

# Allen & Allen Update on Securities Law

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## Proposed:

### **Capital Pools in Ontario?**

CDNX has proposed bringing “Capital Pool Companies” to Ontario. According to a January 23<sup>rd</sup> CDNX conference, the OSC will consider the proposal in the “next few months”.

Capital Pool Companies (formerly “Junior Capital Pools”) originated in Alberta in 1986. The program allows a newly created company - with no assets, no business and no operations (other than cash) - to raise a maximum gross of \$700,000 through an IPO with a CDNX listing. The CPC generally has 18 months to identify and evaluate assets or businesses which, when acquired, qualify the CPC for a Tier 1 or Tier 2 listing on the CDNX (the “Qualifying Transaction”). The CPC program is no “short-cut”, however, since it is a two stage process, rather than just one stage for the traditional IPO. The first stage involves the filing and clearing of the CPC Prospectus, the completion of the IPO and the listing of the CPC’s common shares on the Exchange. The second stage involves the identification of a business or asset that can be acquired as a Qualifying Transaction, the preparation and filing of a CPC Information Circular containing prospectus level disclosure for the Qualifying Transaction and the holding of a shareholders’ meeting to approve the Qualifying Transaction.

### **CDNX issuers with a “significant connection to Ontario” must become reporting issuers in Ontario, effective June 30, 2001.**

Effective June 30, 2001, CDNX issuers with a “significant connection” to Ontario must become reporting issuers in Ontario to remain on the CDNX. A “significant connection to Ontario” will exist where an Issuer:

(a) has Non-Objecting Beneficial Owners (“NOBOS” - see National Instrument 54-101) resident in Ontario who beneficially own more than 20% of the number of equity securities beneficially owned by the NOBOs of the Issuer or Resulting Issuer; or

(b) has its mind and management principally located in Ontario and has NOBOs resident in Ontario who beneficially own more than 10% of the number of equity securities beneficially owned by the NOBOs of the Issuer or Resulting Issuer. The residence of a majority of the board of directors in Ontario or the residence of the President or Chief Executive Officer in Ontario may be considered determinative in assessing whether the mind and management of the Issuer or Resulting Issuer is principally located in Ontario.

## **Ontario to expire Junior Natural Resource Policy 5.2 on July 1, 2001 – Proposed**

OSC Policy 5.2 has regulated Ontario junior natural resource issuers not listed on the TSE since 1988. On March 18, 2000, CDNX applied for an exemption for CDNX issuers. The preliminary view of the OSC, subject to comments which may be received during a 90 day period, is to expire the Policy for all issuers on July 1, 2001.

Policy 5.2 addresses a broad cross section of market-related and corporate activity. Its thrust has been in the areas of minimum expenditures on resource properties; escrow requirements; vendor consideration for resource properties; offering structure and dealer compensation; private placements; bonuses for loans and guarantees and finder's fees; management remuneration; and interests in adjacent resource properties and retained interests.

Rather than providing exemptive relief for just CDNX issuers, Policy 5.2 would expire for all Ontario issuers. The OSC considers that special rules for resource issuers are no longer necessary. This is keeping with the 1996 Ontario "Task Force on Small Business Financing", which recommended that financing requirements and regulatory regimes not be industry-specific. No special rules are proposed for issuers not listed on the TSE or CDNX – i.e. those on remaining on the Canadian Unlisted Board Inc. ("CUB"). They are relatively small and few, and eventually, "alternative trading systems" may report them and develop new safeguards.

The OSC recognized recent factors in the junior resource market: "depressed commodity prices; larger financings being conducted both domestically and internationally; the arrival of high tech as the speculation of choice; the regulation of broker dealers; and the development of policies which upgrade the requirements for technical reporting and disclosure, thereby circumscribing the degree of speculation involved in junior natural resource financings." The CDNX Corporate Finance Policies and practices address most of the functional areas regulated by the Policy, providing at least equivalent regulatory safeguards.

## **New proficiency requirements for Financial Planners – National - Proposed**

Those offering financial planning advice to individuals will need to meet new "proficiency standards", including (1) passing the Financial Planning Proficiency Examination (the "FPPE") sponsored by the CSA and insurance regulators, (2) two years of insurance or securities industry experience in the last five years, and (3) commitment to an approved continuing education program. The FPPE will be identical for both securities registrants and insurance licensees and will be administered on a national basis. Grandfathering exemptions will apply. Proposed National Rule 33-107.

Please call if you have any questions - 865-0303