

TSX VENTURE EXCHANGE

CAPITAL STRUCTURE, ESCROW AND RESALE RESTRICTIONS

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AGENDA

- Introduction
- Capital Structure
- Principals' Escrow
- Non-Principals' Seed Share Resale Restrictions (SSRR)



CAUTIONARY NOTE

- This Presentation is not a substitute for Exchange policy. You need to rely on the actual new Policy 5.4 and the new Form 5D Escrow Agreement with respect to the substantive requirements of the amendments referred to in this Presentation.
- In the case of any discrepancy or conflict, the new Policy 5.4 and the new Form 5D Escrow Agreement prevail.



CAPITAL STRUCTURE

CAPITAL STRUCTURE

- **"New Listing"** as defined in Policy 1.1 includes:
 - Initial Public Offering ("**IPO**")
 - Reverse Takeover ("**RTO**")
 - Change of Business ("**COB**")
 - Qualifying Transaction ("**QT**")
 - Direct listing ("**DL**")
- **"Transaction"** as defined in Policy 5.4 includes an Initial Listing (other than the IPO of a CPC), RTO, COB or QT.



CAPITAL STRUCTURE

- TSXV has amended and expanded the manners in which an Issuer may demonstrate that its capital structure is acceptable.
- An Issuer may demonstrate that its capital structure is acceptable through any one of the following manners set out in section 2.1 of the new Policy 5.4.
- Note: Every Issuer seeking a New Listing is still required to also satisfy TSXV's Initial Listing Requirements set out in Policy 2.1 – *Initial Listing Requirements* and all other applicable Exchange Requirements.



CAPITAL STRUCTURE

- **Contemporaneous Equity Financing**

- Any contemporaneous equity financing(s) (the “**Financing**”) where a majority of the securities are issued to subscribers who are not Non-Arm’s Length Parties of the Issuer or of the Target Company, and either:

- the number of Listed Shares of the Issuer to be issued pursuant to the Financing is **not less than 10%** of the number of issued and outstanding Listed Shares of the Issuer upon completion of the Transaction and the Financing; or

- gross proceeds of the Financing are not less than **\$5,000,000**;

including in both cases equity financings completed by the Target Company within the immediately preceding 6 months at a price that is not less than the Discounted Market Price.



CAPITAL STRUCTURE

- **Contemporaneous Equity Financing vs Concurrent Financing**

- As just noted, a **contemporaneous equity financing** that satisfies the specified criteria set out in Policy 5.4 may be used to demonstrate that an Issuer's capital structure should be acceptable to TSXV.
- This is different from a "**Concurrent Financing**" as defined in Policy 2.4 – *Capital Pool Companies* or Policy 5.2 – *Change of Business and Reverse Takeovers*, which refer to a financing that an Issuer completes concurrently with the closing of the QT, RTO or COB to raise funds needed for the closing (e.g. closing payments to the Vendor) and to satisfy applicable ILR related to Working Capital and Financial Resources.
- The same financing may be used for both purposes.



CAPITAL STRUCTURE

- **Appraisal or Valuation**

- An appraisal or valuation that supports at least 50% of the **Consideration**.



CAPITAL STRUCTURE

- **“Consideration”** includes all payments made or to be made by the Issuer, including (i) all cash payments; (ii) the product of the maximum number of Listed Shares issuable multiplied by the Discounted Market Price of the Issuer; (iii) the value of all other securities to be issued; and (iv) the cash equivalent value of all other non-cash consideration. Generally, the securities referenced in (iii) will:
 - exclude stock options and share purchase warrants issued to replace equivalent securities previously issued by the Target Company in the normal course; and
 - include all other securities of the Issuer as may be required by TSXV to be included, such as preferred, non-voting, subordinate voting, multiple voting and restricted voting securities, and certain securities that are convertible into Listed Shares for nominal consideration.

CAPITAL STRUCTURE

- **Expenditures**

- In relation to an asset, expenditures incurred within the five previous years that support at least 50% of the Consideration.
 - For mining issuers, expenditures must be exploration and development expenditures that are costs incurred by the vendor, and can include the acquisition cost of the property.
 - For an oil and gas property with no proved plus probable reserves, the expenditures must be exploration expenditures that are costs incurred by the vendor, and can include the acquisition cost of the property.
 - For industrial, technology, and research and development issuers that have not yet generated significant revenue, the expenditures must be research and development costs that have contributed to or can reasonably be expected to contribute to the future operations of the Issuer, and can include relevant acquisition costs.
 - Any payments to Non-Arm's Length Parties to the vendor will generally be excluded.



CAPITAL STRUCTURE

- **Net Tangible Assets of the Target Company**
 - In relation to a Company, Net Tangible Assets of the Target Company are equal to at least 50% of the Consideration.



CAPITAL STRUCTURE

- **Operating Cash Flow of the Target Company**
 - Ten times the average annual cash flows from operating activities of the Target Company (calculated over the last eight fiscal quarters) is equal to at least 50% of the Consideration.



CAPITAL STRUCTURE

- **Securities Issued by the Target Company**

- Where an Issuer proposes to acquire a Target Company, at least 50% of the outstanding equity securities of the Target Company have been issued either:
 - at or above prices which would constitute the Discounted Market Price of the Issuer's Listed Shares; or
 - at least 12 months prior to the dissemination of a news release announcing the Transaction at prices that are at least 50% of the current Market Price of the Issuer's Listed Shares.



CAPITAL STRUCTURE

- **Current Listing**

- The Issuer has been listed and trading on a recognized stock exchange, other than TSXV, for at least one year.
- The Issuer must not have completed a Reverse Takeover, Qualifying Transaction or Change of Business or analogous transaction during that one year period.



CAPITAL STRUCTURE

- **Initial Public Offering**

- The New Listing involves an Initial Public Offering that includes a financing (i.e. not by way of a non-offering Prospectus).



PRINCIPALS' ESCROW

PRINCIPALS' ESCROW

- Per NP 46-201 – *Escrow for Initial Public Offerings* ("**NP 46-201**"), the purpose of escrow is to ensure that management and key principals retain an equity interest in an Issuer for an appropriate period.
 - A public investor who buys securities in an initial public offering or an offering to fund a significant change of business relies on the issuer's management and principal securityholders to carry out the plans described in the issuer's prospectus. This is particularly true for issuers with a limited history of operations.
 - An escrow agreement ties the issuer's management and its principal securityholders to the issuer by restricting their ability to sell their securities for a period of time following the issuer's offering. This gives them an incentive to devote their time and attention to the issuer's business while they are securityholders.



PRINCIPALS' ESCROW

- **IPO**

- TSXV will generally defer to the escrow requirements imposed by NP 46-201 for an Initial Listing in connection with an IPO.



PRINCIPALS' ESCROW

- **Non-IPO Transaction**

- Means any **Transaction** that is not an IPO, and for greater certainty, includes a New Listing where the disclosure document is a non-offering Prospectus.
 - **"Transaction"** means an Initial Listing (other than the IPO of a Capital Pool Company), Reverse Takeover, Change of Business or Qualifying Transaction.
- Non-IPO Transactions will generally be subject to TSXV escrow requirements which are substantially the same as those required by NP 46-201, but with the following three notable differences.



PRINCIPALS' ESCROW

• Non-IPO Transaction [continued]

- TSXV will impose escrow where an Issuer will have a market capitalization of at least \$100 million immediately after the completion of the Non-IPO Transaction; however, such an Issuer may request an exemption from this escrow requirement in its Application for Listing.
- Escrow does not generally apply to securities held by a Principal who holds securities carrying less than 1% of the voting rights attached to the outstanding securities of the Issuer immediately after the completion of the Non-IPO Transaction (a "**Below 1% Principal**"); however, TSXV reserves the right to impose escrow on all Below 1% Principals if the aggregate holdings of all Below 1% Principals and the holdings of SSRR Securities of all Below 1% Holders (see SSRRs below) exceeds 5% of the number of Listed Shares of the Issuer outstanding immediately after completion of the Non-IPO Transaction.
- If an Issuer has previously traded in another market, TSXV will generally require that the Principals of the Issuer enter into escrow arrangements which would result in them having been put in a substantially similar position to what would have been required if the Issuer had previously complied with the new Policy 5.4.



PRINCIPALS' ESCROW

- **Securities Subject to Escrow**

- As under the former Policy 5.4, all Principals' Securities are required to be escrowed, and this has been expanded to include not only securities which will be outstanding on completion of the Transaction, but also:
 - those which will be issued subsequently in connection with the Transaction, and
 - all securities transferred from a Principal within the 6 months immediately preceding the Application for Listing.



PRINCIPALS' ESCROW

- **Securities Excluded from Escrow**

- The following Principals' Securities will generally be exempted from the requirement to be deposited into escrow:
 - Principals' Securities that were previously held in escrow pursuant to NP 46-201 or TSXV escrow requirements, and have already been released from such escrow.
 - Principals' Securities issued in connection with a financing offered by way of a Prospectus to a Person who will be a Principal of the Resulting Issuer.
 - Principals' Securities issued in connection with a Private Placement, including a Bridge Financing, to a Person who will be a Principal of the Resulting Issuer (where certain criteria are met).



PRINCIPALS' ESCROW

- **Escrow Release Schedule**

- The Surplus Securities escrow regime has been eliminated, so Principals' Securities will be escrowed according to the Value Securities release schedules and consistent with the release schedules set out in NP 46-201 (i.e. the overall length of the term of escrow is not being changed and will remain 18 months for Tier 1 Issuers and 36 months for Tier 2 Issuers, but there will no longer be releases that are more heavily weighted to later in the term).
- Under the former Policy 5.4 and former Escrow Agreement, if the asset, business or property (or interest) for which the Surplus Securities were issued as consideration is lost or abandoned or the operations or development on the asset, business or property are discontinued, the automatic timed release of the subject Surplus Securities terminated and after five years, such Surplus Securities must be cancelled (the "**Cancellation Provision**"). In eliminating the Surplus Securities escrow regime, TSXV is also eliminating the Cancellation Provision.



PRINCIPALS' ESCROW

- **Escrow Release Schedule**

<u>Tier 1 Issuers:</u>		<u>Tier 2 Issuers (excluding CPC's):</u>	
<u>%</u>	<u>Release Date</u>	<u>%</u>	<u>Release Date</u>
25%	On the Bulletin Date	10%	On the Bulletin Date
25%	6 months following the Bulletin Date	15%	6 months following the Bulletin Date
25%	12 months following the Bulletin Date	15%	12 months following the Bulletin Date
25%	18 months following the Bulletin Date	15%	18 months following the Bulletin Date
		15%	24 months following the Bulletin Date
		15%	30 months following the Bulletin Date
		15%	36 months following the Bulletin Date



NON-PRINCIPALS' SEED SHARE RESALE RESTRICTIONS

SEED SHARE RESALE RESTRICTIONS

- Seed Share Resale Restrictions ("**SSRRs**") are hold periods imposed by TSXV on certain securities held by Persons who are not Principals of the Issuer on completion of a Transaction.
- The release schedule has been simplified so that any securities subject to SSRRs will have a one year hold period with 20% of such SSRR Securities released every 3 months, with the first release on the Bulletin Date.



SEED SHARE RESALE RESTRICTIONS

“Transaction Price” means the greater of:

- (i) the Discounted Market Price, and
- (ii) the price of the financing completed in connection with the Transaction, or if there is no such price or more than one financing, then such price as the Exchange determines;

and in each case, adjusted as appropriate to reflect any share exchange ratio and/or any other changes being made to the capital structure (including a security consolidation or a security split) in connection with or prior to the completion of the Transaction.



SEED SHARE RESALE RESTRICTIONS

- **Securities Subject to SSRRs**

- All Listed Shares of the Issuer, and all securities convertible or exercisable into Listed Shares of the Issuer, and all other securities of the Issuer held by Persons who are not Principals of the Issuer on the completion of the Transaction, are subject to SSRRs if they satisfy any of the following criteria:
 - they were issued, or issued in exchange for a security that was originally issued, at a price or deemed price per security, or are convertible or exercisable at a price per security, that is less than the lesser of \$0.05 and 50% of the Transaction Price (the “**Minimum Price**”); or
 - they were issued, or issued in exchange for a security that was originally issued, within 12 months immediately preceding the date of the TSXV’s conditional acceptance letter for the Transaction at a price or deemed price per security (or are convertible or exercisable at a price per security) that is less than 25% of the Transaction Price; or
 - they were issued, or issued in exchange for a security that was originally issued, within 3 months immediately preceding the date of the TSXV’s conditional acceptance letter for the Transaction at a price or deemed price per security (or are convertible or exercisable at a price per security) that is less than 50% of the Transaction Price.

(collectively, the “**SSRR Securities**”)



SEED SHARE RESALE RESTRICTIONS

- **Securities Excluded from SSRRs**

- Somewhat similar to escrow, the following securities will generally be exempted from the SSRRs:
 - Where an Issuer will have a market capitalization of at least \$100 million immediately after the completion of the Transaction, the Issuer may request an exemption from the SSRRs in its Application for Listing.
 - The SSRRs do not apply to SSRR Securities held by a Person who is not a Principal of the Issuer on completion of the Transaction and holds SSRR Securities carrying less than 1% of the voting rights attached to the outstanding securities of the Issuer immediately after the completion of the Transaction (a "**Below 1% Holder**"); however, TSXV reserves the right to impose SSRRs on all Below 1% Holders if the aggregate holdings of SSRR Securities of all Below 1% Holders exceeds 5% of the number of Listed Shares of the Issuer outstanding immediately after the completion of the Transaction.



SEED SHARE RESALE RESTRICTIONS

- **SSRR Release Schedule**

- In short, SSRR Securities are subject to a one year hold period, with 20% of such SSRR Securities released every 3 months, with the first release on the Bulletin Date.

Price	Held <3 months	Held <12 months	Held >12 months
< Minimum Price (i.e. the lesser of \$0.05 and 50% of the Transaction Price)	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date
≥Minimum Price and <25% of the Transaction Price	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	No hold
≥Minimum Price and ≥25% of the Transaction Price and <50% of the Transaction Price	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	No hold if held more than 3 months	No hold



SEED SHARE RESALE RESTRICTIONS

- **SSRRs Example #1**

- Assume Transaction Price = \$0.20

- **SSRR Securities** only include:

- Minimum Price = lesser of \$0.05 and $(50\% \times \$0.20) = \0.05 , so securities issued $< \$0.05$
- 25% of Transaction Price = \$0.05, so securities issued $< \$0.05$ (already included above)
- 50% of Transaction Price = \$0.10, so securities issued $\geq \$0.05$ and $< \$0.10$ in the 3 months immediately preceding Conditional Acceptance



SEED SHARE RESALE RESTRICTIONS

- **SSRRs Example #2**

- Assume Transaction Price = \$0.60

- **SSRR Securities** only include:

- Minimum Price = lesser of \$0.05 and $(50\% \times \$0.60) = \0.05 , so securities issued $< \$0.05$
- 25% of Transaction Price = \$0.15, so securities issued $\geq \$0.05$ and $< \$0.15$ in the 12 months immediately preceding Conditional Acceptance
- 50% of Transaction Price = \$0.30, so securities issued $\geq \$0.15$ and $< \$0.30$ in the 3 months immediately preceding Conditional Acceptance



SEED SHARE RESALE RESTRICTIONS

- **SSRRs Example #3**

- Assume Transaction Price = \$0.05

- **SSRR Securities** only include:

- Minimum Price = lesser of \$0.05 and $(50\% \times \$0.05) = \0.025 , so securities issued $< \$0.025$
- 25% of Transaction Price = \$0.0125, so securities issued $< \$0.0125$ (already included above)
- 50% of Transaction Price = \$0.025, so securities issued $< \$0.025$ (already included above)



ESCROW AMENDMENTS & TRANSFERS

- This Part of the former Policy 5.4 covering the filing requirements for escrow amendments and transfers has been expanded for clarity.
- For escrow agreements required under NP 46-201, Issuers must apply to the relevant **Securities Commission** which originally required the escrow agreement for any specific request to amend the terms of the escrow agreement, transfer securities within escrow or release securities from escrow.
- Transfers of securities escrowed pursuant to Exchange Requirements require the prior written consent of **TSXV**. Generally, Principals' Securities may only be transferred to new or existing Principals of the Issuer.



ESCROW AMENDMENTS & TRANSFERS

- Amendments to Escrow Agreements (including for transition) require TSXV consent **and** disinterested Shareholder approval.
- Transfers within Escrow require TSXV consent, and additional requirements apply where the Issuer is a CPC.



SPIN-OFF TRANSACTIONS AND OTHER DIRECT LISTINGS

- This Part of the new Policy 5.4 is new and has been added for clarity to specifically address Spin-off transactions and other direct listings.
- A transaction (a "**Spin-off**") may involve the transfer of the assets or business of one entity ("**Parentco**") to another entity ("**Spinco**") in consideration for a distribution of securities of Spinco to the securityholders of Parentco, or may involve the distribution of securities of a subsidiary of Parentco (also referred to as "**Spinco**") to the existing securityholders of Parentco, or any analogous transaction. Spinco may also concurrently or subsequently undertake a financing, reverse takeover or other significant acquisition.



SPIN-OFF TRANSACTIONS AND OTHER DIRECT LISTINGS

- When Spinco applies for listing on TSXV, it must satisfy the Initial Listing Requirements, and the capital structure of Spinco must be acceptable to TSXV.
- Policy 5.4 now includes guidance that applies where the adjusted Net Tangible Asset value of the asset or business transferred from Parentco to Spinco is less than \$0.05 per security issued by Spinco as consideration.



ACQUISITIONS AND DISPOSITIONS - EVIDENCE OF VALUE

- Part 7 of the new Policy 5.4 is new and has been added to specifically address circumstances where an Issuer is required under Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* ("**Policy 5.3**") or otherwise to provide support for the value ascribed to the assets, business or property (or interest) being acquired or disposed of.
- Section 5.12 of Policy 5.3 currently refers to the former Policy 5.4 for the ways in which an Issuer can provide evidence of value.



ACQUISITIONS AND DISPOSITIONS - EVIDENCE OF VALUE

- As TSXV is not amending Policy 5.3 at this time, Part 7 has been included to clarify how the new Policy 5.4 should be applied in the context of Policy 5.3.
- Specifically, for subsequent acquisitions and dispositions, the following sections of the new Policy 5.4 may be used to provide support for the value, provided that each reference to “at least 50% of the Consideration” is read as “at least 100% of the Consideration”:
 - Section 2.1(b) - Appraisal or Valuation
 - Section 2.1(c) - Expenditures
 - Section 2.1(d) - Net Tangible Assets of the Target Company
 - Section 2.1(e) - Operating Cash Flow of the Target Company



ACQUISITIONS AND DISPOSITIONS - EVIDENCE OF VALUE

- Alternatively, such support may be demonstrated by way of a contemporaneous equity financing (the “**Asset Financing**”) where a majority of the securities are issued to subscribers who are not Non-Arm’s Length Parties of the Issuer and either:
 - the number of Listed Shares of the Issuer to be issued pursuant to the Asset Financing is **not less than 10%** of the number of issued and outstanding Listed Shares of the Issuer upon completion of the transaction and the Asset Financing; or
 - gross proceeds of the Asset Financing are not less than **\$5,000,000**.



ACQUISITIONS AND DISPOSITIONS - EVIDENCE OF VALUE

- **Waiver:** Alternatively, where an Issuer is required under Policy 5.3 to provide support for the value ascribed to the assets, business or property (or interest) being acquired or disposed of **because the transaction involves one or more Non-Arm's Length Parties**, the Issuer may apply to TSXV for a waiver of the requirement for such support.



ACQUISITIONS AND DISPOSITIONS - EVIDENCE OF VALUE

- In exercising its discretion to grant such a waiver, TSXV will consider:
 - The rationale provided to support TSXV's exercise of its discretion.
 - MI 61-101 does not apply, or there is an exemption from its formal valuation requirement.
 - Where the transaction involves two Companies, they are not controlled by the same Person or group of Persons, and not more than one individual is a director or officer of both Companies.
 - Neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction exceeds 10% of the Issuer's market capitalization.
 - The securities to be issued as consideration will be subject to escrow or other resale restrictions.
 - The transaction is subject to the approval of the disinterested Shareholders of the Issuer.
 - The news release announcing the transaction includes all of the disclosure required by Policy 5.3 and also includes specified disclosure.



TRANSITION

- Had these changes to the escrow and SSRR requirements been in effect and applied to Transactions that have completed in the last 36 months, some securities that are currently still subject to resale restrictions would have already been released.
- To be fair, TSXV has included a transition section to enable such releases as are consistent with the requirements of the new Policy 5.4.



TRANSITION - ESCROW

- For Issuers with Existing Escrow Agreements, application may be made pursuant to the transition provisions to:
 - Amend the release schedule to comply with the new Policy 5.4; and/or
 - Remove the Cancellation Provision that applied under the Surplus Securities escrow regime.
- Such changes must receive disinterested Shareholder approval.



TRANSITION - SSRR

- For Issuers with outstanding securities subject to SSRR, application may be made pursuant to the transition provisions to amend the SSRR release schedule to comply with the new Policy 5.4.
- Such changes do NOT require Shareholder approval unless required by the terms of any applicable agreement.



TRANSITION – FILING REQUIREMENTS

- **Escrow**

- News release
- Summary of proposed amendments and effect on the current escrow release dates
- Draft amending agreement, with blackline showing proposed amendments
- Draft information circular or form of written consent from Shareholder
- Analysis showing compliance
- Letter from Escrow Agent confirming securities currently held in escrow
- Evidence of Shareholder approval
- Filing Fee \$1,000 through LINX



TRANSITION – FILING REQUIREMENTS

- **SSRR**

- News release
- Summary of effect on the current SSRR release dates
- Draft amending agreement, if applicable, with blackline
- Description of process for implementation
- Analysis showing compliance
- Filing Fee \$1,000 through LINX



ESCROW AGREEMENT (FORM 5D)

- The former Escrow Agreement has been revised to reflect the changes being made to the former Policy 5.4.



TAKEAWAYS

- **Capital Structure amended and expanded:**

- (a) Contemporaneous Equity Financing of not less than 10% or not less than \$5,000,000
- (b) Appraisal or Valuation support at least 50% of Consideration
- (c) Expenditures in last 5 years support at least 50% of Consideration
- (d) Net Tangible Assets of Target Company support at least 50% of Consideration
- (e) Operating Cash Flow of Target Company support at least 50% of Consideration
- (f) Securities issued by Target Company
- (g) Current Listing
- (h) IPO

- **Principals' Escrow simplified:**

- Surplus Securities escrow regime eliminated

- **Non-Principals' Seed Share Resale Restrictions (SSRRs) simplified:**

- One year hold period with 20% of such SSRR Securities released every 3 months

- **Acquisitions and Dispositions:**

- (b) through (e) above, but support at least 100% of Consideration
- Asset Financing of not less than 10% or not less than \$5,000,000

- **Transition:**

- Escrow amendments require disinterested Shareholder approval, but SSRR amendments do not



For more information

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