A mining issuer's guide to the galaxy

FOUR ROADS TO THE TSX VENTURE EXCHANGE

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The TSX Venture Exchange (TSXV) is a desired destination for many mining companies, and for good reason. Listing on the TSXV can enhance your access to capital, increase liquidity for your investors and elevate your company's profile. It may also allow you to offer attractive equity-based compensation to your executives and employees.

As of November 30, 2009, the TSXV had a mining issuer base of 1,099 and over $20.5 billion in market capital. To the same date, those issuers had raised more than $2.4 billion in equity capital for 2009. In short, listing on the TSXV can further the growth of your company. For issuers who have their sights set higher than the TSXV, it can be a valuable stopover en route to the Toronto Stock Exchange (TSX).

Specifically geared toward emerging companies, the minimum listing requirements of the TSXV relate mainly to the experience of your management team and the potential of your mineral properties, rather than actual earnings (see the sidebar on listing requirements). Moreover, with a mandate to mentor the management of newly public companies and a streamlined system in place to facilitate graduation, movement from the TSXV to the TSX full board is quite common. In fact, 2008 alone saw 45 issuers graduate to the full board, and 2007 produced 72 graduates. Combined, 57 per cent of the world's public mining companies are listed on the TSXV and the TSX.

If your company is contemplating listing on the TSXV, in addition to ensuring you can meet the minimum listing requirements, one of the most important considerations is which route to follow. While this decision should no doubt be made in consultation with your legal counsel and other professional advisers, in general there are four options: an initial public offering (IPO), a capital pool company (CPC), a reverse takeover (RTO) and a direct listing.

Initial public offering (IPO)

An IPO is the traditional method for going public and, broadly speaking, involves two concurrent tasks: (i) preparing and filing a prospectus with applicable securities commissions; and (ii) making a successful application to list your company's shares on the TSXV.

The prospectus is a detailed disclosure document that summarizes material information about your company and the shares being offered. Its purpose is to provide potential investors with the information necessary to make an informed investment decision. Accordingly, the prospectus will include such elements as a historical overview of your company, a summary of its business and operations, an overview of your business plan and a description of your principal mineral properties, including input from a National Instrument (NI) 43-101 technical report prepared for each such property, and audited financial statements. It will also disclose information about your company's

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directors and officers, and their respective backgrounds, related experience and shareholdings.

Concurrent with the prospectus-filing process, your counsel will prepare a listing application. As part of that process, the TSXV will review the background and expertise of your company's management. Your company will also be required to maintain transfer and registration facilities with a trust company, and submit its preferred listing symbols to the TSXV.

On top of any time required for planning or due diligence (and auditing the company's financial statements), a straightforward IPO generally takes between 90 and 120 days.

Capital pool company (CPC)

The CPC is a unique program, exclusive to the TSXV, that can give mining companies an opportunity to secure public financing earlier in their development than would be possible with a traditional IPO. The CPC program allows a new company that has no assets, other than cash, to conduct an IPO and list on the TSXV before commencing any commercial operations. Once listed, the CPC uses this early financing, or capital pool, to identify and evaluate a qualifying business, which, when acquired, would qualify the CPC for listing as a regular issuer on the TSXV. In the case of a mining issuer, this "qualifying transaction" is typically a mineral property.

In essence, the CPC process divides a traditional IPO into two phases: (i) creation and funding of the CPC and (ii) the qualifying transaction.

During the first phase, between three and six founders, each with public company experience, must incorporate a shell corporation with a minimum of $100,000 in seed capital. Then, similar to a traditional IPO, a prospectus is prepared and an application made to list the shell company as a CPC on the TSXV. The difference between the CPC prospectus and the IPO prospectus is, among other things, that the CPC prospectus outlines your intention to raise between $200,000 and $1,900,000, and to use the proceeds to identify and evaluate potential property acquisitions. It doesn't contain disclosures about mineral properties and there is no requirement at this stage for an NI 43-101 report. When the public offering closes, the company is listed on the TSXV with a ticker symbol ending in ".P," identifying it as a CPC.

You then have 24 months to find a property to acquire as your qualifying transaction. Once identified, your counsel will prepare a filing statement or information circular, depending on whether shareholder approval is required to complete the qualifying transaction. In either case, the document will include a disclosure, similar to that of a traditional IPO prospectus, on the property being acquired, including an NI 43-101 report on the property. The property must meet certain TSXV criteria, including a minimum amount of prior expenditures and a minimum recommended work program. If the property is acquired from a non-arm's-length company, the TSXV may require shareholder approval and/or a valuation. In addition, though not mandatory, you may also consider conducting a private placement to coincide with the closing of the qualifying transaction.

Provided the TSXV is satisfied, the company will meet the minimum listing requirements after the qualifying transaction closes, the ".P" will be removed from your ticker symbol and thereafter your company will trade as a regular TSXV-listed company.

Reverse takeover (RTO)

As an alternative to the IPO and CPC routes, your company could attempt to list on the TSXV by conducting an RTO of a company that is already listed. Also known as a reverse merger or a backdoor listing, this can be accomplished in a number of ways. Generally, your company acquires shares in a listed company and your shareholders exchange their shares for shares in the listed company – thereby the management and majority of the shareholders of your private company take control of the listed company. Thus your operating private company becomes, in effect, a TSXV-listed issuer.

As in the case of a traditional IPO and the CPC process, completing an RTO will involve the preparation of a prospectus-level disclosure document (a filing statement or information circular) and a listing application. However, in this case the

TSXV listing requirements for mining issuers

TIER 1

- $2,000,000 in net tangible assets
- Material interest in a "Tier 1 property" – a property with "substantial geological merit" that has undergone previous exploration, and either: (i) an independent geological report recommends a work program of at least $500,000 in phase 1 drilling; or (ii) a positive feasibility study or production levels show the property is capable of generating positive cash flow from ongoing operations
- Adequate working capital to fund a work program and 18 months of operations, plus an additional $100,000 in unallocated funds
- 1,000,000 free-trading public shares
- Public shareholders holding 20% of issued and outstanding shares with aggregate market value of $1,000,000

TIER 2

- Significant interest in a mineral property or rights to earn a significant interest in a mineral property
- $100,000 spent on above property in last three years or enough to make property a Tier 1
- Independent geological report recommending a $200,000 work program on above property
- Adequate working capital to fund above work program and 12 months of operations, plus an additional $100,000 in unallocated funds
- 500,000 free-trading public shares
- Public shareholders holding 20% of issued and outstanding shares, with aggregate market value of $500,000

BOTH TIER AND TIER 2

- 200 public shareholders, each holding a board lot
- At least 10% of issued and outstanding shares in public float
- Management with adequate public company experience and technical expertise, and two independent directors
- Sponsor's report (except in the case of IPOs and other limited circumstances) □

filing statement or information circular would disclose information about your company, the listed company and the resulting issuer. Similar to the IPO and CPC routes, listing via an RTO will often involve the adoption of a new ticker symbol. Of course, unique to the RTO process is the need to find a suitable TSXV-listed issuer to begin the process.

Direct listing

Finally, if your company was formerly listed, or is already listed on another exchange, you may qualify to list directly on the TSXV. You will still be required to prepare some form of prospectus-level disclosure document and meet the listing requirements, but depending on where you are currently listed you may be exempt from having to prepare a prospectus and fulfil other regulatory and reporting requirements.

Choosing a suitable route

While a standard IPO is the most traditional method of going public, listing as a CPC tends to be popular with companies attempting to list on the TSXV – particularly mining issuers. An IPO may be appropriate if you require a large financing, but IPOs are heavily dependent on market conditions and generally only appropriate for companies with some history of operations or exploration work. While CPCs are still somewhat market-dependent, this route may be preferred if your company wants to access capital at an early stage in its development, or if the market is not suitable for a traditional IPO. The time required to create and fund a CPC – apart from the time required to complete the qualifying transaction – is also significantly less than that required to close an IPO.

RTOs are less popular than IPOs and CPCs, but are also less dependent on market conditions since they don't involve broad-based financing. And while an RTO might allow your company to become listed more quickly than a traditional IPO or a CPC with a qualifying transaction, this is not often the case. RTOs have their own risks, as listed companies may have unfavourable histories or other liabilities, and identifying a suitable candidate for an RTO can be a time-consuming process.

Finally, though rarely chosen because few companies qualify, listing directly is the simplest and shortest route to the TSXV.

Regardless of which path you choose to follow, it's important to bear in mind that the process will require significant planning and resources to be successful. Although, as mentioned, the traditional IPO process is often estimated to take three to four months, when you consider the preparation, planning and due diligence involved in any of the routes, it's realistic to expect the entire process of listing to take between six months and a year. Be sure to involve your legal counsel early in the process, to help you choose the appropriate route, and then guide you along that route.

The roads described above may lead to the same destination, but choosing the best one for your company will invariably make for a more pleasant journey – and better equip you to leverage the benefits of your new listing. It goes without saying that for many mining issuers, listing on the TSXV is well worth the effort of getting there. ■