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Cannabis

Initial Public Offering Checklist



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Canada's Capital Markets for Cannabis	3
Participants in an Initial Public Offering (IPO)	4
Advantages and Disadvantages of an IPO	10
Getting Ready	11
Key Documents and Requirements	12
Indicative Timeline for an IPO	16
Life After an IPO	17
Other Ways to Go Public	19



Canada's Capital Markets for Cannabis

With their access to local and global investors and finance opportunities for companies at all stages, Canada's world leading cannabis capital markets offer a wealth of opportunity.

While Canada has several public listing platforms, Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSXV") are the principal and most well known exchanges.

- **Global Leader** - TSX and TSXV are home to 45 cannabis companies with a total market capitalization of \$32 billion.
- **Access to Capital** - Over \$7.4 billion in equity capital raised through 62 financings in 2018.
- **Liquid Trading Market** - Nearly \$167 billion of equity traded in 2018.
- **Analyst Coverage** - Cannabis companies listed on TSX and TSXV are covered by 40 equity research analysts with an average of 7 analysts covering TSX listed companies.
- **Global Visibility** - 40% of daily trading on TSX and TSXV originates outside of Canada.

Source: TMX Group Limited and S&P Capital IQ.

Note for Issuers with Non-Canadian Assets

At the current time, neither the TSX nor the TSXV will list any company involved in the cannabis industry in any country which does not legally permit the research, cultivation and/or sale of cannabis products – including the United States.

The TSX and the TSXV are aware that a number of U.S. states have legalized the cultivation, distribution or possession of marijuana to various degrees and subject to various conditions. Nevertheless, marijuana remains a Schedule 1 drug under the U.S. federal *Controlled Substances Act*. This means it is illegal under U.S. federal law to cultivate, distribute or possess marijuana in the United States. Furthermore, financial transactions involving proceeds generated by, or intended to promote, marijuana-related business activities in the U.S. may form the basis for prosecution under applicable U.S. federal money laundering legislation. While the TSX and TSXV are aware of the federal guidance concerning the enforcement of these legislative provisions, the TSX and the TSXV note that such guidance does not have the force of law and can be revoked or amended at any time. Companies with business activities that violate or may violate U.S. federal law are prohibited by exchange rules from listing on either the TSX or TSXV.

The TSX and the TSXV's approach is in contrast to the Canadian Securities Administrators (the "**CSA**") requirements. The CSA considers securities regulation to be primarily disclosure-based. The conflict between state and federal law means that issuers with marijuana-related activities in the United States assume certain risks, including the risk of prosecution or seizure of assets. Accordingly, the CSA does not prohibit U.S. backed cannabis companies from accessing the Canadian capital markets provided they disclose these risks and they are complying with U.S. laws at the state level.

Other public listing platforms, particularly, the Canadian Securities Exchange ("**CSE**"), do permit companies with cannabis operations in the United States to list, provided the issuer complies with the CSE's listing requirements and the rules promulgated by the CSA.

Except for the specific TSX/TSXV listing requirements set out herein, this Checklist is applicable to all issuers seeking to go public in Canada.



Participants in an Initial Public Offering (IPO)

Issuer

- The issuer sells securities to the public (called a “New Issue IPO”), or a major shareholder sells to the public the issuer’s existing shares that the shareholder owns (called a “Secondary Offering IPO”). To address both issuer financing and shareholder liquidity needs, an IPO can be a mixed New Issue IPO and a Secondary Offering IPO
- Dual class share structure with one class having superior voting rights is permitted but stock exchanges and underwriters will require certain protections for shareholders, including “coat-tail” provisions to ensure equal treatment in the event of a take-over bid. Dual class structures may not be as attractive to investors, who may find them more difficult to value and understand, and such structures may be subject to greater scrutiny by institutional investors
- There is flexibility in determining which type of entity to use as the issuer (i.e., corporation, limited partnership, trust, etc.)
- Issuer need not be Canadian, but cross-border tax and securities law implications for nonCanadian issuers should be considered early in the process
- If using a non-Canadian issuer, stock exchanges and underwriters will require certain shareholder protections that match Canadian or Delaware law, principally:
 - › control over election of board of directors and ordinary shareholder matter—usually requires majority of shares voted at shareholders meeting
 - › control over fundamental changes, such as a sale or merger of the issuer or a sale of all or substantially all of the assets of the issuer—usually requires two-thirds of shares voted at shareholders meeting





Exchanges

- The Canadian marketplace is dominated by two securities exchanges:
 - › Toronto Stock Exchange
 - › TSX Venture Exchange
- An issuer effecting an IPO will likely apply to have its securities listed on one of those Exchanges
- During the listing process, the Exchange reviews key minimum business parameters, including working capital, financial resources, number of shareholders, market capitalization and suitability of management and directors
- Each Exchange has different listing requirements; the TSX, being the senior exchange, has the most stringent listing requirements
- Canadian provincial securities regulators also recognize this division; “Venture Issuers” listed on the TSXV are subject to simpler continuous disclosure requirements
- Exchange listing categories:
 - The TSX has two categories of listing for cannabis issuers:
 - › TSX Exempt Issuers and TSX Non-Exempt Issuers
 - › These requirements are geared toward the stage of development of the issuer at the time of listing
 - › Exempt issuers are more advanced and so subject to less stringent reporting requirements
 - The TSXV has two categories of listing requirements for cannabis issuers:
 - › TSXV Tier 1 Issuers and TSXV Tier 2 Issuers
 - › Tier placement depends on historical financial performance, stage of development and financial resources of the issuer at the time of listing
 - › Tier 1 Issuers are more advanced, with more significant financial resources; they are subject to decreased filing requirements



TSX Key Listing Requirements

Minimum Listing Requirements	TSX Non-Exempt Technology Issuers	TSX Non-Exempt Research & Development (R&D) Issuers	TSX Non-Exempt Forecasting Profitability	TSX Non-Exempt Profitable Issuers	TSX Exempt Industrial Companies
Earnings or Revenue			Evidence of pre-tax earnings from on-going operations for the current or next fiscal year of at least \$200,000	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
Cash Flow			Evidence of pre-tax cash flow from on-going operations for the current or next fiscal year of at least \$500,000	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
Net Tangible Assets			\$7,500,000	\$2,000,000	\$7,500,000
Adequate Working Capital and Capital Structure	Funds to cover all planned development expenditures, capital expenditures, and G&A expenses for 1 year	Funds to cover all planned R&D expenditures, capital expenditures and G&A expenses for 2 years	Working capital to carry on the business, and an appropriate capital structure		
Cash in Treasury	Min. \$10 million in the treasury, with majority raised by prospectus offering	Min. \$12 million in the treasury, with majority raised by prospectus offering			
Products and Services	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	Minimum 2 year operating history that includes R&D activities. Evidence of technical expertise and resources to advance its research and development programs			
Management and Board of Directors	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.				
Public Distribution and Market Capitalization	Minimum 1,000,000 free trading public shares Minimum \$10,000,000 held by public shareholders 300 public shareholders each holding a board lot Minimum \$50 million market capitalization	Minimum 1,000,000 free trading public shares Minimum \$4,000,000 held by public shareholders 300 public shareholders each holding a board lot			
Sponsorship	Generally required				Not required

Source: TMX Group - "Listing requirements for Industrial, Technology, Research & Development and Real Estate Companies"

Note: most cannabis issuers will fall under these listing requirements. The TSX/TSXV also has a separate category listing requirements for "diversified" issuers that may be applicable in certain circumstances.

TSXV Key Listing Requirements

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
Net Tangible Assets, Revenue or Arm's Length Financing (as applicable)	\$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	Real Estate: \$5,000,000 net tangible assets Investment: \$10,000,000 net tangible assets	\$2,000,000 net tangible assets or \$3,000,000 Arm's Length Financing
Adequate Working Capital and Capital Structure	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
Property	Issuer has Significant Interest in business or primary asset used to carry on business		Real Estate: Issuer has Significant Interest in real property Investment: No requirement	
Prior Expenditures and Work Program	History of operations or validation of business		Real Estate: No requirement Investment: Disclosed investment policy	Real Estate: No requirement Investment: (i) disclosed investment policy and (ii) 50% of available funds must be allocated to at least 2 specific investments
Management and Board of Directors	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 in Canada or a similar jurisdiction. Companies are required to have at least two independent directors.			
Distribution, Market Capitalization and Public Float	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions; 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; 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
Sponsorship	Sponsor Report may be required			

Source: TMX Group - "Listing requirements for Industrial, Technology, Research & Development and Real Estate Companies"

Note: most cannabis issuers will fall under these listing requirements. The TSX/TSXV also has a separate category listing requirements for "diversified" issuers that may be applicable in certain circumstances.



Securities Regulators

- Provincial and territorial securities regulators in jurisdictions where securities are to be distributed review disclosure used in the IPO material
- Securities regulators work in a co-ordinated manner; each IPO is assigned its own “lead” regulator and that regulator co-ordinates with the others
- Two key required disclosure documents:
 - › prospectus
 - › audited annual and unaudited interim financial statements/management’s discussion and analysis (“MD&A”)

Underwriters

- Role:
 - › issuer’s initial link to the capital markets
 - › sells the offered securities to institutional and retail investors
 - › provides structuring and financing advice to the issuer
 - › obligated to ensure that the interests of public investors are protected and perform legal and commercial due diligence
- Underwriters’ compensation will typically include:
 - › sales commission of between 5% to 10% of gross proceeds raised
 - › payment of underwriters’ expenses (can be subject to a cap and/or deducted from fee)
 - › sponsorship fee (which may be required for TSXV listings) and broker warrants (for junior issuers)
- Relationship between issuer and underwriters governed by engagement letter until replaced by underwriting agreement
- Engagement letter:
 - › entered into early in the process
 - › confirms underwriters (typically 1-3) that will lead offering, fees and indemnities, obligation of issuer to reimburse specified expenses, proposed offering structure and syndicate members





- Underwriting agreement:
 - › entered into when final prospectus is filed
 - › commits underwriter to purchase the offered securities
 - › includes pricing terms, representations and warranties, indemnities
 - › closing typically occurs within 10 days following execution

Lawyers

- Issuer and underwriter each retain own counsel
- If material assets of business are located outside Canada then may need to retain local counsel
- Responsibilities of lawyers include:
 - › assisting IPO structuring issues
 - › overseeing legal due diligence process
 - › managing the preparation of the prospectus
 - › assisting with the regulatory review process
- An IPO is a complex, demanding and often time-sensitive process. Issuer's legal counsel plays a key role in coordinating the many participants and steps in the process

Auditor

- Auditor provides accounting advice, assists with due diligence, prepares audit opinions and reviews financial statements to be included in the prospectus
- The preparation of financial statements is often one of the greatest challenges in an IPO and it is critical to have an auditor experienced with the IPO process and familiar with the business of the issue



Advantages and Disadvantages of an IPO

Advantages

- Liquidity for existing shareholders
- Immediate equity capital, likely at more attractive multiples than private equity financing
- Improved opportunities for future financing - an IPO usually provides increased access to a broader range of financial markets and vehicles
- Increased ability to complete mergers and acquisitions both by using the issuer's publicly traded shares as "acquisition currency" and by raising cash through the sale of additional equity
- Increased ability to attract and retain personnel and improved opportunities for management and employee compensation through stock options or similar compensation arrangements
- Increased public profile, with resulting potential for improving corporate image and relationships

Disadvantages

- Potential loss of control for the founder(s) of the issuer
- Restrictions on management decision making – board and shareholder approval requirements imposed by regulatory authorities including in respect of related party or conflict of interest transactions, liquidity restrictions on majority shareholders and corporation insiders
- Loss of confidentiality due to initial prospectus and periodic financial reporting and other ongoing public disclosure requirements
- Large commitment of time and resources and incurring of expenses in the IPO process and subsequently to address such matters as board meetings, shareholders' meetings, compliance with the requirements of securities laws and stock exchange rules and discussions with analysts and reporters
- More detailed and complex financial information requirements, accounting and auditing matters, disclosure and internal control systems and procedures, as well as certifications
- Accountability, duties and potential liabilities to public shareholders, which may require conducting the business in a more formal manner and imposing greater short-term performance pressures

Getting Ready

An IPO can be complex and time-consuming, with numerous issues to address within tight time frames. The following should be addressed in advance while the issuer is still private:

- Prepare a Business Plan – can be useful for approaching potential underwriters and obtaining financing, as well as serving as the forerunner of the prospectus
- Create a Corporate Image – create a corporate image suitable for a public company that will accurately depict the state of the issuer's business
- Prepare Audited Financial Statements – a prospectus is generally required to include income statements, statements of changes in equity and cash flow for three years and balance sheets for the previous two years. The auditors should preferably be the ones that are used once the issuer goes public
- Develop Reporting and Control Systems – develop and implement appropriate financial and other reporting requirements for a public company
- Select Accounting and Legal Advisers – firms with experience in public offerings should be used
- Select an Underwriter – the appropriateness and interest of prospective underwriters could be affected by the size of the offering and the national / international / regional scope of the offering. Consider the following factors in evaluating the suitability of an underwriter for a particular offering:
 - › specialization and reputation, particularly where the issuer is unknown, may be significant to potential investors as well as to other investment dealers that might be invited to join an underwriting syndicate or banking group to sell the offered securities
 - › ability to arrange for adequate distributional capability, both for selling the requisite number of shares and for selling them to a sufficiently broad investor base. The retail or institutional focus of the underwriters should be considered in respect of the company's desired shareholder base
 - › research department with the capability and likely desire to follow the issuer after it goes public
- Make Needed Modifications to Corporate Structure including:
 - › the share capital structure. Simplification to create a single class of common equity is often a requirement of the underwriters
 - › if the shareholders of the private issuer historically have taken little or no profits from the issuer, it may be appropriate to pay a dividend before the issuer goes public. Further, it will typically be necessary and desirable to eliminate loans between shareholders and the issuer before an IPO
 - › the articles and by-laws of the company should be reviewed with a view to their suitability for a public company. At a minimum, "private company" restrictions will need to be removed
- Board of Directors – identify directors who possess the degree of expertise, experience and independence to form a high quality board of an appropriate size
- Corporate Governance – corporate governance processes appropriate for a public company will need to be adopted. Significant representation of independent directors on the board will be expected. A TSX listed company is required to have an audit committee composed of at least 3 directors, all of whom are independent and financially literate. Issuers listed on the TSXV have more flexibility
- Establish Share Incentive Plans - administrative requirements regarding share incentive plans may be facilitated by setting up the plan before an issuer goes public, being mindful of equity compensation arrangement requirements that may be imposed by the relevant Exchange
- Executive Compensation – management should review employment, incentive and compensation practices to make sure they are appropriate for a public company and in compliance with applicable regulatory requirements



Key Documents and Requirements

Prospectus

- Contains prescribed disclosure including:
 - › “full, true and plain disclosure of all material facts relating to the securities” offered by the prospectus
 - › a summary of the business of the issuer and risk factors
- Required to be provided to investors in IPO
- Issuer, issuer’s directors, CEO and CFO, underwriters and experts certify that the prospectus does not contain a “misrepresentation”, which term includes a failure to state a fact required to make a statement not misleading in the circumstances

Financial Statements and MD&A

- An issuer is generally required to prepare financial statements in accordance with IFRS
- Audited annual financial statements generally required as follows:
 - › comprehensive income, changes in equity and cash flows for the 3 most recently completed financial years (less than 3 years may be sufficient in certain circumstances)
 - › financial position for 2 most recently completed financial years
 - › notes to financial statements
- Requirement applies to financial years ended more than 90 days prior to the date of the prospectus (unless a TSXV listing, in which case applies to financial years ended more than 120 days prior)
- If not a Canadian “domestic issuer” then, subject to applicable rules, may be able to prepare financial statements in accordance with home-country GAAP
- Unaudited interim financial statements generally required for most recently completed interim period as follows:
 - › financial position as at the end of the interim period

- › comprehensive income, changes in equity and cash flows, all for the year-to-date interim period and comparative financial information
- › for interim periods other than the first interim period, comprehensive income for the three month period ending on the last day of the interim period and comparative financial information
- › notes to the financial statements
- Requirement applies to interim periods ended more than 45 days prior to the date of the prospectus (unless a TSXV listing, in which case applies to interim period ended more than 60 days prior)
- Issuer is required to prepare MD&A for each set of annual and interim financial statements included in the prospectus
- MD&A is “a narrative explanation through the eyes of management” of how the issuer has performed during the prior annual or interim period, and supplements the applicable financial statements
- If the issuer has effected a significant acquisition or disposition or intends to effect such a transaction in connection with its IPO, then pro forma annual and interim financial statements reflecting the transaction may be required

Governance

- For stock exchanges and underwriters, the composition of the board of directors is significant in assessing the desirability of the listing or the engagement
- Stock exchanges and securities regulators perform extensive background checks on members of an issuer’s board of directors and senior management
- Directors and senior management are generally required to submit to the applicable stock exchange personal information forms containing detailed information regarding their background

- Securities regulators have adopted a detailed set of corporate governance guidelines recommending, among other things, that:
 - › majority of directors be “independent”
 - › board chair be “independent”
 - › written mandates and codes for key corporate processes, ethical and similar matters be adopted
- An issuer listed on the TSX must have an audit committee composed of a minimum of three independent and financially literate directors; independence is recommended for all members of other committees
- Prescribed rules regulate the responsibilities, authority and reporting obligations of the audit committee
- TSXV listed issuers are exempt from this requirement but must disclose how and why their practices differ
- › **Established Issuers:** If issuer is listed on the TSX in its non-exempt category or on Tier 1 of the TSXV, then up to 75% of the equity securities (including stock options) owned or controlled by principals will be escrowed and released from escrow in equal tranches at six-month intervals over an 18-month period (i.e., 25% is released from escrow every six months)
- › **Emerging Issuers:** If issuer is not an “Exempt Issuer” or “Established Issuer” as described above, then up to 90% of the equity securities (including stock options) owned or controlled by principals will be escrowed and released from escrow in equal tranches at six-month intervals over a 36-month period (i.e., 15% is released from escrow every six months)
- In addition, underwriters often impose contractual restrictions on insiders of the issuer, preventing sale by them of issuer securities for a period of time after the IPO (6 to 18 months is typical)

Escrow Requirements

- Securities regulators and the Exchanges have developed a national escrow regime for IPOs which impose a requirement for pre-IPO principals to hold equity securities for a period of time following IPO
- Purpose is to ensure market price not depressed by early sales by insiders, etc.
- Applies to certain principals, including:
 - › directors and officers
 - › promoters during the two years preceding IPO
 - › holders of more than 20% of the equity securities
 - › holders of more than 10% of the equity securities (if they have appointed or have the right to appoint a director or senior officer)
- For escrow purposes, issuers are classified as “exempt issuers”, “established issuers” or “emerging issuers”
- Different escrow rules apply depending on classification
 - › **Exempt Issuers:** No escrow for issuers conditionally listed on the TSX in its exempt category or those issuers having a market capitalization of at least \$100 million

Considerations for Emerging Market Issuers

- Emerging market issuers are those with significant business operations in emerging markets, because their mind and management is largely outside of Canada and/or their principal active operations are outside of North America or Western Europe
- Emerging market issuers intending to list their securities on the TSX or TSXV may be subject to enhanced guidance or requirements, including special rules with respect to disclosure of the following:
 - › potential risks associated with listing an emerging market issuer
 - › management and corporate governance, including relating to requirements for independent directors
 - › financial reporting and specifically the role of the Chief Financial Officer, the audit committee and auditors
 - › internal controls, including, for the TSX, whether a report on internal controls should be submitted by an auditor at the time of original listing
 - › related-party transactions
 - › non-traditional corporate / capital structures
 - › sponsorship, including whether sponsorship reports should be made public



Costs

- Common expenses in completing an IPO in Canada include:
 - › auditor fees
 - › filing fees (paid to Canadian securities regulators when filing a prospectus in all provinces)
 - › legal fees
 - › listing fees (paid to the applicable Exchange)
 - › marketing costs
 - › printing costs
 - › transfer agency fee
 - › translation costs (if any part of the offering is made in Québec)
 - › underwriter fees
- A corporation must also consider the time and effort required of management to assist in the preparation and realization of the public offering



Indicative Timeline for an IPO

Weeks 1-2: Review corporate, board, capital and management structures to identify necessary changes to be implemented in connection with IPO and confirm availability of historical financial statements

Weeks 3-5: Interview and select underwriters

Week 5: Commence due diligence process and drafting of the preliminary prospectus

Week 11: Diligence process and drafts of the following should be nearly complete: preliminary prospectus; financial statements; MD&A; and underwriting agreement. Also expect such documents to have been circulated to the issuer's board and French translation of prospectus commenced (assuming distribution in Québec)

Week 13: Following a formal due diligence session and approval of the preliminary prospectus, financial statements and MD&A by issuer's board of directors, the preliminary prospectus is filed with securities regulators, a listing application is filed with the applicable stock exchange

Weeks 15-16: Securities regulators issue first comment letter, "road shows" begin, comments addressed by issuer, and the preliminary prospectus is cleared to go final. Finalize underwriting agreement; settle all provisions except pricing terms

Weeks 16-18: Issuer and underwriter negotiate and agree on pricing terms. Following a formal "bring-down" due diligence session and approval of the final prospectus by the issuer's board of directors, the underwriting agreement is signed and the final prospectus is filed with the securities regulators

Week 19: "Closing" of the IPO occurs and the issuer's new life as a public company begins



Life After an IPO

- Once an issuer completes an IPO it becomes a “reporting issuer”
- A “reporting issuer” is subject to three main reporting and operational requirements:
 - › timely disclosure (disclosure of material information as it arises)
 - › periodic disclosure (disclosure of financial and other information on a scheduled basis)
 - › internal controls over financial reporting and disclosure controls and procedures
- › proxy and other shareholder meeting materials
- › Business Acquisition Reports, for significant acquisitions
- › material contracts and documents affecting the rights of security holders

Timely Disclosure

- Securities regulators and stock exchanges require the filing and prompt public dissemination of information on a timely basis where such information is of a material nature and relevant to investors
- While procedures are in place to preserve confidentiality in appropriate circumstances, issuers are required to promptly disclose, among other things, changes in their business, operations or capital that “would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer”
- The prompt release of material information is necessary to ensure that information is disseminated on a non-selective basis to all investors in a timely manner and to reduce the risk of insider trading or other misuse of the information

Periodic Disclosure

- Reporting issuers are required to file:
 - › annual audited financial statements with MD&A
 - › quarterly unaudited financial statements with MD&A
 - › management certification with each set of financial statements filed
 - › an “Annual Information Form” (“AIF”), which includes certain prescribed disclosure of the issuer’s business and operations and supplements its financial statements and MD&A (AIF not required if a TSXV listed issuer)

Internal Controls Over Financial Reporting, Disclosure Controls and Procedures

- CEO and CFO are required to certify that they have designed and evaluated the effectiveness of internal controls over financial reporting (“ICFR”) and disclosure controls and procedures (“DC&P”) and have caused the issuer to disclose in its annual MD&A their conclusions about the effectiveness of the ICFR and the DC&P
- CEO and CFO are also required to annually and quarterly certify that:
 - › they have caused the issuer to disclose in its MD&A any material weakness relating to its design of ICFR or DC&P and any changes in ICFR
 - › applicable filings do not, to their knowledge, contain any “misrepresentations” and fairly present the issuer’s financial position
- Canadian issuers are not required to obtain from their auditors an opinion covering management’s assessment of the effectiveness of the ICFR (as required under Sarbanes-Oxley in the United States)
- TSXV listed issuers may file certificates that are less onerous than those described above



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Other Ways to Go Public

Issuers can also become a “reporting issuer” and achieve a listing on the TSX or TSXV by way of reverse take-over, qualifying transaction for a Capital Pool Company or acquisition by a Special Purpose Acquisition Corporation.

Reverse Take-Over (RTO)

- A reverse take-over is also known as a “back door listing” or “reverse merger” of a company already listed on TSX or TSXV
- This listing can be done in a number of ways, including an amalgamation or issuance of shares in exchange for shares or assets of the issuer
- The issuer resulting from the RTO must meet the applicable original listing requirements of either the TSX or TSXV and must submit to an approval procedure similar to that of an original listing application
 - › the CPC prepares a draft filing statement or information circular providing prospectus-level disclosure on the business that is to be acquired
 - › TSXV reviews the disclosure document and evaluates the business to ensure it meets minimum listing requirements
 - › directors, officers and shareholders of the private business may become directors, officers and shareholders of the listed CPC
- The listing of a business or assets through the CPC program can be a more cost and time efficient alternative than a listing through a traditional IPO and provides an opportunity to reduce the underwriting risk of an IPO

Capital Pool Company (CPC)

- The Capital Pool Company program is a unique two-stage listing process offered by the TSXV
- In stage one of the process:
 - › minimum three individuals with an appropriate combination of business and public company experience put up a minimum of the greater of \$100,000 or 5% of total funds raised
 - › these founders incorporate a shell company - the CPC - and issue shares in exchange for seed capital at a minimum price between the greater of \$0.05 or 50% of the price at which subsequent shares are to be sold via prospectus
 - › the CPC and its advisors prepare a prospectus that outlines management's intention to raise between \$200,000 and \$4,750,000 by selling CPC shares at typically twice the issuance price of the seed shares, and to use the proceeds to identify and evaluate potential acquisitions
- In stage two (the “Qualifying Transaction”):
 - › within 24 months, the CPC identifies an appropriate business as its “qualifying transaction” and issues a news release to announce that it has entered an agreement in principle to acquire the business

Special Purpose Acquisition Corporation (SPAC)

- A SPAC is an investment vehicle allowing the public to invest in companies or industry sectors normally sought by private equity firms
- The SPAC program enables seasoned directors and officers to form a corporation that initially contains no commercial operations or assets other than cash. The SPAC is then listed on TSX via an IPO, raising a minimum of \$30 million. 90% of the funds raised are placed in escrow, and must then be used toward the acquisition of an operating company or assets within 36 months of listing
- SPACs become reporting issuers as a result of their IPO, and thus are fully regulated by the relevant securities regulators as well as TSX. The issuer acquired becomes part of the SPAC. Directors, officers and shareholders of the acquired issuer may become directors, officers and shareholders of the SPAC



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The Bennett Jones Corporate Finance Group consists of more than 90 lawyers based in Calgary, Edmonton, Ottawa, Toronto, Vancouver, New York, Washington, DC., Beijing and Doha.

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Cannabis, Initial Public Offering Checklist, January 2019

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In keeping with this standard, our corporate finance lawyers are practice leaders, known for their extensive experience and excellence. They are trusted advisors to our clients, which include cannabis companies of all sizes, investment banks and investors.

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