

# The Guide to Going Public

Achieving a successful  
Initial Public Offering  
in Canada

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# Foreword

On behalf of TMX Group, I would like to thank and congratulate PricewaterhouseCoopers for publishing this comprehensive guide to going public. Going public can be a great opportunity for a company and it is potentially one of the biggest decisions a company will make. I trust this guide and the services of PricewaterhouseCoopers will be a valuable resource to companies considering financing through public equity markets.

Our organization is proud to own and operate two of the world's leading equity exchanges: Toronto Stock Exchange and TSX Venture Exchange. These exchanges are recognized and respected for the calibre of listed issuers as well as our market integrity and liquidity. In terms of market capitalization, TSX and TSX Venture Exchange are the eighth largest global exchange group and are home to:

- The majority of the world's public mining companies
- More oil and gas companies than any other exchange group in the world
- The second largest group of listed technology companies
- The largest group of public clean technology companies

There are a lot of factors to credit with this success and calling Canada home is definitely one of them. We are fortunate to operate in one of the world's most stable economies. Canada offers a uniquely sound capital environment with political stability, a tax system that is fair and equitable, and a financial system that has been ranked by the World Economic Forum—two years running—as the safest, most sound financial system in the world. Canada also provides an enviable equity ownership culture in Canada: over 50% of Canadians hold equities. All of these factors make Canada a great place to invest and an attractive place for a public listing.

Along with the team of professionals at PricewaterhouseCoopers, Toronto Stock Exchange and TSX Venture Exchange would be pleased to assist in your decision, doing what we can to ensure your road to going public is a successful one.

Sincerely,

Thomas Kloet  
CEO  
TMX Group

May 2010





# Going Public – Introduction

Going public is an important decision for your company—it has many strategic advantages which can propel your Company's growth. Becoming a public company, however, also comes with an associated cost—not just additional overhead relating to compliance, but also with costs relating to your new governance structure and being responsible to your new shareholders. We have put together this guide to going public not as a technical manual but instead a guide designed to help you understand what it means to be a public company and what it takes to have a successful Initial Public Offering (IPO). Equally important this document will also prepare you for what life is like after an IPO.

An IPO is a complex process that involves three distinct stages:

- (i) preparing to go public,
- (ii) actually going public (the IPO)
- (iii) life afterward as a public company.

Throughout these stages you and your management team will be challenged as you balance the requirements of going public with running your day to day business. Our experience has told us that it's important to engage trusted advisors early in the process—advisors who can help you be successful and get you to the finish line.

As we discuss later, a typical IPO can take 100 days to complete—during this challenging period there will be numerous hurdles to overcome as you prepare to become public. We have tried in this publication to include hints and tips along the way to help you tackle some of these hurdles (we believe these will save you time and money but clearly there is no substitute to talking one on one about your individual situation).

If you are thinking about going public, we should talk—please contact a member of our PwC IPO Service team (listed on page 55) for a deeper conversation about the IPO process and what it means to you and your company.

Neil Manji  
National IPO Services Leader  
May 2010

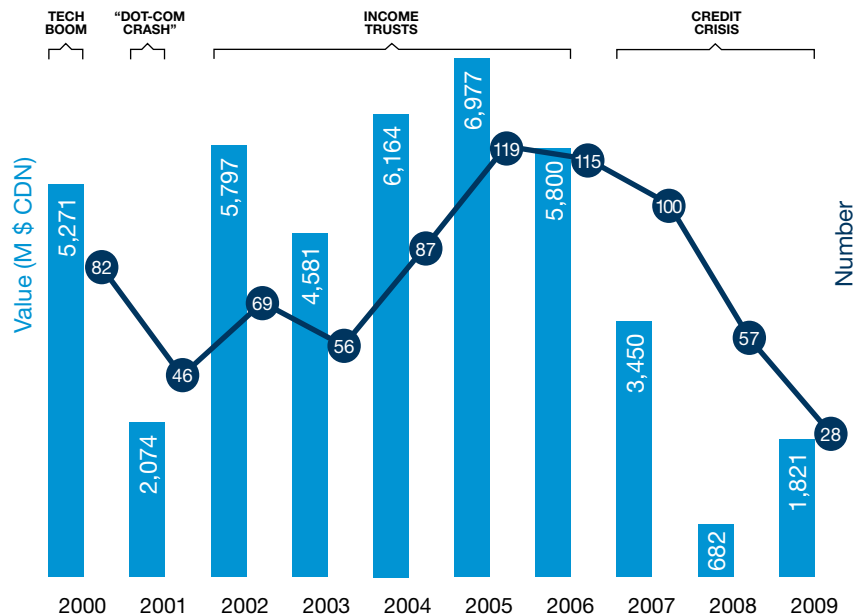
# Recent IPO Trends in Canada

## The IPO market in Canada

Canada's IPO market predominately consists of public offerings on the Toronto Stock Exchange (TSX) as well as the TSX Venture Exchange (TSXV). In addition, companies recently have been listing on other stock exchanges (such as the CNSX) as well as listing abroad via the London Stock Exchange's AIM exchange. Over the last decade the Canadian IPO market at times was robust and hit a high of just under \$7 Billion in new equity offerings in 2005. The latter part of the decade however was impacted by the worldwide economic credit crisis which resulted in a limited number of equity offerings. The following chart illustrates the number of IPOs and the associated dollar value of equity offerings over the last decade. As you can see the IPO market has been on a bit of a roller coaster ride but the decade ended on a hopeful note with an increased size of equity offerings—this suggests that combined with an improving economy and increasing investor confidence, the appetite for new equity issues (IPOs) is rebounding.

From discussions with many companies and dealmakers, we know that a number of companies expected to go public in the latter part of the decade; these plans, however, were shelved due to the credit crisis and the lack of an IPO market. As these plans are resurrected, we expect the IPO market to once again blossom—in the near term, we expect to see a Canadian market of \$4-\$5 Billion annually in IPOs.

## Canada IPO market over the last decade





# The Advantages and Disadvantages of Going Public

Companies go public for a number of different reasons from providing a mechanism to grow to implementing an exit strategy for shareholders. Some of the advantages and reasons for companies to go public include:

Advantages/Reasons to go Public	
1. Growth Strategy	An IPO can provide capital to grow and opens up opportunities that may have been previously limited under existing cash resources. Successful companies can tap the equity markets again (secondary offerings) to fund further opportunities such as acquisitions, investments in plants and equipment or expanding R&D activities.
2. Exit Strategy	Going public can provide a means to monetizing a portion of your (or your shareholders') investment. Note: this process may need to be completed in stages—your new investors will want to know that you are committed to staying on to run the Company once public and continue to grow the business.
3. Providing liquidity and personal wealth	Similar to the exit strategy discussed above, a public offering can provide liquidity to your existing shareholders and provide an opportunity to increase wealth through selling a portion of their shares.
4. Increased market value/valuations	The value of a public company tends to be higher than a private company due to the increased liquidity, availability of information and comparability to other public companies.
5. Financial flexibility	Going public may allow you more flexibility to execute your company's strategy. Funds can be used for acquisitions or to pay down debt. In addition, the issuance of new equity allows your debt to equity ratio to improve.
6. Stature and prestige	An initial public offering can take your company from obscurity to high visibility. Going public can also give your customers and suppliers a greater sense of security in doing business with you.
7. Ability to retain and attract key talent	As a public company you can use shares and various stock options plans to attract and retain key talent. These plans give employees a chance to participate in the Company's financial success and your company will benefit from their vested interest.

Now that we have discussed some of the advantages of going public let's review some of the disadvantages of going public—we recommend that you also give these factors some consideration to make sure you and your company are ready for public company life.

Disadvantages of going Public	
1. Increased costs	The initial costs of going public can be expensive—however this is a necessary evil of getting a public listing. Once a public company, you will also incur higher costs due to shareholder and regulatory compliance costs in addition to audit and legal costs.
2. Increased infrastructure and time commitments	Once public, the demands on your management team are ongoing. You are now a public reporter and every quarter will need to publish interim financial statements, an MD&A as well as prepare for analyst and investor presentations. In addition, the infrastructure requirements can be significant—public companies need to have a Board and Audit Committee and these directors have fiduciary duties that they need to fulfill.
3. Regulatory environment	Public companies are subject to scrutiny by regulators as well as the investing public. Information that was once private (including salary information or competitive information) will now be disclosed in various public documents. In addition, the CEO and CFO's of a public company need to certify to the correctness of the financial statements quarterly. (For more information on the regulatory environment see appendices.)
4. Potential for reduced flexibility in decision making	One of the biggest adjustments for owners who take a company public is the potential loss of flexibility. As a public company you will need to adjust to a new way of life and involve your board and shareholders in key decisions.
5. Performance pressure	As a public company, shareholders will now eagerly await your quarterly reports—you will need to adequately communicate your long term goals so that these are not jeopardized by the market's emphasis on short term results (which can impact on your share price).
6. Market volatility	External economic factors and fluctuations in the stock market (like those seen during the credit crisis) are out of your control but can affect the value of your company and employee morale.
7. Trading restrictions	Insiders have access to key information before the public, which means that you will be subject to certain blackout periods when you are unable to trade and also must exercise caution when discussing internal affairs. There may be times when you are unable to sell even though you want to or at times the disposal of your shares may be met with skepticism by your shareholders.

The important thing is to weigh all of the advantages of being a public company including the impact it can have on the strategic direction of the company with some of the disadvantages of being in the public eye.

Despite the loss of some control through an IPO and the higher regulatory scrutiny, going public is the right decision for many companies.

# Getting ready for an IPO...

## Are you ready?

Now that you've thought about the pros and cons of being a public company, let's review the current status of your organization. This next section will focus on getting organized for an IPO to minimize the bumps down the road and to make the IPO process as smooth as possible.

This section covers the following topics:

- A. Getting your “house in order”
- B. Starting to manage like a public company
- C. Developing a public profile
- D. Establishing and retaining your key professional advisors
- E. Consider your IPO options

Remember an IPO process typically takes 100 days from beginning to end—reviewing where you stand against these topics before you embark on the IPO journey will help you measure if that's achievable and will tell you where to focus.

### A. Getting your “house in order”

Let's take a step back—the following list is a summary of the common pitfalls and areas where we have seen companies experience delays in the IPO process or worse still, shelve plans of an IPO until the organization is ready. Assess your company and look for areas that need focus—this will ensure your company will have a successful public offering.

**Note:** the “Get your house in order” list opposite is not exhaustive, but gives you some things to think about. At PwC we offer an IPO Diagnostic, which is a cost effective way of examining the current status of your organization and enables us to assess your readiness for an IPO. We can use our experience of the many successful IPOs we have been involved in to benchmark your organization and provide you and your shareholders with the proper perspective.

## Getting your house in order...

(i) How understandable and realistic is your <b>business plan</b> ?	<p>Your business plan will be scrutinized by your underwriters and prospective investors—it will become an important part of your prospectus and marketing road shows.</p> <p>Consider your business plan:</p> <ul style="list-style-type: none"> <li>• is it realistic; will it withstand the scrutiny of outsiders—is it consistent with your competitive landscape?</li> <li>• is it understandable and well documented—is it measurable, can it be explained to a lay person?</li> <li>• are you ready to communicate it to your underwriters and potential investors—is it well known by your senior management, and is everyone in your organization aligned with this plan?</li> </ul> <p>As you consider the IPO process, now is also the time to think about your organization—do you have marginal products/divisions? Investors won't punish you for having losses but they will punish you if you retain money losing business units after the IPO (which might be considered a drag on operations).</p>
(ii) Review your <b>contracts</b>	<p>What works for a private company, may not necessarily work for a public company. Private companies often have agreements with shareholders re: buyouts or rights of first refusal. All agreements including compensation plans should be reviewed by legal counsel to make sure they are appropriate for a public company.</p>
(iii) Review our <b>internal processes</b> .	<p>If the Company has typically operated with informal operating and reporting procedures, now is the time to make some changes. You don't have to invest in a significant ERP system, but you need to have reliable financial systems that will provide accurate quarterly reporting. You will also need to formalize certain processes so that the CEO/CFO can sign the quarterly certificates required by the regulators.</p>
(iv) Retain an <b>auditor</b>	<p>Your company's financial statements will need to be audited as part of the going public process. You will need to have 3 years of historical audited financial statements included in the prospectus and interim statements may need to be reviewed.</p> <p>The earlier your auditor is in place auditing the financial statements the better—it's always more costly and time consuming to reconstruct information after the fact (see tip below).</p>
(v) Evaluate the <b>"bench strength" of your team</b>	<p>Now is the time to look at your team and evaluate if you have the right depth of experience and expertise within your organization. Don't forget your senior management team will have to gain the confidence of a whole bunch of new investors.</p>
(vi) Address <b>tax issues</b>	<p>Proper tax planning in advance can minimize taxes related to the restructuring of your organization. A tax review is necessary to get your organization ready for a public offering as well as examining certain tax planning structures such as estate planning arrangements that are unique to private companies. Engage your tax professionals early in the process to allow for adequate time for planning and co-ordination with your other advisors. (See page 30 for other tax considerations.)</p>
(vii) Evaluate <b>related party transactions</b>	<p>As a public company there will now be full disclosure of related party transactions. Evaluate whether these transactions should continue or be eliminated. Also consider—are there any compensation arrangements that should be brought more in line with market conditions?</p>
(viii) Evaluate <b>litigation and potential claims</b>	<p>Contingencies will be disclosed and reviewed as part of the IPO process. Anticipate any business issues that may receive additional focus as part of the IPO process, for instance employee relations, union agreements and environmental matters. Can any issues/contingencies be resolved as part of getting your house in order?</p>

## TIP 1

Begin early to position your company for a public offering by ensuring that the sufficient number of years of audited financial statements are available before starting the IPO process. You will save fees, headaches and, most important, time.

If you wait until "crunch" time to have multiple-year audits done, you may face two nasty surprises; first, higher costs for the reconstructed financial statements, and second, figures that may show that the company is performing at a level below what you expected.

## TIP 2

IFRS (International Reporting Standards) is coming to Canada – effective January 1, 2011 public companies will be required to report under IFRS. As a result your historical financial statements may need to be converted to IFRS to comply with public listing requirements. As part of getting your “house in order” spend some time with your accountants addressing IFRS, consider converting early and ensure your systems can provide IFRS ready information.

### B. Starting to manage like a public company

Before you become a public company, you have to start acting like one and looking like one. Public companies have a management structure with clear lines of authority as well as a strong and independent board that can comply with the appropriate corporate governance regulations. The better run public companies have formal processes for operating and financial reporting and have a level of depth at senior levels to enable future continuity.

### Management

As the CEO, you are the pivotal figure for the entire offering process. You are critical in making the strategic decision to go public. You evaluate the company’s readiness, recruit the team, monitor the process and make the key decisions. Your leadership and vision will set the tone for the entire exercise.

Just as the team needs a good leader, the leader can’t do it alone. You need a solid team that is prepared to continue the responsibilities of managing the company with the significant additional demands of preparing for and completing the initial public offering process. Your management team will come under close scrutiny as you take the company public—investors will want to make sure that you team can meet its goals and their funds are well invested. Your team will need to be a cohesive unit that shares a long-term vision and demonstrates to prospective investors its depth of experience, expertise, commitment and integrity.

If your team doesn’t measure up on all counts, you may need to hire additional personnel to add the necessary depth and improve your Company’s chance of success.

Management experience in taking a company public is a definite asset. Investors look for executives who have a successful track record in building companies, who meet goals and who have demonstrated the ability to deliver shareholder value. You will have an opportunity to communicate your track record via the prospectus and road shows but you will also gain credibility by having key members of your team in place for some time.

## Board of Directors

A strong board is an invaluable asset—your directors will enhance shareholder value by bringing experience and specialized expertise, business contacts and an objective perspective to your company. They will also act as a key sounding board to you and your management team on key strategic decisions.

Corporate governance requirements are largely disclosure based. For example, issuers are required to disclose the members of the board of directors, in addition to those members who are not independent, along with the basis for that determination.

Depending on the market the issuer’s securities trade on, requirements may be more onerous. For example, while TSX issuers have to provide a description of the roles and responsibilities of the CEO, the Chair and chairs of each board committee, issuers on the TSXV are not subject to this requirement. Another such example is that TSX issuers need record the attendance record of each director at board meetings; again, this is not a requirement for TSXV issuers.

In addition to disclosure requirements, audit committees are required to perform specific functions under the current regulations. Specifically, audit committees are to provide oversight of the external auditor; provide recommendations on the nomination and compensation of external auditors; approve all non-audit services; and perform a review of financial statements, MD&A, and annual and interim earnings press releases.

The Canadian regime is a lot less prescriptive than the U.S. requirements. For example, audit committee members for all TSX and TSXV issuers are generally required to be financially literate; however, for NYSE and Nasdaq issuers, all members “must be” financially literate and at least one member “must be” a financial expert.

From a Canadian compliance perspective, where there is questionable conduct by the issuer, management and/or the board, the shareholders, regulators and other interested stakeholders often attack the Board of Directors for a failure to properly oversee the management of the business. This is why a focus on compliance and controls, as well as effective risk management is important for oversight bodies.

Ideally, you want an independent board of directors with a broad range of expertise—the right mix and the right credentials will speak volumes about your company. As you know, attracting the right people can be easier said than done. Because of legal exposure, it can be a tough sell to attract the best board members. Securities laws hold directors responsible for “full, true and plain disclosure of all material facts” relating to the issuing of securities. Board members can be held liable for the information or lack of information in the prospectus. Although insurance can usually be obtained to protect directors against potential liabilities, such insurance is costly and cannot cover all eventualities or completely eliminate the risks.

So again, a timely and orderly approach increases your chances of attracting high-caliber board members. The more you look and act like a public company, the greater comfort there will be in joining your team.

We have summarized in Appendix 3 the governance requirements of being a public company in Canada. These requirements can be complicated—talk to your PwC representative to gain an understanding on the requirements and how we can help in getting your governance structure right.

## C. Developing a public profile

Developing a public profile is a process that requires careful “hands on” management. In fact, it can be daunting if you’ve never before had to generate publicity. If that’s your position, consider hiring a public relations firm or an investor relations manager who has experience in handling the financial press and the investment community—and do so early in the game. It takes time to build a company’s image. The earlier you start to build your story and foster media contacts, the more credibility, name recognition and momentum you will have going into the offering process.

As noted before, your business plan needs to be understandable and realistic—the ideas for your company as well as the growth prospects need to be well articulated and realistic to attract investor interest. Your organization needs to also show a habit or a trend of meeting its goals and objectives—this will inspire confidence in your investors.

A good investor relations firm will:

- (i) synthesize your information into presentations and make it investor friendly
- (ii) ensure that the presenters and road shows convey your message
- (iii) help train key individuals on presenting at the road shows
- (iv) post IPO, support the company as you continue to communicate with investors

## D. Establish and retain your key professional advisors

The process of going public is intense—having well established relationships with your professional advisors, people you can trust, is very important. You need advisors who you can rely on and who you are completely at ease with—a team of advisors who will be there for you in the heat of the battle! When selecting and putting your team together—consider the following fundamental traits:

**Rapport** – simply put, you need to be able to get along with your advisors. The going public process is so intense and subject to such a time crunch—that you cannot allow personality conflicts to hinder the process.

**Reputation** – you need professional advisors who are experienced, that have the highest integrity and are known for quality work. They should know your industry, be familiar with the IPO process and be able to deliver the wide range of services you may need.

**Response** – You should expect quick and responsive action—the IPO process is a high priority for you and needs to be a high priority for them.

Where possible try and establish professional relationships in advance of the offering stage—this will give you the chance to evaluate the individuals as well as gain confidence and trust in them. It will also allow them to gain knowledge of your business, how you like to work and how your company operates.

### TIP 3

When retaining professionals for the first time inquire about their experience working on an IPO and ask them to clear any conflicts. Check their references and negotiate fee arrangements including engagement letters early in the process... get the administrative stuff out of the way.

## **What some of the key professional advisors will do during the IPO process:**

### ***i) Lawyers***

Lawyers often will assume a coordinating role throughout the offering process. They can be called upon to:

- Evaluate organizational structures and working with your tax advisors streamline the corporate structure
- Assist in the preparation of the prospectus
- Issue legal opinions and comfort letters to underwriters
- Evaluate disclosures and assist with regulatory matters

### **Considerations when looking for legal counsel:**

- Experience with securities law and dealing with regulators
- Experience in your industry
- An established profile – counsel who has worked with underwriters and auditors before
- Quick and responsive turnaround
- Good chemistry! You will be spending lots of time together

### ***ii) Auditors***

Your auditors play a critical role in helping you make informed and intelligent decisions about going public and getting your house in order. Your auditors will:

- Audit and review the historical financial statements required in the prospectus.

- Assist in evaluating whether going public is the company's best option and explore alternatives with you.
- Review your game plan, sharing the benefit of our experience with other companies of similar size and industry focus.
- Help establish a reasonable timetable.
- Provide valuable input into the prospectus and help you avoid common pitfalls during the IPO process.
- Advise on internal controls and financial and operating systems.
- Help you respond to questions from securities regulators.
- Issue "comfort letters" to regulators and underwriters and respond to any due diligence inquiries.

### **You should look for:**

- Experience with initial public offerings.
- Experience with your industry.
- A firm that provides a broad range of services (including Tax, Valuations and Corporate Governance assistance).
- An established profile within the underwriting community.
- Quick and responsive turnaround of work.
- A firm that will support you when public and be there as you grow nationally and internationally.
- Good chemistry, again, you'll be spending many hours together!!

### **iii) Underwriters**

Your underwriters put it all together. In essence, they have a sense of what sells, an instinct for timing and the savvy to anticipate market and investor appetite—you want the very best representing your company!!

#### **The lead underwriter:**

- Assists in developing the prospectus.
- Advises on the timing of the offering and the ultimate share price.
- Co-ordinates the road show.
- Puts together a group of underwriters to sell the shares.
- Provides after-market support and advice.

Your selection of an underwriter is a critical part of planning your public offering. It's a courting process that should start well before the offering takes place. While you're evaluating the various investment banking firms, they in turn will evaluate your company and your likelihood of success before deciding whether they'll undertake the offering. Adequate lead-time allows each side to develop the necessary level of comfort and knowledge to create a positive team environment.

Initiating an early relationship allows you to sell your story over time and to demonstrate positive milestones. You begin to establish credibility with underwriters by demonstrating growth and a track record, as well as a history of attainable budgets and positive actual results—all essential ingredients for a successful IPO.

Ultimately, your company will seek out one investment banker as the lead underwriter for the offering. The lead underwriter will put together a group or syndicate of other investment banking firms to assist in selling the securities.

#### **What you should look for in an underwriter:**

An established IPO track record. Does the underwriter have recognized experience in your industry and in the type of security you want to offer? Are transactions ultimately priced within the original, estimated range? What percentage of transactions go through to completion? How have previously handled equity offerings performed in the aftermarket? These are strong indicators of the underwriter's experience.

**Solid reputation.** Look for underwriters who have credibility with investors—institutional and retail. A lead underwriter should command peer respect in order to be able to put together a strong group to assist in selling and distributing the stock.

**Distribution capabilities.** Does the underwriter have a regional, national or international client base? How does that fit with your plans? Are the investors mainly institutional, pension plans, or retail?

**Terms and conditions.** What flexibility is there concerning the number of shares that can be sold by the current owners? Is there a requirement to hold your shares in escrow? If so, for how long?



### **What the underwriter looks for:**

Before underwriters agree to undertake the offering, you can expect them to take a long, hard look at your company. They'll review your company's business plan, analyze your financial statements and interview your key employees and likely suppliers, customers and external advisors. When they look at an IPO candidate, they're looking for a company with growth potential or with a unique product or service as well as strong management who have demonstrated their ability to set and meet goals; and a clean and solid corporate structure.

### **Letter of intent**

When you've selected your lead underwriter, you'll meet to discuss the type of security to be issued, an estimated range of the offering price and the type of underwriting.

At this point, the underwriter will issue a "letter of intent" to formalize the arrangement. This letter is a non-binding working agreement that sets forth the general terms

and conditions of the offering but does not create a legal obligation for your company or the underwriters to proceed with the offering. The letter of intent will eventually lead to the legally binding underwriting agreement. The provisions of the underwriting agreement are under constant discussion during the entire going-public process and are subject to revision based on market conditions. Generally, it is finalized and signed only at the point when the final prospectus is ready for distribution.

## **TIP 4**

Sometimes the best information you can obtain on a potential underwriter is through informal processes. Ask for a list of past IPOs that the underwriter has served in a similar capacity to your planned IPO. From this overall listing, select a few and call for a reference. Ask them some—if not all—of the questions already suggested, as well as these: Would you use the underwriter again and, if so, is there anything you would change? How did the pricing process go? Did the underwriter sell the over allotment? What surprises were there?

With respect to the type of underwriting, your investment banker will propose one of two types:

- **Best Efforts**, which means the underwriting firm agrees to use its best efforts to sell the issue but is not obligated to purchase unsold securities. The proceeds to the Company are the number of shares sold multiplied by the offering price less underwriter commissions.
- **Bought Deal**, which means the underwriter agrees to buy all of the issue and as a result assumes the risk for any unsold securities. This is certainly the preferred option from the company perspective, however is not always available. The commitment is not made until the exact offering price is set, which is just prior to the effective date of the prospectus. This way, the issue can be priced according to current market conditions. The proceeds will be equal to the amount agreed to be bought less underwriters commissions.

## The underwriting agreement

The actual underwriting agreement, covers the matters included in the letter of intent, as well as the type of offering; warranties by the company; indemnification of the underwriter against liabilities arising under securities laws; and conditions and events that must occur before the underwriter takes you to market, including the receipt of a comfort letter from your independent auditor, the lock-up period, and the time and location of the closing.

### TIP 5

You need to be in constant communication with your underwriter over pricing. This includes monitoring investor interest as well as reviewing peer and industry market multiples to assess the IPO price. Keep an eye on economic news and how the market is behaving as these factors will also impact the pricing and potentially the timing of your IPO.

## E. Considering your IPO options

Companies can choose from a variety of exchanges to go public on—the decision depends on the size of your company, the listing requirements, as well as which exchange provides investor interest in your company and industry.

### Public Exchange Alternatives:

(i) Toronto Stock Exchange (TSX) – The TSX is Canada’s major stock exchange and primarily provides listings for larger companies from a variety of industries.

(ii) TSX Venture Exchange (TSXV) – The TSXV is Canada’s junior exchange and provides listing opportunities for emerging companies that do not meet the requirements of the TSX. Companies can go public on the TSXV and then graduate to the TSX as the company grows and matures.

(iii) Other alternatives for Canadian companies include the CNSX (Canadian National Stock Exchange)—a relatively new option for emerging companies and AIM (Alternative Investment Market—the London Stock Exchange) for international smaller size but growing companies. These exchanges provide other listing alternatives.

In addition to the above, Canadian companies also have opportunities to list on the US exchanges such as the NASDAQ or NYSE. Companies can choose to list only on the US or dual list with a listing on the TSX at the same time. A US listing can add to prominence and may make sense depending on the Company’s market and anticipated growth, but it should be noted that US listings can be complex and regulatory requirements are more onerous than Canada’s. More information on going public in the US can be found on page 35.

### Listing requirements TSX & TSXV

The minimum listing requirements of the TSX and TSXV depend on the exchange and the industry sector. The TSX and TSXV divide each industry sector into two

tiers based on the stage of development, historical financial performance and financial resources of issuer. These minimum listing requirements are summarized in Appendix 1 and 2 for your reference. They get updated frequently—so we recommend you also check [www.tmx.com/en/listings/listing\\_with\\_us/index.html](http://www.tmx.com/en/listings/listing_with_us/index.html).

### TSX

The TSX has minimum listing requirements specific to the applicants industry which includes the following sectors:

- Mining Exploration & Mining
- Oil & Gas
- Industrial
- Research and Development
- Technology Companies

The TSX refers to “exempt” companies as more established companies and less established companies as “non-exempt”.

### TSX Venture Exchange

TSXV companies are usually at an earlier stage of their development and as such listing requirements are adjusted accordingly.

The TSXV has minimum listing requirements specific to the following sectors:

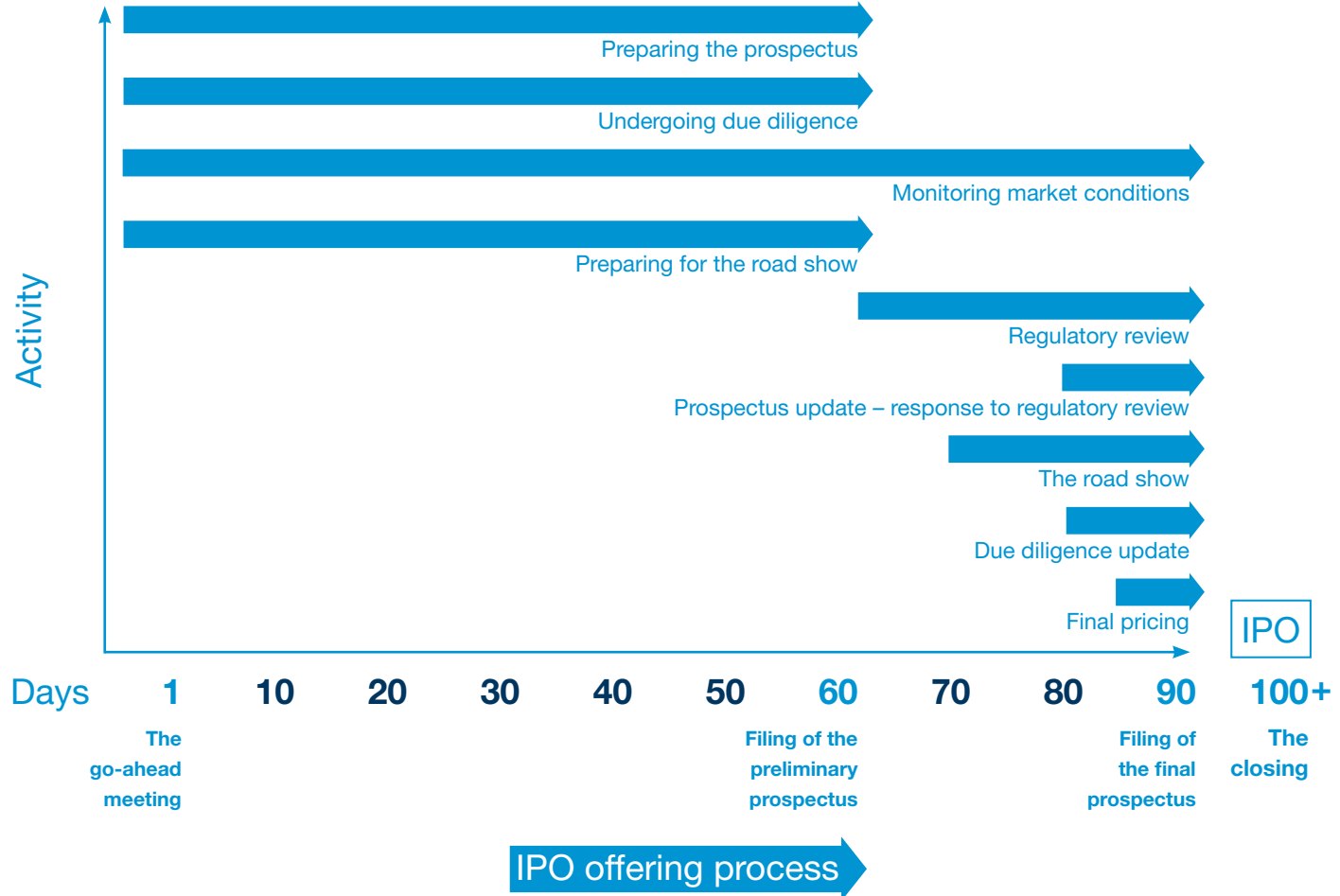
- Mineral Exploration and Mining
- Oil and Gas
- Industrial or Technology
- Research and Development

TSX-V refers to its more established companies as Tier 1 issuers and less established as Tier 2 issuers.

# Going Public – The Initial Public Offering

## Zero to 100 – the typical IPO lifecycle

Once you have engaged your key advisors and made the decision to go—the IPO dash is now on. Typically an IPO process takes about 100 days—this is a very intense period with a number of deadlines and multiple priorities. The following chart summarizes the typical IPO timeline:



### **An overview of the offering phase:**

During the offering phase, the prospectus will be put together by your team of underwriters and advisors. At the same time the underwriters will begin a process of due diligence on your organization and key individuals—be prepared to provide a lot of information and be available to answer a lot of questions. Once the preliminary prospectus is completed this will then undergo a regulatory review—regulators deal with a number of prospectuses at the same time so it's important to get in the queue with a good product (allow for two weeks turnaround here). Your advisors, accountants and underwriters will assist in answering the regulators questions. Throughout this period your team will pull together a presentation for the road show—using the preliminary prospectus and your investor presentations you will perform a series of road shows, taking your story across the country or internationally (if applicable) to potential investors.

Throughout, your underwriters will be monitoring interest from investors and evaluating the offering's likelihood of success. In the last days of the process you will set a final price and file your final prospectus. Finally your underwriters will sell the shares as part of the IPO and deliver the proceeds.

### **A detailed look at the offering process:**

#### **a) The go-ahead meeting**

The offering process officially gets under way with an “all hands” meeting of what will become known as the working group. Your company executives meet with the working group (consisting of your lawyers, auditors, lead underwriters and your underwriters' counsel) to establish relationships, responsibilities and time frames.

It is important that one person (from your organization) is identified and clearly acknowledged as having co-ordination responsibilities (“IPO Champion”). In addition, the company must have an ultimate decision maker for all issues that may arise during the IPO process.

As a group, areas of responsibility for gathering relevant information, preparing different parts of the prospectus and deadlines for completed work will be agreed to. A great deal of information may be available, but the information must be factual, verifiable and traceable to the source. Your team will determine the availability of each of the group members, develop a timetable and circulate a group list of names and contact numbers.

## **TIP 6**

The IPO will throw a number of managerial challenges your way—consider the following options to assist in making your IPO successful:

- Elect an “IPO champion” who will be responsible for receiving, coordinating and delegating requests from the various parties (underwriters, advisors, regulators)—this will avoid the consistent barrage for additional information and will facilitate better coordination and fulfillment of requests. Usually this is a senior individual within the organization e.g. Internal Counsel or the CFO.
- Consider delegating more responsibilities of running the business to other key individuals during this intense time period—you and a number of key senior staff will be needed for the IPO and will be out of town on the road show. Plan for this, so that the business doesn't come out of the IPO process weaker than when it went in.

## b) Preparing the prospectus

Essentially, the prospectus is a document that provides the necessary information to allow investors to make reasoned and informed decisions. It includes the history of your company and outlines future prospects and risks associated with the investment in your company's securities. It also describes the securities to be issued and outlines how the proceeds from the sale of the securities are expected to be used ("use of proceeds").

The content, the sequence of information and the form of the prospectus are set out in provincial securities acts but may vary according to industry, size of company and the nature of the offering.

You know your business best, so make sure you are reviewing the drafts of the prospectus as they are put together—don't relinquish this responsibility completely to the underwriters or professional advisors—you need to ensure the prospectus tells your story and that investors understand the business and what your company stands for.

### TIP 7

Even with an experienced team of advisors, make sure your company takes an active role in controlling the progress of the IPO. Ask for an initial timetable and measure against this continually. Remember, of all the parties involved, the company has the most at stake.

## The preliminary prospectus

The first step is to prepare a preliminary prospectus, which is subject to regulatory review and includes all of the required information, except for the final price, the underwriters' commission, the final number of shares to be sold and the net proceeds. This information is decided in the last days of the offering and is included with any revisions in the final prospectus, which is also subject to regulatory review.

The prospectus is a committee effort. Individual team members submit their portions of the prospectus to the draft co-ordinator (usually legal counsel) who assembles the pieces to form a first draft, which is then circulated to the team for review. You can expect numerous revisions before all team members are satisfied with the final draft document.

The next challenge is to maintain a balancing act in the writing. The preliminary prospectus has a dual purpose: it's a selling tool and also a document designed to limit liability and provide factual information to the investors. Though it's used as a marketing document to promote investment in your company, for liability purposes it also includes full disclosure of all risks associated with the offering. Because the basis of the prospectus is a standardized format, there is certain uniformity to every prospectus that is filed.

The respective provincial securities commissions are rigorous in reviewing the document to ensure compliance with the prescribed legislations. They will review the disclosures, risks and uncertainties as well as the financial statements and other information. Questions will come in writing and will be circulated to the working group to help you formulate responses.

## TIP 8

Do you anticipate marketing and selling your securities in Quebec? This will require translation of the prospectus and other financial information into French—allow for the additional time and cost for this translation in your offering timetable.

### – Red Herring

The printed preliminary prospectus is also known as “The Red Herring” because it bears a proviso on the cover—printed in red ink—that states that the prospectus is not yet final and that the content may be subject to completion or amendment. It reads as follows:

“A copy of this prospectus has been filed with the securities regulatory authorities in each of the provinces in Canada but has not yet become final for the purpose of the sale of securities. Information contained in this prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt is obtained from the securities regulatory authorities.

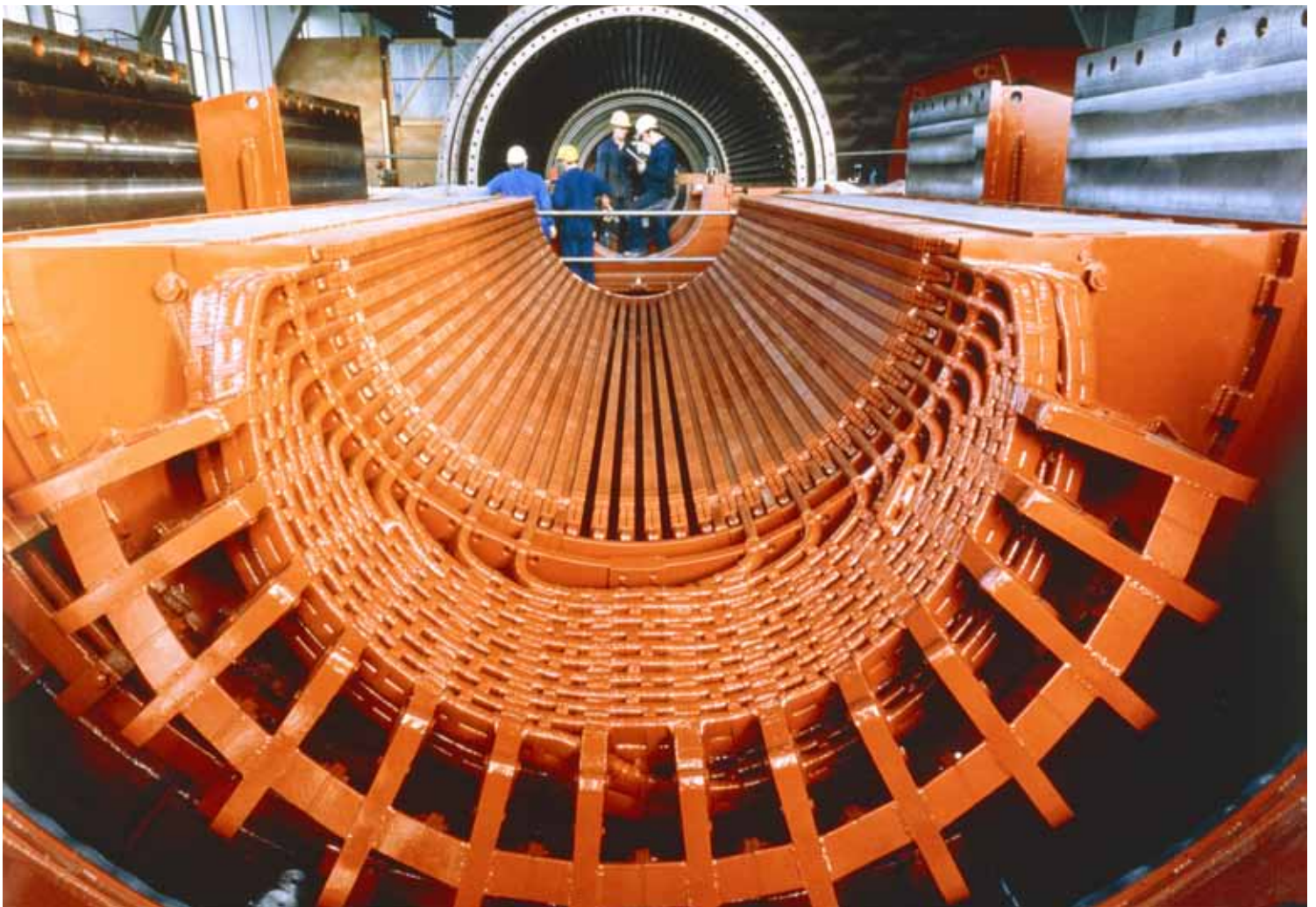
The cover of the final prospectus reads like a fact sheet on the offering. It includes the name of the company and date of offering, a description of the securities being offered, the offering price, the market for the securities

and the anticipated net proceeds to the company (some of this information is still bulleted at time of preliminary as these items are not finalized). It also includes the name of the lead underwriters and certain information about the underwriting agreement.

### – Contents

As a general summary, the contents of the prospectus break down into distinct components.

- Details of the offering itself – the nature of the securities, how the money will be raised and how the proceeds are expected to be used by the company (i.e. acquisitions, pay down debt, working capital needs).
- Description of the company, including any significant changes in its history. The disclosures will cover your principal products and services and intellectual property such as patents and trademarks, as well as significant markets (including your market share, the relative size of the market, recent studies), customers and competitive conditions. In addition investors are advised of the risk factors facing your industry and owning securities in your company. You will find this list exhaustive but a necessary evil in providing a detailed list of risk factors to potential investors.
- Detailed financial information – your company’s operating results, its capital structure and details of corporate debt. You’re required to provide a comprehensive financial picture, including three years historical audited financial statements as well as unaudited interim financial statements (depending on the timing of your offering).



- In a separate section, the prospectus includes Management’s Discussion and Analysis (MD&A) which discusses the operating results and the liquidity of the company.
- Disclosure of all material acquisitions and dispositions that have taken place over the two years prior to preparing the prospectus, along with their impact on the company’s operating results. Financial information may also be required for the acquired companies depending on their relative size to your company.
- Detailed information on management, directors and principal shareholders—including background of individuals, details of remuneration packages and bonus plans as well as management shareholdings and any interest in the company’s material transactions.
- Finally, there is a discussion of income tax considerations for the investor, any legal proceedings in which the company is involved and an analysis of risk factors.

### **c) Undergoing due diligence**

As part of the process, the lead underwriters and their lawyers conduct a thorough investigation of all aspects of your business. They do so for three primary reasons: to gather information for the prospectus; to be sure that all information that is material to the offering is included; and to confirm the accuracy of that information. Due diligence is a “...reasonable investigation... to provide reasonable grounds for a belief that there has been no misrepresentation.” The process is primarily carried out over the first 60 days, and it requires time, patience and co-operation from management.

In addition to protecting the underwriters from potential liability for misrepresentations in the prospectus, the investigation assures investors that the prospectus contains full and true disclosure. This process also gives the underwriters a better understanding in order to present your company to investors.

#### **– Request list**

Generally, the underwriters' lawyers will compile a comprehensive request list for documents pertaining to your company. For example, you'll need to provide corporate documents such as articles of incorporation, minutes of board meetings, detailed records of the company, a current list of all shareholders and so on. They'll also want sales-related information—a list of your top customers and suppliers and any contracts and agreements with them, as well as documents regarding material assets and liabilities.

As part of due diligence, the lawyers will do a thorough review of your intellectual property. They will need to investigate all financial information and corporate financing and securities matters, as well as your insurance coverage and claims, litigation and tax matters. They will also want to satisfy themselves that your company is in compliance with relevant government regulations. Finally, they will look at your HR policies—a list of employees, an organizational chart, your benefits plans, any collective bargaining agreements and details of union activities. This investigation will also include meetings with your auditors, your company lawyers and, in certain circumstances, other consultants.

#### **– Management questionnaire**

Often, the underwriters' lawyers prepare a questionnaire for officers and directors of the company. In addition to seeking general information about the company, the questionnaire may question statements included in the prospectus, management background and experience, terms of employment contracts and compensation. The process may even include extensive background checks on company executives. Your officers and directors must be prepared to answer all questions openly and honestly. The lawyers will look to verify information and identify any inconsistencies, misstatements or omissions.

#### **– Close inspection**

The underwriters and their lawyers will visit your facilities to inspect your material assets. They may even contact customers, suppliers and others with whom you do business and hold meetings with your directors, auditors and other advisors. In addition, they will request a comfort letter from your auditors with respect to financial data contained in the prospectus—this process includes underwriters “circling up” financial data and the auditor ensuring that this data agrees to previously audited information or your financial records.

#### **– Preliminary Due Diligence Call**

At the time of filing the preliminary prospectus, a preliminary due diligence call will be held with management and all of the key advisors. Questions will be asked by underwriters' counsel of the various parties to ensure the prospectus contains factual and complete information.

## TIP 9

The list of questions can be quite long, obtain the list of questions as early in the process as possible and script your written answers so you are ready for the call. Ask your advisors if there are any questions they cannot answer which they will refer to you, this way you are not surprised or caught off guard.

### d) Regulatory review

Once the preliminary prospectus is agreed upon, it is printed and filed with the relevant securities commissions.

There is a brief pause in the process when you file the preliminary prospectus as the securities commissions conduct their first- stage regulatory review. Depending upon the activity in the markets, the securities administrators will usually issue a comment letter within two weeks outlining points of clarification, required revisions, requests for further information and any other questions. There are often a number of questions or comments that require clarification from the company, your lawyers or your auditor. Usually your lawyer co-ordinates any required revisions.

If the changes from the regulatory review are extensive, you may need to file an amendment and distribute it to all those who receive the preliminary prospectus. Otherwise, changes that do not materially affect the offering are incorporated into the final prospectus.

### e) Marketing the IPO

At the same time that you are preparing the prospectus, satisfying the probing questions of due diligence and trying to maintain business as usual, you also need to think about how you will present your story to potential investors.

Once you receive the first comment letter from the securities administrators and are able to address their concerns, it's time to take your story on the road to institutional investors and investment dealers.

Not only do you have a narrow window of time to do so, you must also respect strict rules about the means of marketing your offering. Your primary information source is the preliminary prospectus which provides the basis for what's known as the "green sheet." Prepared by the underwriter, the green sheet is a summary of key information from the prospectus, often with comparative data on similar stocks.

### The road show, the red herring and the green sheet

Armed with the red herring and the green sheet, you, your key executives and your lead underwriter will go on a whirlwind tour known as the road show—a series of presentations to the investment community that typically takes place in a number of different cities over a two-week period. The road show itself usually includes a prepared presentation—showcasing the company's vision, its competitive position, its unique attributes and financial performance and its growth expectations—followed by a question and answer period. This is the core of the selling effort. The greater the interest you build, the more likely your IPO will be successful.

The competition for investor interest is often fierce, so make your road show a good one. In fact, because the road show can be one of the most important elements in a successful offering, you should call in your public relations or investor relations firm for assistance.

As excited as you may be about your IPO, you must be very careful about inadvertently disclosing confidential information during this pre-selling period. Remember to use and discuss only the information already made public through the preliminary prospectus and the green sheet. Talk to your counsel if you are uncertain whether certain information can be disclosed.

## TIP 10

Road shows not only allow you to tell your corporate story but they also enable you to showcase to investors the talent, caliber and integrity of your management team through an organized, smooth presentation. It can be one of the most important elements of a successful offering. Maximize the value of your road show through planning, preparation and practice!

### **f) Due diligence update**

Shortly before the preparation of the final prospectus, your working group of advisors will hold a meeting to update the due diligence. This gives all parties an opportunity to raise any questions they have about the offering or your company—and to establish due diligence defences.

### **g) The final prospectus**

Throughout the whole offering period, the underwriters are testing the waters in terms of pricing and market acceptance. General market conditions and the interest you generated with the preliminary prospectus and the road show affect the final decision on pricing and the number of shares.

Although the underwriters usually recommend the final price and offering size, there is always room for negotiation. As such you should monitor market conditions in order to help you negotiate the final pricing decision.

When the price and offering size have been established and the due diligence and regulatory review completed, you are ready to file the final prospectus. Once the final prospectus is filed and a receipt obtained from the securities commissions, the selling and distribution of shares may begin!!

### **h) The closing**

Shortly after signing the underwriting agreement and the securities offering, there is a closing meeting with all those involved in the process. Legal documents are signed and exchanged, after which you receive the net proceeds of the offering in exchange for the securities that have been issued.

The closing meeting is the official start of life as a public company.

# Costs of getting ready and going public

The cost of becoming a public company can be significant and vary, depending on the size, the complexity of the offering and the form of the Company after it goes public. Costs are incurred in three stages:

## (i) Preparing to go public

Costs in preparing to go public include audit and accounting fees, legal fees, possibly additional personnel costs and directors' fees.

Audit and Accounting	<p>In order to file a prospectus you will need to have three years of audited financial statements. Many companies need to engage auditors to go back and audit historical information. In addition, you will need to consider your current reporting systems—can they handle your reporting needs? Can they provide reliable financial information to enable you to meet quarterly reporting requirements?</p> <p>With Canada moving to International Financial Reporting Standards (IFRS) commencing January 1, 2011 you will also have to give some consideration to your organization's readiness to convert to IFRS in 2011 or to adopt IFRS early to simplify your accounts going forward.</p>
Legal Fees	<p>You will likely incur legal fees in getting your house in order—improving your corporate governance, reviewing key contracts and as well as examining existing disputes.</p>
Additional Personal Costs	<p>Consider your organization—do you have the necessary bench strength to carry you through this process? You may need to add to your current finance complement as well as enhance resources in other areas of your organization—this is common in an organization getting ready for life as a public company.</p>
Directors' fees	<p>In order to go public you will need to have a strong, independent Board of Directors in place—this comes with additional cost.</p>

## (ii) The Offering Stage

During the offering stage things heat up and your organization will incur costs in the following areas:

Underwriters Fees	<p>The underwriters receive a commission for actively marketing and taking your company public. Their fee is usually a percentage of the IPO proceeds and can range from 4-10% of the gross proceeds of the offering depending on the size and type of offering.</p> <p>Underwriters' fees are the largest single component of the public offering costs. The percentage commission paid may be subject to negotiation but this will depend on the size, complexity of the offering as well as nature of underwriting. Additional compensation may go to the underwriters in the form of warrants (the right to purchase shares in the future at a specified price)—this is all part of the negotiation.</p> <p>As with all professionals you will also need to pay out of pocket expenses incurred which can be significant due to the marketing effort and road shows.</p>
Audit & Accounting Fees	<p>During the offering process your accountants will get quite busy as depending on the status of your audits these will also need to be completed. Your auditors will also be responsible for providing a “comfort letter” to your underwriters as well as consent letters to regulators. In addition, they will be reviewing the prospectus, possibly performing interim reviews, assisting with the regulatory responses and participating in due diligence sessions.</p>
Legal Fees	<p>The amount of fees incurred during this process will depend on the complexity of the offering. Regulatory review comments as well as the number of versions of the prospectus directly impact the legal costs. As well, you will be required to reimburse the underwriters' legal costs as part of the prospectus work.</p>
Other Costs:	
(i) Marketing & Road Show Costs	<p>In order to tell your story to the investment community you will need to prepare marketing and presentation material. Likely you will need to engage an Investor Relations firm who will assist in getting your story out. You will be taking your story on the road, so travel and other costs will also be incurred here.</p>
(ii) Miscellaneous Costs	<p>These costs include printing costs associated with the prospectus as well as exchange filing fees, transfer agent fees, etc.</p>

### How much can the costs of going public add up to?

Well as you can see from above, it depends on the level of complexity and sophistication of your organization. But here are some ranges of the cost of an IPO:

- Underwriters fees 4-10% of the IPO gross proceeds
- +
- Legal, Audit, Accounting costs on a smaller offering can range between \$200K-\$500K and on a larger offering can range between \$500K - \$1M +

### (iii) After the offering – public company costs

Once public you will incur ongoing costs in order to comply with being a public company—these costs include annual audit fees, director costs, as well as annual meeting costs and investor relations costs. These costs will vary depending on the relative size of your organization, the complexity and number of staff dedicated to being a public company.

## TIP 11

During the IPO process, everyone around you including your staff and professional advisors will be working flat out. Naturally everyone is focused on getting the prospectus filed and completing the offering—but don't lose sight of the costs you are incurring to avoid nasty surprises. Select one senior member of your team as the “fee champion” and have them request bi-weekly estimates of time and costs incurred from each of your advisors. This way you have a good handle of the costs as you move through the IPO process.

# Life as a Public Company

## Transition and adjustment

The closing meeting is a point in time which marks the beginning of being a public company. You are now in the business of delivering shareholder value—and you must learn to balance short-term market demands with long-term company objectives.

It can also be difficult to get accustomed to what amounts to working under a microscope. If you've been used to making all the decisions alone and calling all the shots, you have to learn to operate within a more structured environment.

In addition, you must also devote considerable time and effort to maintaining your market position and investor interest. If enthusiasm wanes, trading declines—and thinly traded shares dilute the liquidity benefits you may have been seeking through the IPO. You may need an effective investor relations program to support interest in your stock.

## Public accountability

It may seem that your new public company has become an information machine. You are now regulated under disclosure requirements to continually disclose timely and accurate information about your operations and financial results. Your public company is required to produce quarterly financial reports; to disclose material changes; to produce annual, audited financial statements, accompanied by an MD&A and to distribute an annual information form with proxy material as well as hold an annual meeting of shareholders. You must also comply with the securities commission's electronic filing system, which requires you to file all your disclosure documents in a public disclosure data bank (a system known as SEDAR).

## The perpetual three-month calendar

One of the major challenges you face as a public company is to reset your company clocks to a three-month time frame. Security regulations require quarterly reporting of your operating and financial results. You generally have 45 days (60 days for TSXV companies) following the end of each of the first three quarters to provide your quarterly financial statements and MD&A

and 90 days (120 days for TSX-V) following year-end to produce your audited financial statements with MD&A. You must also distribute an annual information circular and hold an annual meeting of shareholders generally within six months after each year end.

As part of the going public process a board of directors was established. This board and its committees (e.g. audit committee) now have responsibility to review the financial statements prior to public release. As a result, every quarter expect to have an audit committee meeting and a Board Meeting as part of their ongoing fiduciary process. Directors will expect detailed information as well as presentations from management so that they can fulfill their responsibilities.

These ongoing requirements make it critical to have strong financial reporting systems as well as the right individuals in place to execute the process of timely, complete and accurate reporting.

In addition as the CEO or CFO you will be required to complete a certification that is filed with the financial statements each quarter indicating that the financial statements are materially accurate and that there has not been a material change in your control environment.

## Timely disclosure

Unfortunately, reporting isn't limited to four times a year. You are also required to disclose all news that materially affects the company—good or bad—as promptly as possible. “As promptly as possible” means as soon as you have the full details and are satisfied that they are reasonably accurate. Generally, you have 10 days to issue a press release, announcing any material change—that is, any change that can reasonably be expected to have a significant effect on the market price or value of the company.

## Keeping investor interest alive

One of your most important tasks as a public company is to keep investors and potential investors interested and to satisfy their requests for information. Your company will be under ongoing pressure from analysts and investors seeking information. You must be cautious about how you release information.

You'll find that shareholders and analysts have a huge appetite for information. In addition to the information your company already provides, you will likely want to generate added interest through positive media coverage and influential analysts' reports on your company. These are two of the strongest influences on investment decisions. Because analysts can be your conduit to investors, you will need to be prepared to deal with their ongoing requests as well as ensuring you comply with full disclosure regulations.

Responding to requests for information and soliciting coverage can be a huge drain on management time. The investor relations process must be carefully managed by people who understand the field. As such, you may want to consider hiring an investor relations manager—either in-house or through contracted services—to help ensure you are projecting a strong and consistent image.

# Tax planning

Like any significant transaction, going public has tax implications. Tax planning before the IPO will provide a company and its shareholders with the best opportunity to maximize the advantages and minimize the disadvantages of being a public company.

The tax issues that a company and its shareholders could face will vary depending on the circumstances. Engaging an experienced tax advisor early in the process is the best approach to ensure preparedness.

The following discussion will assist in understanding some of the key tax issues a Canadian company and its shareholders may encounter as a result of an IPO.

## Company Issues

### Changes in tax rates

Before a company goes public, it may be a Canadian-controlled private corporation (CCPC). A CCPC is eligible for certain tax incentives which are not available to a public corporation.

For example, a CCPC is taxed federally at a reduced statutory tax rate (Small Business Rate) on a portion of its business income and enjoys refundable federal investment tax credits on qualifying research and development expenses. A public company is taxed federally at full statutory tax rates on all of its income and unlike a CCPC can only access non-refundable federal investment tax credits on qualifying research and development expenses. Provincial rules are similar in many circumstances.



The taxation of investment income is also different depending on whether it is earned by a CCPC or a public company. A public company's investment income is taxed at full statutory tax rates whereas a CCPC's investment income is subject to a refundable tax that accumulates in a refundable dividend tax on hand (RDTOH) account. The RDTOH is refunded to the CCPC when dividends are paid effectively passing the taxation of such income to the shareholder. Prior to going public a company should plan to access all of its RDTOH as the balance is not accessible after the IPO

Understanding how and why income taxes may increase is critical to the effective on-going management of taxes for a public company. There may be planning opportunities as part of an IPO to offset the loss of CCPC-related tax benefits.

### Changes in profit distribution

A CCPC may have paid bonuses to key shareholder/employees to reward performance and to lower corporate taxes. Dividends may have also been paid to distribute retained earnings and to access RDTOH. Some CCPCs might have paid capital dividends or returned capital to provide shareholders with tax free distributions. As a public company however the approach to profit distribution will change. Consider these examples:

- **Bonuses:** Bonuses paid by a public company to shareholders active in the business should still be deductible for tax purposes. However the use of a bonus to reduce corporate taxes is not as relevant to a public company as to a CCPC. Typically the bonus paid by a CCPC to a shareholder active in the business is used to reduce corporate income to the Small Business Rate threshold.

- **Dividends:** Dividends are a common way for shareholders of a public company and a CCPC to receive profits of a company. A CCPC and a public company can both pay “eligible dividends” to their shareholders. Canadian individuals that receive eligible dividends receive a higher dividend tax credit than for non-eligible dividends. A public company must first pay non-eligible dividends before it can pay eligible dividends. Non-eligible dividends are sourced to investment income and business income subject to the lower Small Business Rate. Though a public company would not normally have these sources of income a CCPC may. As a result a CCPC needs to pay non-eligible dividends before the IPO or disclose to their shareholders that some portion of future dividends may not be eligible dividends.

- **Capital dividends:** A capital dividend account (CDA) is a notional balance of a private corporation (including a CCPC) that includes, among other items, the non-taxable portion of capital gains and losses realized by a corporation. A capital dividend can be paid from the CDA anytime and is tax-free to shareholders. Once a private company goes public it can no longer pay capital dividends to its shareholders. As part of any IPO planning steps should be taken to access the CDA.

- **Returning capital:** A shareholder of a private corporation (including a CCPC) can receive the capital they invested in (or that is attributable to) a company’s shares without any tax implications. Returning capital is a common method of distributing profits to shareholders that typically precedes paying taxable dividends. A public company’s return of capital to shareholders will only be tax free in limited circumstances and in general will be taxable to the shareholder in the same manner as a taxable dividend.

## Changes in tax reporting

Becoming a public company will result in changes to the routine tax reporting processes that management of a non-public company maybe familiar with.

The first change may be a deemed tax year-end on the IPO. If the IPO results in an acquisition of control of the company by one person or a group of persons, a deemed tax year-end will result and various rules requiring the realization and expiration of losses will apply. There may be circumstances where business losses are no longer available after the acquisition of control. Consulting with a tax advisor is recommended if an acquisition of control is expected to occur as planning opportunities may be available to minimize any potential adverse tax consequences.

Corporate income tax returns for a public company are due for filing at the same time as tax returns for non-public corporations (6 months after the taxation year-end). However the statute of limitations for audits by the Canada Revenue Agency and provincial tax authorities is increased by one year for a public company (increased to four years federally and five years in some provinces). A public company must also have their income tax for a taxation year paid in full within two months of their taxation year end to avoid interest charges. Some CCPCs are permitted three months to make this final payment.

A company will also have incurred costs from the IPO transaction. Common costs include accounting and legal fees, investment banker fees, and other filing fees. Fees that relate directly to the issuance of shares are generally deductible over 60 months (5 years). Other fees may be deductible in the period of the IPO as a general expense or deductible at 7% per year on a declining pool basis on 75% of the expense. An analysis of all of the IPO fees is recommend to ensure the classification is correct and tax treatment optimized.

## Shareholder Issues

### Return on investment

The prior comments regarding changes in profit distribution after an IPO are equally applicable to a shareholder of a public company. Determining the best way to structure shareholder profit sharing will be an important consideration for shareholders of the company that want to remain active in the business and/or want their investment to grow together with the public company.

### Taxation on the IPO

A shareholder of a company going public may choose to retain or sell their investment. In either case it may be possible for the shareholder to access their lifetime capital gains exemption on qualified small business corporation shares. Planning may be required as part of the IPO to access this exemption. Common issues in planning to access this exemption include ensuring the company's shares qualify for the exemption and integrating the exemption into other estate and sale planning of the shareholder.

### Estate planning and retirement planning

Shareholders may have organized their shareholdings of the company to allow other family members to participate in the company's growth. An IPO of the company may require these existing arrangements be revisited to ensure they are still effective. If a shareholder has not considered estate planning in the past, they may consider it as part of the IPO. It should be possible to reorganize shareholdings

to allow other family members to participate in the company's growth after the IPO. This and other planning should be considered in advance of the IPO transaction.

Once the company is a public company, its shares will qualify for RRSPs, TFSA's, and other tax-deferred plans. Investing through these types of plans may not have been available when the company was private.

### Stock Options

Both a private and public company can issue stock options to its employees. Because there is a market for a public company's shares, employees of a public company that receive options will be able to realize the benefit from their investment easier than with private company options. Because of this liquidity, stock options are attractive for employees.

The taxation of stock options differs in some respects between a public and private company and the tax law associated with stock options is evolving. However, from an employee option-holder perspective the key benefit of having a stock option benefit taxed at half of personal income tax rates exists in both scenarios.

As part of your trusted advisors you team needs to include a professional tax advisor who understands your current organizational structure as a private company and the implications once you are a public company. Private companies are taxed differently to public companies—proper planning can ensure that the Company and its shareholders maximize tax benefits before going public.



# Going Public in the United States

As with the rest of this publication, this is not a technical manual. The following is an overview of what is involved in taking a Canadian company public in the United States and why you might want to consider this alternative.

## What draws Canadian companies to the U.S. marketplace?

Companies consider a US listing due to the larger market which may mean access to more capital and increased trading volume in the shares of your company. A US listing may make sense due to the company's market or competition as well as the increased visibility it can buy.

## The IPO process in the U.S.

The IPO process in the U.S. is much like that in Canada. There is a similar time curve—planning time up front, the “crunch” of the offering phase and ongoing compliance as a public company. The same principles of preparation apply. You have to weigh the advantages and disadvantages, consider the costs, put together a sound business plan and then put that plan into action. Before you take your company to the markets, you must do the necessary “housekeeping,” put together a team of advisors, ensure strong reporting systems are in place and have the required audited financial statements.

The actual offering process—the “all hands” meeting, the preparation of a prospectus, underwriter due diligence, the regulatory review, the road show and the closing are also similar in form. It's the content and the details that differ. The U.S. has more rigorous disclosure requirements. The Washington-based Securities and Exchange Commission (SEC) ensures compliance through the applicable laws of the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as various rules, policies, interpretations and enforcement proceedings of the SEC and its staff. Each state may have its own securities laws, although many states have adopted the Uniform Securities Act to ease the process of filing in multiple states.

The SEC will review an S1 Form, the form typically used in an IPO and this review can take 15-30 days to review from the initial filing of the registration statement. This document also involves the filing of material information at the same time.

The advantages of going public in the US (i.e. larger market, increased profile and sometimes more sophisticated understanding of your industry) need to be weighed against some of the disadvantages. The US regulatory and compliance environment results in additional reporting costs as external advisors such as accountants, auditors and attorneys will need to be significantly involved in all of your regulatory filings.

In addition to the more onerous reporting requirements your US public company may be required to comply with Sarbanes Oxley 404—which requires your auditor to attest on your internal control environment (depending on size)—a significant process for your management team and your auditors.

The US environment also may result in a higher risk of litigation towards your company as corporate litigation and the number and amount of awards are significantly higher in the US compared to Canada.

It's important to make sure you have the right type of advisors with experience doing cross border offerings if you are considering a US offering. Talk to one of your PwC advisors to discuss the merits of a US listing.

# Going Public alternatives

Having now read this guide you are now ready to take your company public. If after reading this, you are now not so sure about going public directly—here are some other alternatives:

1. Reverse Take Over (RTO)	This option allows you to immediately obtain a public listing by taking over an existing reporting issuer (likely a shell company). These shell companies have often stopped operating and have no assets, but careful due diligence needs to be performed—acquiring all the shares results in assuming all of the predecessor’s liabilities and contingencies. Talk to your business advisor about the merits of this type of transaction.
2. Capital Pool Company (CPC)	This is a unique listing vehicle offered by the TSX – Venture Exchange for companies in the exploration, mining and oil and gas sectors. The program allows for founders to incorporate and list a shell company (CPC)—the capital raised from this offering is used to acquire an operating company (known as Qualifying Transaction) that meets the TSXV listing requirements. This type of transaction is relatively new and care must be taken in following the prescribed steps to ensure the transaction qualifies.
3. Private Equity/Venture capital (VC)	You may not be ready to go public yet, but need to raise capital. Private Equity or VC’s look for companies that have growth potential and then ultimately seek an exit through a public offering down the road. Most will insist on having an active voice in the management of the Company and will take an equity stake.
4. Private placement	Similar to a VC in giving up some of the equity in your organization—the private placement entails an offering of securities usually to a limited number of sophisticated investors by way of an offering memorandum. This process is simpler than an IPO, however usually results in a lower valuation and a ceiling on proceeds due to its relative size.
5. Selling the Company	This is, of course, another exit strategy, but often has significant drawbacks. The sale of a private company may face a limited market and could result in lower proceeds than from selling shares in a public company. It may also preclude you any future upside from future earnings.

## TIP 12

If going public is not right for your organization right now—there are lots of alternatives in the meantime. Careful consideration needs to be given to choosing the best course of action—at PwC, we provide a broad range of services and have a unique understanding of the market place that allows us to be your trusted business advisors. Let’s have a conversation about the alternatives and options for your company.

# Appendix 1

## TSX Listing Requirements



### A. Minimum Listing Requirements for Exploration & Mining Companies (TSX)

	TSX Non Exempt Exploration and Development Stage	TSX Non Exempt Producer	TSX Exempt
<b>Property Requirements</b>	Advanced Exploration Property <sup>2</sup> Minimum 50% ownership in the property <sup>3</sup>	Three years proven and probable reserves as estimated by an independent qualified person (if not in production, a production decision made)	Three years proven and probable reserves as estimated by an independent qualified person
<b>Recommended Work Program</b>	\$750,000 on advanced exploration property as recommended in independent technical report	Bringing the mine into commercial production	Commercial level mining operations
<b>Working Capital and Financial Resources</b>	Minimum \$2.0 million working capital, but sufficient to complete recommended programs, plus 18 months G&A <sup>1</sup> , anticipated property payments and capital expenditures. Appropriate capital structure	Adequate funds to bring the property into commercial production; plus adequate working capital for all budgeted capital expenditures and to carry on the business. Appropriate capital structure	Adequate working capital to carry on the business. Appropriate capital structure.
<b>Net Tangible Assets, Earnings or Revenue</b>	\$3,000,000 net tangible assets	\$4,000,000 net tangible assets; evidence indicating a reasonable likelihood of future profitability supported by a feasibility study or historical production and financial performance	\$7,500,000 net tangible assets; pre-tax profitability from ongoing operations in last fiscal year; pre-tax cash flow of \$700,000 in last fiscal year and average of \$500,000 for past two fiscal years
<b>Other Criteria</b>	Up-to-date, comprehensive technical report prepared by independent qualified person and 18 month projection (by quarter) of sources and uses of funds, signed by CFO		Up-to-date, comprehensive Technical Report prepared by independent qualified person
<b>Management and Board of Directors</b>	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.		
<b>Distribution, Market Capitalization and Public Float</b>	\$4,000,000 publicly held 1,000,000 free trading public shares; 300 public holders with board lots		
<b>Sponsorship</b>	Required (may be waived if sufficient previous 3rd party due diligence)		Not required

(1) "G&A" means general and administrative expenses.

(2) "advanced exploration property" refers to one on which a zone of mineralization has been demonstrated in three dimensions with reasonable continuity indicated. The mineralization identified has economically interesting grades.

(3) A company must hold or have the right to earn and maintain a 50% interest in the qualifying property. Companies holding less than a 50% interest will be considered on a case-by-case basis looking at program size. Stage of advancement of the property and strategic alliances.

**Mining Disclosure Standards**

National Instrument 43-101 is the Canadian Securities Administrators' ("CSA") policy that governs the scientific and technical disclosure by mining companies and the preparation of technical reports. It covers oral statements as well as written documents and websites. NI 43 101 requires that all technical disclosure be based on advice by a "qualified person." Issuers are required to make disclosure of reserves and resources using definitions approved by the Canadian Institute of Mining, Metallurgy and Petroleum, except for disclosure pertaining to coal.

**Foreign Scientific and Technical Reports**

NI 43-101 permits issuers to report resources and reserves under three foreign codes: the JORC Code, USGS Circular 831 and the IMMM system. To report using another foreign code, such as the South African Code for Reporting of Mineral Resources and Mineral Reserves (the "SAMREC Code"), currently the issuer must apply to securities regulators for exemptive relief.

**Technical Reports by Foreign Qualified Authors**

Technical reports that accompany a listing application must be prepared by a qualified person who is a member of an approved professional association. Licences, certification or membership in the ASBOG, AIPG, AusIMM; IMMM; SAIMM; SACNASP; or IGI will normally be acceptable. CSA has published an FAQ that provides details on the "qualified person" equivalents from other jurisdictions and other resources and reserve definitions that are acceptable with a brief reconciliation.

**NI 43-101 is available at:**

[http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/noticeRule\\_43101.pdf](http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Rules/noticeRule_43101.pdf) and the Frequently Asked Questions at [http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/2003/csan\\_43-302\\_faq-43\\_101\\_20030124.htm#faq](http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/2003/csan_43-302_faq-43_101_20030124.htm#faq). All amounts are expressed in Canadian dollars. For detailed listing requirements, go to [www.tmx.com](http://www.tmx.com).

## B. Listing requirements for Industrial, Technology, and Research and Development companies

Minimum Listing Requirements	TSX Non-Exempt Technology Issuers <sup>1,7</sup>	TSX Non-Exempt Research & Development Issuers <sup>7</sup>	TSX Non-Exempt Forecasting Profitability <sup>7</sup>	TSX Non-Exempt Profitable Issuers <sup>7</sup>	TSX Exempt Industrial Companies <sup>8</sup>
<b>Earnings or Revenue</b>			Evidence of pre-tax earnings from on-going operations for the current or next fiscal year of at least \$200,000 <sup>2</sup>	Pre-tax earnings from on-going operations of at least \$200,000 in the last fiscal year	Pre-tax earnings from on-going operations of at least \$300,000 in the last fiscal year
<b>Cash Flow</b>			Evidence of pre-tax cash flow from on going operations for the current or next fiscal year of at least \$500,000 <sup>2</sup>	Pre-tax cash flow of \$500,000 in the last fiscal year	Pre-tax cash flow of \$700,000 in the last fiscal year, and an average of \$500,000 for the past 2 fiscal years
<b>Net Tangible Assets</b>			\$7,500,000 <sup>3</sup>	\$2,000,000 <sup>3,4</sup>	\$7,500,000 <sup>3</sup>
<b>Adequate Working Capital and Capital Structure</b>	Funds to cover all planned development expenditures, capital expenditures, and G&A <sup>5</sup> expenses for 1 year <sup>6</sup>	Funds to cover all planned R&D expenditures, capital expenditures and G&A <sup>5</sup> expenses for 2 years <sup>6</sup>	Working capital to carry on the business, and an appropriate capital structure		
<b>Cash in Treasury</b>	Min. \$10 million in the treasury, with majority raised by prospectus offering	Min. \$12 million in the treasury, with majority raised by prospectus offering			
<b>Products and Services</b>	Evidence that products or services at an advanced stage of development  or commercialization and that management has the expertise and resources to develop the business <sup>9</sup>	Minimum 2 year operating history that includes R&D activities. Evidence of technical expertise and resources to advance its research and development programs <sup>10</sup>			
<b>Management and Board of Directors</b>	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.				
<b>Public Distribution and Market Capitalization</b>	1,000,000 free trading public shares \$10,000,000 held by public shareholders 300 public shareholders each holding a board lot Minimum \$50 million market capitalization	1,000,000 free trading public shares \$4,000,000 held by public shareholders 300 public shareholders each holding a board lot			
<b>Sponsorship</b>	Generally required				Not required

The listing requirements above must be met at the time of listing. Any funds raised or transactions closing concurrent with listing contribute to the company meeting the listing requirements.

(1) Generally includes companies engaged in hardware, software, telecommunications, data communications, information technology and new technologies that are not currently profitable or able to forecast profitability.

- (2) Applicants should file a complete set of forecast financial statements covering the current and/or next fiscal year (on a quarterly basis). Forecasts must be accompanied by an auditor's opinion that the forecast complies with the CICA Auditing Standards for future-oriented financial information. Applicants should have at least six months of operating history.
- (3) Under certain circumstances, deferred development charges or other intangible assets can be included in net tangible asset calculations.
- (4) Companies with less than C\$2 million in net tangible assets may qualify for listing if the earnings and cash flow requirements for senior companies are met.
- (5) "G&A" means general and administration expenses.
- (6) A quarterly projection of sources and uses of funds, for the relevant period, including related assumptions signed by the CFO must be submitted. Projection should exclude uncommitted payments from third parties or other contingent cash receipts. R&D issuers should exclude cash flows from future revenues.
- (7) Exceptional circumstances may justify granting of a listing, notwithstanding minimum requirements—generally an affiliation with established business and/or exceptionally strong financial position is required.
- (8) (7), as well as for granting Exempt status. Special purpose issuers are generally considered on an exceptional basis.
- (9) "Advanced stage of development or commercialization," generally restricted to historical revenues from the issuer's main business or contracts for future sales. Other factors may also be considered.
- (10) Other relevant factors may also be considered.

### C. Listing requirements for Oil & Gas companies (TSX)

Initial Listing Requirements	TSX Non-Exempt Oil & Gas Exploration and Development Issuers	TSX Exempt Oil & Gas Issuers <sup>4</sup>
<b>Net Tangible Assets, Earnings or Revenue</b>		Pre-tax profitability from ongoing operations in last fiscal year. Pre-tax cash flow from ongoing operations of \$700,000 in last fiscal year and average pre-tax cash flow from ongoing operations of \$500,000 for the past two fiscal years
<b>Working Capital and Financial Resources</b>	Adequate funds to execute the program and cover all other capital expenditures & G&A1 + debt service expenses for 18 months with a contingency allowance; 18 month projection of sources & uses of funds signed by CFO; appropriate capital structure	Adequate working capital to carry on the business. Appropriate capital structure.
<b>Distribution, Market Capitalization and Public Float</b>	At least 1,000,000 freely tradable shares with an aggregate market value of \$4,000,000; 300 public holders, each with one board lot or more	
<b>Sponsorship</b>	Sponsor report may be required (not required for IPOs or certain other exemptions for North American properties)	Not required
<b>Property Requirements</b>	\$3,000,000 proved developed reserves <sup>2,5</sup>	\$7,500,000 proved developed reserves <sup>2,5</sup>
<b>Recommended Work Program</b>	Clearly defined program to increase reserves	
<b>Management and Board of Directors</b>	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.	
<b>Other Criteria</b>	Up-to-date technical report prepared by an independent technical consultant (NI 51-101 <sup>3</sup> ) <sup>5</sup>	

(1) "G&A" means general and administrative expenses.

(2) "Proved development reserves" are defined as those reserves that are expected to be recovered from existing wells and installed facilities, or, if facilities have not been installed, that would involve low expenditure, when compared to the cost of drilling a well, to put the reserves on production.

(3) "NI 51-101" National Instrument 51-101 – Standards of Disclosure for Oil & Gas Activities – available at: <http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part5/rule 20030926 51-101 rule.pdf>.

(4) Exceptional circumstances may justify the granting of Exempt status notwithstanding the minimum requirements – generally an affiliation with an established business and/or exceptionally strong financial position is required.

(5) Reserve value of pre-tax NPV of cash flows using a 20% discount rate: constant pricing assumptions are used.

# Appendix 2

## TSX Venture Exchange Listing Requirements



### A. Listing Requirements for Exploration & Mining Companies (TSXV)

Initial Listing Requirements	TSX Venture Tier 1	TSX Venture Tier 2
<b>Property Requirements</b>	Material interest in a Tier 1 property	Significant interest in a qualifying property or, at discretion of Exchange, hold rights to earn a significant interest in a qualifying property with sufficient evidence of no less than \$100,000 expenditures in the past three years prior to Application for Listing
<b>Recommended Work Program</b>	\$500,000 on the Tier 1 property as recommended by geological report	\$200,000 on the qualifying property as recommended by geological report
<b>Working Capital and Financial Resources</b>	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 mo. following listing; \$200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 mo. following listing; \$100,000 unallocated funds
<b>Net Tangible Assets, Earnings or Revenue</b>	\$2,000,000 net tangible assets	No requirement
<b>Other Criteria</b>	Geological report recommending completion of work order	
<b>Management and Board of Directors</b>	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.	
<b>Distribution, Market Capitalization and Public Float</b>	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders
<b>Sponsorship</b>	Sponsor report may be required	

## B. Listing Requirements for Industrial, Technology, Research & Development and Real Estate Companies (TSXV)

Initial Listing Requirements	TSX Venture Tier 1 Industrial/Technology/Life Sciences	TSX Venture Tier 2 Industrial/Technology/Life Sciences	TSX Venture Tier 1 Real Estate or Investment	TSX Venture Tier 2 Real Estate or Investment
<b>Net Tangible Assets, Revenue or Arm's Length Financing (as applicable)</b>	\$5,000,000 net tangible assets or \$5,000,000 revenue  If no revenue, two year management plan demonstrating reasonable likelihood of revenue within 24 months	\$750,000 net tangible assets or \$500,000 in revenue or \$2,000,000 Arm's Length Financing  If no revenue, two year management plan demonstrating reasonable likelihood of revenue within 24 months	<b>Real Estate</b> – \$5,000,000 net tangible assets  <b>Investment</b> – \$10,000,000 net tangible assets	\$2,000,000 net tangible assets or \$3,000,000 Arm's Length Financing
<b>Adequate Working Capital and Capital Structure</b>	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 mo. following listing; \$200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 mo. following listing; \$100,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 mo. following listing; \$200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 mo. following listing; \$100,000 unallocated funds
<b>Property</b>	Issuer has Significant Interest in business or primary asset used to carry on business		<b>Real Estate</b> – Issuer has Significant Interest in real property <b>Investment</b> – no requirement	
<b>Prior Expenditures and Work Program</b>	History of operations or validation of business		<b>Real Estate</b> – no requirement <b>Investment</b> – disclosed investment policy	<b>Real Estate</b> – no requirement <b>Investment</b> – (i) disclosed investment policy and (ii) 50% of available funds must be allocated to at least 2 specific investments
<b>Management and Board of Directors</b>	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.			
<b>Distribution, Market Capitalization and Public Float</b>	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders
<b>Sponsorship</b>	Sponsor report may be required			

### C. Listing Requirements for Oil & Gas (Exploration or Producing) Companies (TSXV)

Initial Listing Requirements	TSX Venture Tier 1	TSX Venture Tier 2
<b>Net Tangible Assets, Earnings or Revenue</b>	No Requirement	
<b>Working Capital and Financial Resources</b>	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 mo. following listing; \$200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 mo. following listing; \$100,000 unallocated funds
<b>Distribution, Market Capitalization and Public Float</b>	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders
<b>Sponsorship</b>	Sponsor report may be required	
<b>Property Requirements</b>	<p><b>Exploration</b> - \$3,000,000 in reserves of which a minimum of \$1,000,000 must be proved developed reserves and the balance probable reserves</p> <p><b>Producing</b> - \$2,000,000 in proved developed reserves</p>	<p><b>Exploration</b> – either (i) Issuer has an unproven property with prospects or (ii) Issuer has joint venture interest and \$5,000,000 raised by Prospectus offering</p> <p><b>Reserves</b> – either (i) \$500,000 in proved developed producing reserves or (ii) \$750,000 in proved plus probable reserves</p>
<b>Recommended Work Program</b>	<p><b>Exploration</b> – satisfactory work program (i) of no less than \$500,000 are (ii) which can reasonably be expected to increase reserves, as recommended in a Geological Report</p> <p><b>Producing</b> – No requirement</p>	<p><b>Exploration</b> – minimum of \$1,500,000 allocated by Issuer to a work program as recommended in a Geological Report except where Issuer has a joint venture interest and has raised \$5,000,000 in Prospectus offering</p> <p><b>Reserves</b> – (i) satisfactory work program and (ii) in an amount of no less than \$300,000 if proved developed producing reserves have a value of less than \$500,000 as recommended in Geological Report</p>
<b>Management and Board of Directors</b>	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.	
<b>Other Criteria</b>	Geological Report recommending completion of work program	

# Appendix 3

## Summary of Canadian Financial & Corporate Governance Disclosure Requirements

The following is a summary of the current financial and corporate governance disclosure requirements for the TSX and TSX Venture Exchanges in Canada.

Disclosure	TSX	TSXV
<b>Financial and Other Related Disclosures (National Instrument 51-102)</b>		
Financial Statements & MD&A	Audited annual financial statements within 90 days of the end of each financial year  Quarterly financial statements within 45 days of the end of each quarter	Annual financial statements within 120 days of the end of each financial year  Quarterly financial statements within 60 days of the end of each quarter
Annual Information Form	Filed annually  Supplemented throughout the year through subsequent continuous disclosure filings, including quarterly financial reports, news releases, material change reports and business acquisition reports	N/A
Press Release	Reporting issuers must immediately issue a press release concerning any material change in the affairs of the issuer and must file a “material change report” respecting the material change as soon as practicable and in any event within 10 days of the material change	
Selective Disclosure	Prohibited under Canadian securities law under insider trading and tipping laws which prohibit the disclosure of a “material change” or “material facts” concerning a public company which have not been broadly disclosed to the investing public unless such selective disclosure is made in the “necessary course of business”	
Material Information	TSX require listed companies to disclose all “material information” which encompasses both material facts and changes. Material information is any information relating to the business and affairs of a company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company’s listed securities	
Information Circular	Required to be prepared and sent to shareholders in connection with the solicitation of proxies for use at a meeting of shareholders	
Business Acquisition Report	Must file a “business acquisition report” for issuers completing a significant acquisition. This report provides a description of the business acquired and the impact of the acquisition on the issuer. A core component of the report is to disclose whether the acquisition is “significant” for the issuer, and this is verified through the disclosure of three financial “significance tests”—the asset test, the investment test and the income test. The report also requires the inclusion of audited annual financial statements, interim financial statements, together with proforma financial statements giving effect to the acquisition.	

Disclosure	TSX	TSXV
<b>Corporate Governance Disclosures (National Instruments: 52-109, 52-110, 58-101, 71-102)</b>		
Corporate Governance (TSX and TSXV)	<p>Issuers are required to provide the following corporate governance disclosures:</p> <p>Disclose the members of the board of directors; those members who are not independent, and the basis for that determination</p> <p>Description of what measures the board takes to orient new directors, and what measures the board takes to provide continuing education for its existing directors</p> <p>Disclose whether or not the board has adopted a written code conduct and the steps taken to encourage or promote a culture of ethical business conduct</p> <p>Describe the process by which the board identifies new candidates for board nomination</p> <p>Describe the process by which the board determines the compensation for the issuer’s directors</p> <p>Identify and describe all board committees (e.g. audit, compensation, nominating, and other).</p> <p>Disclose whether or not the board, its committees and individual directors are regularly assessed with respect to their effectiveness and contribution</p>	
Corporate Governance (TSX Only)	<p>Whether a majority of the board is independent and, if not, a description of what the board does to facilitate its exercise of independent judgment</p> <p>Whether any directors hold directorships with other issuers and, if so, the names of the other issuers</p> <p>Whether the independent directors hold regularly scheduled meetings separate and apart from the non-independent directors</p> <p>Attendance record of each director</p> <p>Text of the board’s written mandate and, where there is not a written mandate, a description of how the board delineates its role and responsibilities</p> <p>Description of the CEO, Chair and chair of each board committee and the role and responsibilities of each</p>	N/A
Audit Committee	<p>Board of directors must establish an audit committee for the purpose of overseeing the accounting and financial reporting processes of the issuer and the audit of its financial statements</p> <p>Functions to be performed by the audit committee:</p> <p>Oversight of the external auditor</p> <p>Recommendation for the nomination and compensation of external auditors</p> <p>Approval of all non-audit services</p> <p>Review of financial statements, MD&amp;A, and annual and interim earnings press releases</p> <p>Committee must be composed of a minimum of 3 members. Generally, every member of the audit committee is required to be independent and financially literate</p> <p>Every issuer must include in its prospectus, and in its continuous disclosure, certain information relating to its audit committee and each member</p>	

Disclosure	TSX	TSXV
<p>Disclosure Controls &amp; Procedures (“DC&amp;P”), and Internal Controls over Financial Reporting (“ICFR”)</p>	<p>DC&amp;P and ICFR must be evaluated on an annual basis</p> <p>Certifying officers (e.g. CEOs and CFOs) must individually certify annual and interim filings and their responsibility for the design and evaluation of DC&amp;P and ICFR</p> <p>On an annual basis, CEO and CFO must individually certify that:</p> <p>They have reviewed the filings for greater certainty</p> <p>The annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading</p> <p>The financial statements, together with the other financial information included in the annual filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, based on that individual’s knowledge and having exercised reasonable due diligence</p> <p>The certifying individual, along with the issuer’s other certifying officers, have:</p> <p>Designed DC&amp;P, or caused it to be designed under their supervision, in order to provide reasonable assurance that material information relating to the issuer is made known to the certifying individuals and that information required to be disclosed is recorded, processed, summarized and reported within the time periods specified by the securities legislation; and</p> <p>Designed ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer’s GAAP</p> <p>Any fraud that involves management or other employees who have a significant role in the issuer’s ICFR has been reported to the issuer’s auditors and to the board of director or the audit committee of the board of directors</p> <p>No auditor attestation required unlike in the United States</p>	
<p>Shareholder Meetings and Proxy Solicitation</p>	<p>Directors of public companies are generally elected on an annual basis</p> <p>Management can solicit proxies in connection with various matters reviewed annual or special meetings of shareholders</p> <p>Management information circulars generally disclose:</p> <p>Details of directors standing for re-election</p> <p>Alterations in share capital</p> <p>Amendments to charter agreements</p> <p>Pending and/or actual mergers, acquisitions, or reorganizations</p> <p>Any direct or indirect material interest that directors, executive officers and significant shareholders may have in matters to be acted upon or had in any material transaction occurring since the beginning of the most recent fiscal year</p> <p>Details pertaining to executive compensation, and any indebtedness of directors and executives owed to the issuer</p>	

Disclosure	TSX	TSXV
Exemptions for Certain Foreign Issuers	<p>Apply to foreign issuers with U.S. reporting obligations, as well as foreign issuers with reporting obligations in certain other designated foreign jurisdictions.</p> <p>Enables these specific foreign issuers to satisfy Canadian continuous disclosure (i.e. amendments, material change reporting, financial statements etc.), proxies and proxy solicitation, and corporate governance obligations (i.e. insider reporting, change of auditor) by complying with their equivalent obligations in their local jurisdiction.</p> <p>Generally, foreign issuers must comply with the following criteria in order to be eligible for exemptions:</p> <p>Compliance with securities law requirements in local jurisdictions</p> <p>File a copy of the relevant disclosure document in Canada at the same time as, or as soon as practicable after, the filing or furnishing of that document with the SEC or other applicable foreign regulatory authority</p> <p>Provide Canadian security holders with the relevant disclosure document at the same time and in the same manner as security holders in the issuer's local jurisdiction.</p>	
Civil Liability for Misrepresentations in Secondary Market Disclosure	<p>Issuers, certifying officers, directors, and executives could face civil liability under Canadian securities laws should market participants acquire or dispose of the issuer's securities based on misrepresentations in certain secondary market disclosure</p>	
Corruption of Foreign Public Officials Act (Canada) ("CFPO")	<p>Reporting issuers and their directors, officers and employees are subject to the CFPO</p> <p>CFPO prohibits foreign public officials from using abusing their position, title or rank in order to influence any acts or decisions of a foreign state or public organization to confer an advantage in the course of business</p>	

**Note:** Please refer to the National Instruments (highlighted above in each section) for specific guidelines in place.

# Appendix 4

## Glossary

**After-market** – Also known as the secondary market. The public trading of a company’s securities after the initial public offering.

**All hands meeting** – Also known as the “go-ahead meeting.” The initial, full assembly of your offering team, including company officers, your lawyer, auditor, underwriter and underwriter’s lawyer.

**Analyst** – A specialist who studies certain industries or stocks for the purpose of giving investment advice.

**Best-efforts underwriting** – Underwriters agree to use “best efforts” to sell the shares but are under no obligation to pursuant any unsold shares.

**Bought deal** – An underwriter’s agreement to buy all the shares in the offering at a fixed price and to resell those shares to the public. Any shares not sold to the public are paid for and held by the underwriter.

**Capitalization** – The total amount of securities issued by a company, including, in certain circumstances, short- and long-term debt.

**Closing meeting** – The meeting at which final documents are exchanged and the offering company receives its proceeds.

**Comfort letter** – A letter or letters that the company’s independent auditor issues to the underwriter, detailing results of accounting and auditing procedures performed at the underwriter’s request as part of the due diligence process.

**Comment letter** – The securities commission’s response to initial or subsequent filings, stating the areas that have been found incomplete or for which further explanation is required.

**Dilution** – A decrease in the percentage of ownership of the Company.

**Due diligence** – A standard of reasonable investigation by the company’s underwriters and directors affirming that the statements made in the prospectus are true and do not omit any material facts.

**Effective date** – The first day that securities of an offering may actually be sold—upon filing of the final prospectus and receipt from the securities commission.

**Escrow** – Also known as “lock-up.” An agreement imposed by the underwriters and/or securities regulators to prevent insiders from selling their shares on the market too soon after going public.

**Final prospectus** – See “preliminary prospectus.” The printed document filed and approved by the securities commission and used to sell shares to the public. Prepared in the final stages of an offering, it contains required information to help the investor make an informed decision and includes the number of shares being offered, the offering price, the underwriter’s commission and the net proceeds from the sale.

**Green sheet** – A summary sheet prepared by the underwriter to help other underwriters and securities dealers understand the key elements of the offering contained in the prospectus.

**Insider** – Anyone with access to non-public information about the company, usually any officer, director or holder of more than 10% of a company’s publicly traded shares.

**Lead underwriter** – The primary underwriter for the company with whom the offering agreement is made. The lead underwriter acts as the organizer and leader of the group of underwriters who will sell the securities.

**Letter of intent** – A non-binding agreement between the underwriter and the company stating an intention to complete an offering and specifying terms that will be contained in the final underwriting agreement.

**Over allotment** – A provision allowing the underwriter to buy a specified number of additional shares from the company at the offering price, in the event they sell more shares than agreed to in the underwriting agreement. (This is also known as the “green shoe option” because the Green Shoe Company was the first to use it.)

**Preliminary prospectus** – Also known as a “red herring.” An interim document filed with the securities commission and provided to prospective investors to allow them to make reasoned and informed decisions. It does not include the underwriter’s commission, number and offering price of shares or net proceeds.

**Price-earnings ratio** – The price of a stock divided by its earnings per share.

**Primary offering** – The sale of previously unissued securities.

**Proxy** – A shareholder’s written authorization for some other person to represent that shareholder and vote the respective shares at a shareholders’ meeting.

**Red herring** – Also known as the “preliminary prospectus.” A document with distinguishing red ink on the cover to identify it as not being final.

**Registrar and transfer agent** – A person or institution appointed by the company to issue certificates to new shareholders, maintain current records of all shareholders, including addresses, and record the transfer of shares.

**Registration statement** – A U.S. document consisting of a prospectus and all other disclosures not required in the prospectus but required to be filed with the Securities Exchange Commission.

**Road show** – A management tour following the filing of the preliminary prospectus that consists of a series of presentations to potential investors in a number of different locations.

**SEC** – The U.S. Securities and Exchange Commission, an agency responsible for the administration of U.S. federal securities laws.

**Secondary offering** – A public offering of shares owned by existing shareholders.  
Transfer agent – See “registrar and transfer agent.”

**Underwriter** – The investment dealer with whom you reach an agreement to market your securities. See “lead underwriter.”

**Underwriting agreement** – A binding contract between the underwriter and the company, normally signed within 24 hours of the expected effective date of the offering. See “letter of intent.”

**Window** – The market window refers to the market’s appetite to complete an IPO. An open window means many IPOs are being completed; a closed window means just the opposite.

# Going Public Summary of Hints & Tips

## TIP 1

Begin early to position your company to go public by ensuring that a sufficient number of years of audited financial statements are available before starting the IPO process. You will save fees, headaches and, most important, time.

If you wait until “crunch” time to have multiple-year audits, you may face two nasty surprises; first, higher costs for the reconstructed financial statements, and second, figures that show the company may be performing at a level below what you expected.

## TIP 2

IFRS is coming to Canada—effective January 1, 2011 public companies will be required to report under IFRS. As a result your historical financial statements may need to be converted to IFRS to comply with public listing requirements. As part of getting your “house in order” spend some time with your accountants addressing IFRS, consider converting early and ensure your systems can provide IFRS ready information.

## TIP 3

When retaining professionals for the first time inquire about their experience working on an IPO ask them to clear any conflicts. Check their references and negotiate fee arrangements including engagement letters early in the process... get the administrative stuff out of the way.

## TIP 4

Sometimes the best information you can obtain on a potential underwriter is through informal processes. Ask for a list of past IPOs that the underwriter has served in a similar capacity to your planned IPO. From this overall listing, select a few and call for a reference. Ask them some—if not all—of the questions already suggested, as well as these: Would you use the underwriter again and, if so, is there anything you would change? How did the pricing process go? Did the underwriter sell the over allotment? What surprises were there?

## TIP 5

You need to be in constant communication with your underwriter over pricing. This includes monitoring investor interest as well as reviewing peer and industry market multiples to assess the IPO price. Keep an eye on economic news and how the market is behaving as these factors will also impact the pricing and potentially the timing of your IPO.

## TIP 6

The IPO will throw a number of managerial challenges your way—consider the following options to assist in making the IPO smoother:

Elect an “IPO” champion who will be responsible for receiving, coordinating and delegating requests from the various parties (underwriters, advisors, regulators)—this will avoid the consistent barrage for additional information and will facilitate better co-ordination and fulfillment of requests. Usually this is a senior individual within the organization e.g. Internal Counsel or the CFO.

Consider delegating more responsibilities of running the business to other key individuals during this intense time period—as you and a number of key senior staff will be needed for the IPO and will be out of town on the road show. Plan for this, so that the business doesn’t come out of the IPO process weaker than when it went in.

## TIP 7

Even with an experienced team of advisors, make sure your company takes an active role in controlling the progress of the IPO. Ask for an initial timetable and measure against this continually. Remember, of all the parties involved, the company has the most at stake.

## TIP 8

Do you anticipate marketing and selling your securities in Quebec? This will require translation of the prospectus and other financial information into French—allow for the time and cost for this translation in your offering timetable.

## TIP 9

The list of due diligence questions can be quite long, obtain the list of questions as early in the process as possible and script your written answers so you are ready for the call. Ask your advisors if there are any questions they cannot answer which will be referred to you so you are not surprised or caught off guard.

## TIP 10

Road shows not only allow you to tell your corporate story but they also enable you to showcase to investors the talent, caliber and integrity of your management team through an organized, smooth presentation. It can be one of the most important elements of a successful offering. Maximize the value of your road show through planning, preparation and practice!

## TIP 11

During the IPO process, everyone around you including your staff and professional advisors will be working flat out. Naturally everyone is focused on getting the prospectus filed and completing the offering—but don't lose sight of the costs you are incurring to avoid nasty surprises. Select one senior member of your team as the “fee champion” and have them request bi-weekly estimates of time and costs incurred from each of your advisors—so that you have a good handle of the costs as you move through the IPO process (and don't forget the out of pocket expenses!).

## TIP 12

If going public is not right for your organization right now—there are lots of alternatives in the meantime. Careful consideration needs to be given to choosing the best course of action—at PwC, we provide a broad range of services and have a unique understanding of the market place, that allows us to be your trusted business advisor. Let's have a conversation about the alternatives and options for your company.

# About PricewaterhouseCoopers LLP

At PricewaterhouseCoopers, our Initial Public Offering Services group has the resources and expertise to guide you through the complexities of your IPO from beginning to end. We offer industry-specific services in a wide range of areas, including consumer and industrial products, energy and mining, financial services, real estate, forestry, technology, communications, media and entertainment.

As a member of a full-service global firm, PricewaterhouseCoopers LLP can provide the strategic insight, industry knowledge and financial expertise you will need to complete the IPO process successfully. Our years of experience and our leading network of contacts enable us to secure the services of the foremost legal, underwriting and IPO-related specialists.

The initial public offerings process can be rigorous. We're here to help you better understand what it takes to "go public." Our IPO Services group will equip you with what you need to realize your goals as a publicly traded company.

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