelated to the qualifying acquisition and a majority of the votes cast by securityholders of the SPAC, excluding the Founders. In seeking securityholder approval, the SPAC must provide its securityholders with prospectus level disclosure relating to the QT. In addition, the QT must have a fair market value of at least 80% of the aggregate amount then on deposit in the escrow account. The 80% threshold may be met through a single acquisition or multiple acquisitions, so long as all transactions close at the same time. If additional debt financing is required to complete the acquisition(s), such financing may only be drawn upon contemporaneously with or after completion of the QT.

Prior to completion of the QT, a listed SPAC is prohibited from obtaining any form of debt financing other than ordinary course trade payables. Share purchase warrants may be issued subject to certain restrictions including no participation in the liquidation distribution described below.

Pursuant to Part X, Founders are restricted from transferring any of their securities in the SPAC until the QT has been completed. Also, any securityholder that holds share purchase warrants is prohibited from exercising such warrants prior to completion of the QT.

Further investor protection is provided by a conversion right and a liquidation distribution feature for the SPAC securities. If the proposed QT is completed, the conversion right enables the public securityholders who vote against it to exchange their securities for a *pro rata* portion of the proceeds on deposit in the escrow account, in effect a dissent right similar to that found in corporate statutes. Subject to applicable laws, securityholders who exercise their conversion rights shall be paid within 30 calendar days of completion of the QT and such converted securities shall be cancelled.

If a QT is not completed within the required 36 months, the SPAC is bound by a liquidation distribution feature that requires the return to securityholders of a *pro rata* portion of the proceeds then on deposit in the escrow account. Such liquidation must be completed within 30 calendar days of failing to complete the QT and the SPAC's securities will then be delisted. Founders are not permitted to participate in the liquidation distribution.

Once the QT has been completed, the resulting issuer will be subject to all continued listing requirements in the TSX Manual without exception.

SPACs in Canada versus the United States

In making the decision to bring SPACs to Canada, the TSX noted the success of SPACs in the United States. In its initial Request for Comment on the proposed Part X, the TSX noted that as of April 30, 2008, in the United States 94 SPACs had completed their initial public offerings, having raised an aggregate of US$18.6 billion, and another 87 SPACs were in the process of registration.

In developing Part X, the TSX started with the SPAC rules in the United States, specifically those recently adopted by the New York Stock Exchange and NASDAQ. While Part X is closely modelled after these rules, the TSX has adapted the requirements where necessary to fit the Canadian market.

The following highlights some of the more significant differences between SPAC rules in the United States for the NYSE and those set out by the TSX in Part X:

- NYSE rules provide that SPACs demonstrate an aggregate market value of $250,000,000 and a market value of publicly held shares of $200,000,000;
- NYSE requires a minimum of 400 securityholders;
- NYSE requires a minimum listing price of US$4.00 per security; and
- NYSE will not permit a qualifying acquisition to proceed if public securityholders owning in excess of a certain threshold amount (to be set no higher than 40%) of the securities exercise their conversion rights;

Other Matters

The TSX has noted that there are a number of requirements in Part X that impact prospectus disclosure. The TSX intends to publish a Staff Notice summarizing these key disclosure requirements.

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