

# Raising capital

## A primer for small and medium-sized enterprises (SMEs)

Corporate Finance Branch

February 12, 2014

# Disclaimer

*“The views expressed in this presentation are the personal views of the presenting staff and do not necessarily represent the views of the Commission or other Commission staff.*

*The presentation is provided for general information purposes only and does not constitute legal or accounting advice.*

*Information has been summarized and paraphrased for presentation purposes and the examples have been provided for illustration purposes only. Responsibility for making sufficient and appropriate disclosure and complying with applicable securities legislation remains with the company.*

*Information in this presentation reflects securities legislation and other relevant standards that are in effect as of the date of the presentation.*

*The contents of this presentation should not be modified without the express written permission of the presenters.”*

# Presentation Outline

Time	Topic	Page
1:30 – 1:35	Welcome and Introduction to the OSC SME Institute	4
1:35 – 1:40	Regulatory Landscape in Canada	6
1:40 – 1:50	Key Principles of Securities Regulation	11
1:50 – 2:15	Sales of securities without a prospectus	20
2:15 – 2:45	Common Methods of Going Public	55
2:45 – 3:00	Questions	86

# Welcome and Introduction to the OSC SME Institute

# OSC SME Institute - Objectives

Our goal is to:

- Help SMEs navigate the regulatory waters
- Demystify disclosure requirements so companies can focus on building their business
- Reduce SMEs' cost of compliance so that this money can be better spent on strategic initiatives
- Provide an opportunity for informal dialogue with OSC staff

# Regulatory Landscape in Canada

# Regulatory Landscape in Canada

- Securities regulatory authorities
- OSC Corporate Finance Branch

# Securities Regulatory Authorities

- In Canada, securities regulation is a provincial and territorial responsibility
- Each jurisdiction of Canada has its own Securities Act and securities regulatory authority (e.g., Ontario Securities Commission)
- The securities regulatory authorities are members of the Canadian Securities Administrators (CSA)
- CSA assists in coordinating what securities regulatory authorities do



# Securities Regulatory Authorities (cont'd)

- Rules adopted by all jurisdictions are called “national instruments”
  - National instruments have forms (national instruments and forms have the force of law)
  - National instruments also have companion policies (which provide guidance on how the national instrument should be interpreted, but do not have the force of law)
- Copies of national instruments, forms and companion policies that apply in Ontario are available on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

# OSC Corporate Finance Branch

- Branch of OSC that administers rules applicable to public companies and their insiders
- Disclosure of material information that investors and other market participants need to make informed investment decisions
- Continuous disclosure filings and prospectuses
- Applications for exemptive relief from legislative requirements
- Matters relating to reports of exempt distributions, insider reports, early warning reports and take-over bids

# Key Principles of Securities Regulation

# The Prospectus Requirement

- If you are selling securities to an investor in a “distribution”, you must do so under a prospectus unless an exemption from the prospectus requirement is available
  - Section 53 *Securities Act*
  - National Instrument 45-106 *Prospectus and Registration Exemptions*
  
- A prospectus is a key investor protection tool
  - Provides investors with important information about the company and the securities being offered
  - Disclosure should help investors evaluate the prospects and risks of the company so they can make an informed investment decision

# Key Concepts

- Security
- Trade
- Distribution
- Registration requirement
- Reporting issuer
- Relevant definitions in section 1(1) of the *Securities Act* (Ontario)

# What is a security?

- A “security” includes:
  - Common and preferred shares
  - Bonds, debentures, notes and other evidences of indebtedness
  - Rights, subscription receipts, warrants and options
  - Investment contracts
  - Inclusive definition that is purposely broad, flexible, with focus on substance over form to protect purchasers

# What is a trade?

- “Trade” includes
  - Sale or disposition of security for valuable consideration
  - Any receipt by a registrant of an order to buy or sell a security
  - Any act, advertisement, solicitation, conduct or negotiations directly or indirectly in furtherance of a trade (pre-sale activities)

# What is a distribution?

- What is a distribution?
  - A “distribution” includes
    - A trade in securities of an issuer that have not previously been issued
    - A trade in previously issued securities of an issuer by a control person
    - A trade in securities by investors who acquired those securities in reliance on certain prospectus exemptions
  - A trade that is a distribution requires the purchaser to be provided with a prospectus, unless an exemption is available
  - Deemed distribution on resale of securities issued under prospectus exemption unless resale rules complied with



# Registration requirement

- Registration requirement
  - Must be registered to engage *in the business* of trading
  - OSA section 25
  - National Instrument 31-103 *Registration requirements, exemptions and ongoing registrant obligations*
  - “In the business”
  - Is the activity for a business purpose?
    - Engaging in activities similar to a registrant
    - Intermediating trades or acting as a market maker
    - Directly or indirectly carrying on the activity with repetition, regularity or continuity
    - Being or expecting to be, remunerated or compensated
    - Directly or indirectly soliciting purchasers

# Registration requirement

- Entity that issues its own securities may have to register as a dealer
  - Frequently trades in securities
  - Employs or contracts with individuals to perform activities on its behalf that are similar to those performed by a registrant
  - Solicits investors actively
- In general, securities issuers with an active non-securities business do not have to register if they
  - Do not hold themselves out as being in the business of trading
  - Trade securities infrequently
  - Are not compensated for trading
  - Do not product a profit from trading

# The overall framework revisited

- General requirement – no distribution of securities without a prospectus
  - Prospectus is filed and receipted by the securities regulators
  - Sales can be made to anyone
  - Issuer becomes a “reporting issuer” (“public company”)
  
- Exemption from prospectus requirement
  - Referred to as “exempt market”
  - Issuing securities where no prospectus required
  - Sales can only be made to certain investors – depending on the limits in the exemption being relied on
  - Available to both reporting and non-reporting (private) issuers

# Sales of securities without a prospectus

# Selling securities without a prospectus

- Exempt distributions
- Background
- Rationale for exemptions
- Frequently used exemptions for capital raising
- Reports of exempt distributions
- Resale restrictions
- CSA and OSC exempt market review

# Exempt Distributions

- Sale of securities without a prospectus
- Saves time and cost
- Avoids public company (“reporting issuer”) responsibilities
- Several different exemptions available
- National Instrument 45-106 *Prospectus and Registration Exemptions*

# Background

- Size of the exempt market in Ontario
  - The exempt market in Canada has become increasingly important for investors and issuers
  - The total amount of capital raised in Ontario through exempt distributions reported to the OSC in 2012 was approximately \$104 billion of which \$37 billion was raised by non-investment fund issuers

# Background

- Does not mean unregulated market
  - NI 45-106 specifies to whom securities can be sold and/or under what circumstances
  - Require some of the transactions in this market to be reported to us so that we can monitor compliance
  - Registrant obligations, including know-your-client (or KYC) and suitability, apply when selling or advising in securities sold in the exempt market



# Rationale for Exemptions

- Idea that there is a reason in each case that full disclosure in a prospectus is not necessary
- Balancing capital raising with investor protection

# Rationale for Exemptions

- Nature of investor
  - Certain level of sophistication
  - Ability to withstand financial loss
  - Financial resources to obtain expert advice
- Nature of security
  - Lower risk profile associated with security
- Alignment of economic interests
  - e.g. between employees and employers
- Alternative disclosure regime
  - e.g. information circular
- Regulation under another regime

# Commonly used exemptions for capital raising

Exemption	Available in Ontario	Available in other Canadian Jurisdictions	Reporting Requirements
Private issuer	Yes	Yes	No
Founder control person and family	Yes	No	No
Family, friends and business associates	No	Yes	Yes
Accredited investor	Yes	Yes	Yes
Minimum amount	Yes	Yes	Yes
Rights offering	Yes	Yes	NI 45-101 alternative disclosure required and provided to regulators
Securities for debt	Yes	Yes	Yes
Offering memorandum	No	Yes	Yes

# Private Issuer Exemption

<b>Issuer of security</b>	“Private issuer” – maximum 50 securityholders (excluding employees)
<b>Purchaser</b>	Certain specified persons
<b>Type of security</b>	Any security
<b>Seller</b>	Any seller (issuer or one of specified persons)
<b>Other key conditions</b>	Purchaser purchases as principal
<b>Source</b>	Section 2.4 of NI 45-106

# Private Issuer Exemption

- Private issuer security holders include:
  - Director, officer, employee, founder or control person of issuer
  - Director, officer or employee of affiliate of issuer
  - Certain relatives of director, executive officer, founder or control person and certain relatives of spouse of director, executive officer, founder or control person
  - Close personal friend or close business associate of director, executive officer, founder or control person
  - Existing security holder of the issuer
  - Accredited investor
  - A person that is not the public

# Founder, Control Person and Family Exemption

<b>Issuer of security</b>	Any issuer
<b>Purchaser</b>	Founder, specified family members, control person
<b>Type of security</b>	Any security
<b>Seller</b>	Any seller
<b>Other key conditions</b>	Purchaser purchases as principal
<b>Source</b>	Section 2.7 of NI 45-106

# Founder, Control Person and Family Exemption

- Section 2.7 of NI 45-106
- Applies to a distribution of a security to a specified list of purchasers
  - List of purchasers includes
    - Founder of issuer
    - Affiliate of a founder of the issuer
    - Family member of an executive officer, director or founder of the issuer or
    - A person that is a control person of the issuer

# Accredited Investor Exemption

<b>Issuer of security</b>	Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
<b>Purchaser</b>	Accredited investors
<b>Type of security</b>	Any security
<b>Seller</b>	Any seller
<b>Other key conditions</b>	Accredited investor must purchase as principal
<b>Source</b>	Section 2.3 of NI 45-106



# Accredited Investor Exemption

- Accredited Investors include – individuals
  - Alone or with spouse certain net income (before taxes) in two most recent years
    - \$200,000 (alone)
    - \$300,000 (with spouse) OR
  - Alone or with spouse *financial* assets of at least \$1 million, net of related liabilities (excludes real estate)
    - Financial assets – generally liquid or easy to liquidate
      - Cash
      - Securities
      - Contract of insurance, deposit or evidence of deposit OR
  - Alone or with spouse net assets of at least \$5 million (includes real estate)

# Accredited Investor Exemption

- Accredited investors include – non-individuals
  - Canadian federal or provincial governments, crown corporations or government agencies
  - Canadian municipalities
  - Foreign governments
  - Canadian financial institutions
  - Pension funds regulated by the Office of the Superintendent of Financial Institutions or pension commission of jurisdiction of Canada
  - Registered charities
  - Certain investment funds

# Accredited Investor Exemption

- The accredited investor exemption is the most used capital raising exemption (based on reports filed with the OSC)
- It accounts for approximately:
  - 70% of distributions
  - 90% of funds raised
- In 2012, approximately \$34 billion was raised under the accredited investor prospectus exemption in Ontario by non-investment fund issuers

# Accredited Investor Exemption

- Individuals qualifying for the accredited investor income threshold are a small minority
- In 2011 persons with income at or above \$200,000 accounted for:
  - 1.3% of tax filers in Ontario
  - 1.1% of tax filers across Canada
    - (Source: Statistics Canada)

# Minimum Amount Exemption

<b>Issuer of security</b>	Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
<b>Purchaser</b>	Any investor
<b>Type of security</b>	Any security
<b>Seller</b>	Any seller
<b>Other key conditions</b>	<p>Purchaser purchases as principal</p> <p>Acquisition cost of security is at least \$150,000</p> <p>Must be paid in cash at time of distribution</p>
<b>Source</b>	Section 2.10 of NI 45-106

# Minimum Amount Exemption

- The minimum amount prospectus exemption is less used compared to the accredited investor exemption
- In 2012, approximately \$1.5 billion was raised under this exemption in Ontario by non-investment fund issuers

# Rights Offering Exemption

<b>Issuer of security</b>	Any issuer (investment funds and non-investment funds, reporting issuers and non-reporting issuers)
<b>Purchaser</b>	Existing security holders of the issuer
<b>Type of security</b>	Right granted by the issuer to purchase a security of its own issue
<b>Seller</b>	Issuer of the right
<b>Other key conditions</b>	<p>Written notice provided to the regulator</p> <p>Regulator does not object or confirms acceptable information provided</p> <p>Compliance with NI 45-101 (rights offering rule)</p>
<b>Source</b>	Section 2.1 of NI 45-106

# Rights offering exemption

## ■ Process

- National Instrument 45-101 *Rights Offerings*
- Issuer gives the regulators prior written notice of proposed trade
- Regulators have 10 days to object to proposed trade OR confirm acceptable information has been delivered to the regulators
- Issuer must comply with requirements of NI 45-101



# Rights Offering Exemption

- Under NI 45-101 the issuer relying on the rights offering prospectus exemption must deliver to the regulator:
  - A rights offering circular in draft and final form (Form 45-101F)
  - If issuer not a reporting issuer a statement of the issuer signed by a senior officer confirming
    - (a) that the issuer is in compliance with the requirements of its incorporating legislation concerning the distribution of information to securityholders; and
    - (b) no material change has occurred that has not been previously disclosed in writing to securityholders
  - A copy of any agreement entered into, or proposed to be entered into, by the issuer with a managing dealer
  - A copy of any technical reports for a mining or oil and gas issuer
  - The details of any other rights offering completed by the issuer within the 12 months immediately preceding the date the rights offering circular in draft form was sent to the regulator

# Rights Offering Exemption

- Staff reviews the circular and provides comments to the issuer
- Once all issues have been resolved, a final circular is filed and the regulator in each jurisdiction and a letter of acceptance is issued
- Issuer sends the circular (that was accepted by regulator) to its securityholders

# Rights Offering Exemption

- Restricted offerings
  - Rights offering prospectus exemption removed is not available in certain circumstances
    - Issuer is a reporting issuer and there would be an increase of more than 25% in the number (or principal amount) of outstanding securities upon exercise of the rights
    - Issuer has entered into agreement to compensate someone for soliciting rights that provides for payment of a higher fee for soliciting exercise of rights by holders of rights that were not securityholders of the issuer immediately before the rights offering
    - Rights offering is conditional on a minimum amount of proceeds being raised and exercise period for rights if more than 45 days after acceptance date
    - Other restrictions on the length of time the exercise period can stay open

# Rights Offering Exemption

- Restricted offerings
  - Issuer is a reporting issuer and has not filed financial statements required to be filed under Canadian securities legislation

# Rights Offering Exemption

- Stand-by commitments
- Additional subscription privilege – must be granted to all holders
- Appointment of depository

# Rights Offering Exemption (cont'd)

- Form of rights offering circular – Form 45-101F *Information Required in a Rights Offering Circular*
  - Information about the offering
  - Brief description of the business
  - Registration and delivery of security certificates
  - Subscription agreement and transfer agent
  - How to exercise rights
  - Stand-by commitment
  - Escrow
  - Managing dealer
  - Underwriting conflicts
  - Intentions of insiders and ownership of securities
  - Use of proceeds
  - Resale restrictions
  - SEDAR website address

# Securities for debt

- Prospectus requirement does not apply to:
  - A trade/distribution
  - By a reporting issuer
  - In a security of the issuer
  - To a creditor
  - To settle a bona fide debt of the issuer
  - Section 2.14 of NI 45-106

# Exemptions not available in Ontario Offering Memorandum Exemption

- Section 2.9 of NI 45-106
- Exemption applies to a distribution by an issuer in a security of its own issue to a purchaser
  - Purchaser purchases as principal
  - Delivery of offering memorandum
  - Signed risk acknowledgement form
- Two primary models
  - “BC model” – no restriction on purchaser or investment size
  - “Alberta model” – purchaser must be an “eligible investor” or acquisition cost is not more than \$10,000
  - “Alberta model” also limits application for investment funds



# Exemptions not available in Ontario

## Family, friends and business associates

- Section 2.5 and 2.6 of NI 45-106
- Exemption applies to distributions of securities to purchasers that have a specified relationship with the issuer
- Includes “close personal friend” of a director, executive officer or control person of the issuer or an affiliate of the issuer
- Includes “close business associate” of a director, executive officer or control person of the issuer or an affiliate of the issuer

# Reports of Exempt Distributions

- Form – Part 6 of NI 45-106
  - Form 45-106F1
  - Form 45-106F6 (BC only)
- Timing
  - 10 days after distribution
  - Investment funds can file annually for distributions under certain prospectus exemptions
- Exemptions triggering reporting requirement include
  - Accredited investor
  - Family, friends and business associates
  - Offering memorandum
  - Minimum amount investment
- E-form for 45-106F1
  - Voluntary electronic filing starting June 2012

# Resale Restrictions

- There are resale restrictions on securities sold under an exemption
  - In addition to restrictions on share transfers to qualify as a private issuer
- Rules complex and fact specific
  - Prescribed in NI 45-102 Resale of Securities

# CSA exempt market review

- Scope of review
  - Reviewing two key capital raising exemptions
    - Accredited investor exemption
    - Minimum amount exemption
  - Key focus - When should individuals be able to invest in the exempt market?
- Framework for review
  - Exempt market in Canada has become increasingly important for investors and issuers
  - Need to align interests of investors and issuers, and strike a balance between investor protection and efficient capital raising
- Published CSA Staff Consultation Note 45-401 on November 10, 2011

# OSC expanded exempt market review

- Announced June 7, 2012 - OSC Staff Notice 45-707
  - OSC broadening scope of review
  - Considering whether the OSC should introduce other prospectus exemptions to facilitate capital raising for business enterprises
- OSC Staff Consultation Paper 45-710 *Considerations for new capital raising prospectus exemptions* – December 14, 2012
- OSC Notice 45-712 *Progress report on review of prospectus exemptions to facilitate capital raising* - August 28, 2013

# Common Methods of Going Public

# Common Methods of Going Public

- Initial public offering
- Reverse take-over
- TSXV capital pool program

# Initial Public Offering

- Traditional method of going public
- Involves preparation and regulatory clearance of prospectus
  - Prospectus provides material information about company and securities being distributed
- Advantage - facilitates broad distribution
- Disadvantage – cost and time considerations



# Reverse Take-Over

- Also known as reverse merger or back door listing
- Public company acquires private company
  - Public company is generally a “shell company” (has no active business but has public shareholders)
  - Private company has an active business
  - Can be effected through merger, asset purchase or share purchase
  - Private company becomes subsidiary of public company (or its assets vended to public company)
  - Shareholders of private company become majority shareholders of public company

# Reverse Take-Over

- Generally subject to approval of public company shareholders
  - Requires preparation of management information circular, proxy materials and shareholder meeting
  - Generally require prospectus level disclosure in circular for public company, private company and resulting company

# Reverse Take-Over

- Advantages
  - Most beneficial where private company's management and/or assets attractive and no financing required
    - Public company may bring management skills, relationships and/or assets
  - Can facilitate listing without financing
  - Pre-existing shareholder base of public company to satisfy exchange distribution requirements and help facilitate future financings

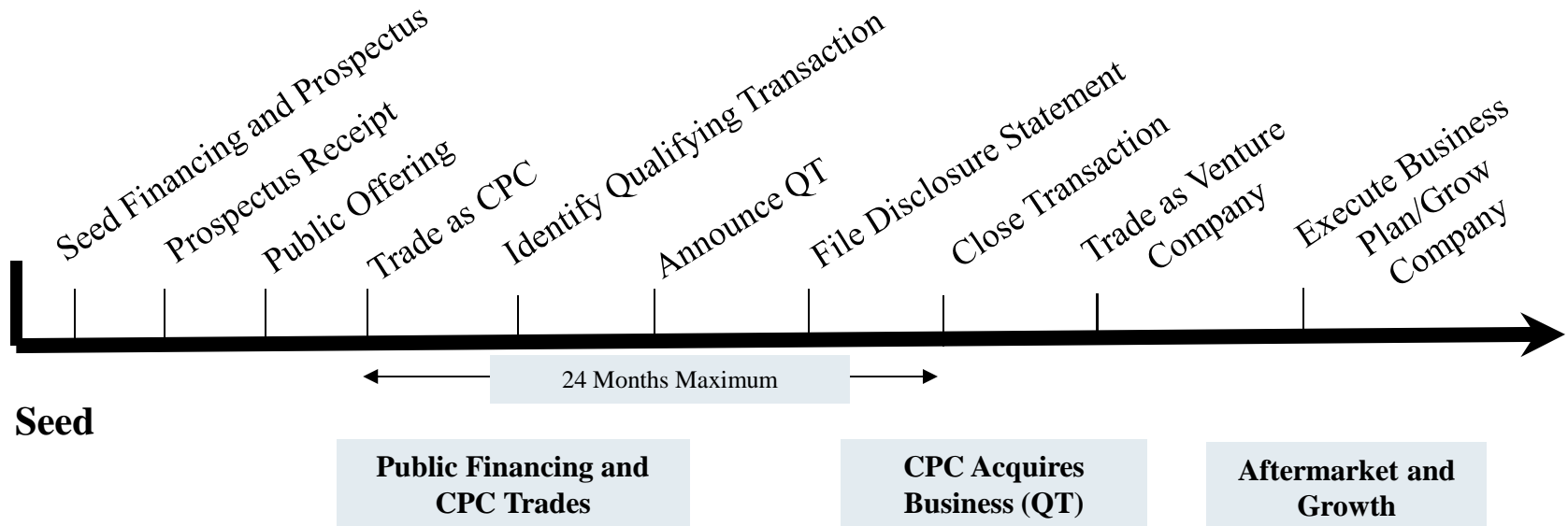
# Reverse Take-Over

- Varying views re costs compared to IPO
- Costs include:
  - Purchase price of public company
  - Due diligence
  - Preparation of management information circular, proxy materials and shareholder meeting
  - Dealing with pre-existing brand and name of public company
  - Potential downward pressure on share price of resulting company due to sales by disinterested public company shareholders

# TSXV Capital Pool Program

- Capital pool company (CPC) with no assets other than cash from seed round financing and no operations conducts IPO and becomes listed on TSXV
- CPC must identify appropriate business as its “qualifying transaction” within 24 months of listing
- CPC must then prepare and file filing statement or information circular with TSXV
  - Prospectus level disclosure required for CPC, private company and resulting issuer
  - Shareholder approval not required by TSXV for arm’s length QT
  - Resulting company must qualify for TSXV listing
- More information available at [http://www.tmx.com/en/listings/listing\\_with\\_us/ways/capital\\_company.html](http://www.tmx.com/en/listings/listing_with_us/ways/capital_company.html)

# TSXV Capital Pool Program Process



*Slide provided by TSX Venture Exchange*

# TSXV Capital Pool Program

- Protections included in CPC program
  - Only permitted business of CPC is identification and evaluation of potential QT
  - Majority of minority shareholder approval required for non-arm's length QT
  - Suitability requirements for CPC board
  - Seed capital
    - Prescribed minimum amount of seed capital must be contributed by officers and directors
    - Prescribed maximum amount of seed capital
    - Prescribed minimum seed share issuance price that is relative to IPO share issuance price
  - Proceeds from sale of securities of CPC may only be spent on identification and evaluation of potential QT
    - Prescribed limits on non-arm's length payments; investor relations activities; and administration and related expenses

# TSXV Capital Pool Program

- Protections included in CPC program (cont'd)
  - Limits on agent's compensation – commissions, shares and options
  - Limits on incentive stock options
  - Escrow applies to:
    - Seed shares issued at a price lower than IPO price
    - Shares which are owned directly or indirectly by non arm's length parties
    - Seed shares purchased by members of the Pro Group (brokers)
  - TSXV listing review process



# TSXV Capital Pool Program

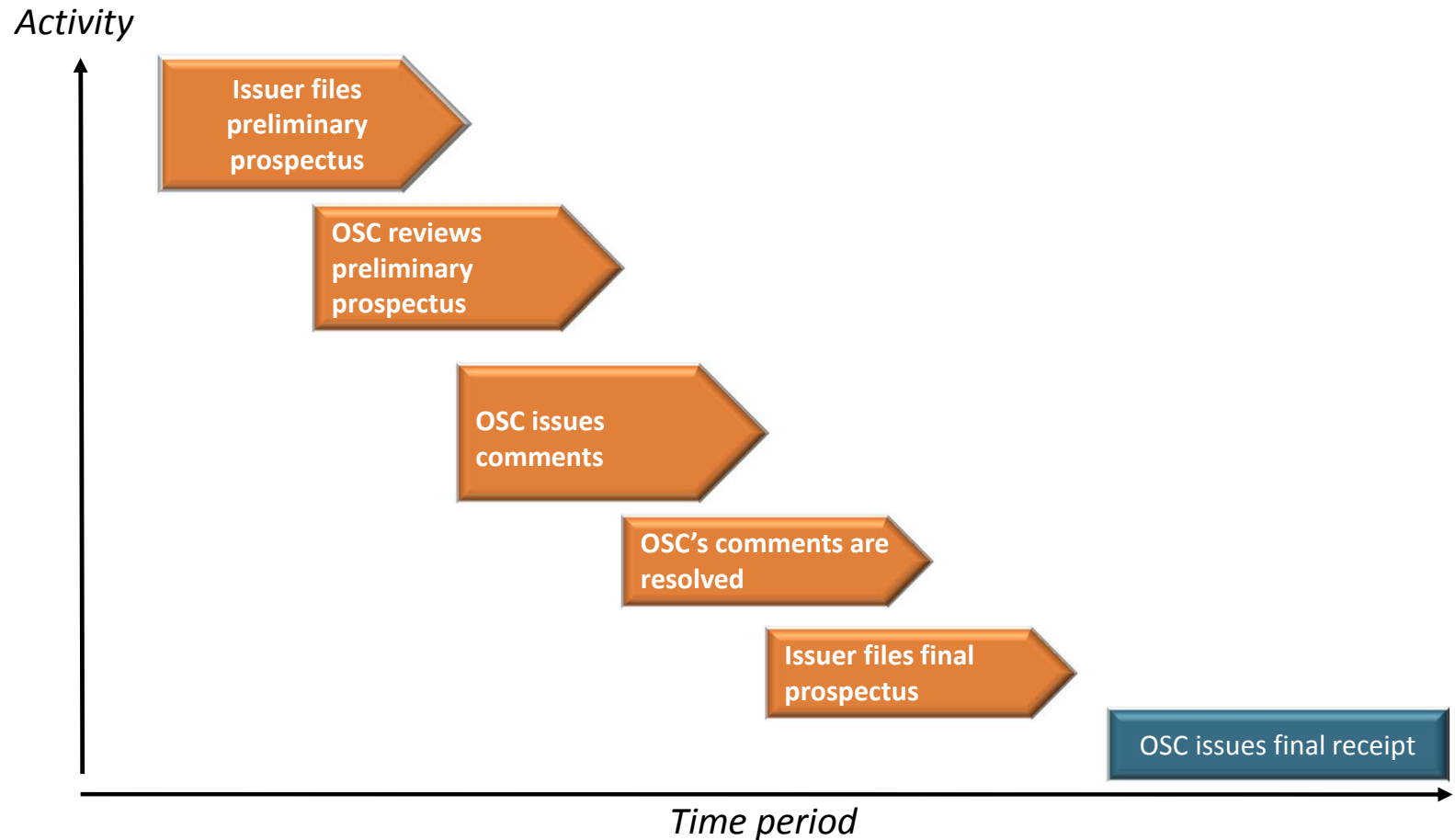
- Same general advantages and disadvantages as reverse take-over, except:
  - Advantages
    - Little due diligence required on CPC since recently created special purpose vehicle
    - Well established program with defined parameters facilitates regulatory review
    - Can be completed more quickly than conventional reverse take-over if structured so that CPC shareholder approval not required
  - Disadvantage
    - Low stock price in seed round financing and IPO may result in shareholders taking their profit and selling ASAP following the qualifying transaction
      - Concern mitigated by escrow provisions

# Initial Public Offering

- Conducting the IPO
- Regulatory Issues
- Outcomes of Prospectus Reviews
- Dealing with the OSC

# Conducting the IPO

## General Sequence of Events



Note (1): Additional procedures involved if securities offered both inside and outside Ontario but only OSC reviews if OSC is the principal regulator

Note (2): Additional procedures for shelf and PREP prospectuses

# Regulatory Issues

- Quality of prospectus disclosure
- Offering structure and size
- Financial statements
- Management's discussion and analysis
- Escrow
- Cheap shares
- Additional requirements for mining companies

# Regulatory Issues

- Quality of prospectus disclosure
  - Meets requirements of relevant prospectus form
    - Company's business, securities being offered and use of proceeds
  - Balanced discussion
  - Covers material information
  - Internally consistent
  - Uses plain language

# Regulatory Issues

- Offering structure and size
  - Must have sufficient proceeds to accomplish purpose of issue following prospectus offering
  - Must be able to continue operations for a reasonable period of time
  - Director must refuse a receipt under s. 61 of the Act if
    - s. 61(2)(c) - insufficient proceeds to accomplish purpose of issue
    - S. 61(1) of Act – not in the public interest
  - Guidance published in CSA Staff Notice 41-307 *Concerns Regarding an Issuer's Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering*

# Regulatory Issues

- Offering structure and size (cont'd)
  - Concerns may be addressed by underwriting or minimum best efforts offering
  - Broad enough distribution and public float to meet stock exchange original listing requirements

# Regulatory Issues

## Financial Statements

- In general, an issuer's prospectus must include the following:

### Annual:

For the three most recent annual periods:

- Statement of comprehensive income
- Statement of changes in equity
- Statement of cash flows

For the two most recent annual periods:

- Statement of financial position

### Interim:

Comparative interim financial report for most recent interim period (subsequent to most recent financial year end).

- In cases of a reverse take-over transaction or other transactions, must know who the issuer is
- Requirements set out in item 32 of Form 41-101F1



# Regulatory Issues

- Financial Statements (cont'd)
  - Financial statements also required for any significant or probable business acquisitions
  - Generally, the same financial disclosure requirements as required by NI 51-102, Part 8 – Business Acquisition Reports
    - Two years of financial statements
    - Most recent year audited
    - Interim financial statements if necessary
    - Pro-forma financial statements
  - Requirements set out in item 35 of Form 41-101F1

# Regulatory Issues

- Management Discussion & Analysis
  - MD&A relating to most recent annual and interim financial statements must be included in the prospectus
  - Must be reviewed/approved by issuer's audit committee/board of directors
  - Requirements set out in item 8 of Form 41-101F1
    - Generally the same as Form 51-102 F1

# Regulatory Issues

- Management Discussion & Analysis (cont'd)
  - MD&A is a narrative explanation “through the eyes of management” which:
    - Provides a balanced discussion of company’s results, financial condition and future prospects – openly reporting bad news as well as good news
    - Helps current and prospective investors understand what the financial statements show and do not show
    - Discusses trends and risks that have affected or are reasonably likely to affect the financial statements in the future
    - Provides information about the quality and potential variability of company’s earnings and cash flow

# Regulatory Issues

## Management Discussion & Analysis (cont'd)

Area	Common Deficiencies
Discussion of operations	<ul style="list-style-type: none"><li data-bbox="778 411 1837 504">■ Disclosure simply repeats differences in the financial statements without explanation of why changes occurred</li><li data-bbox="778 565 1837 654">■ Few details on the performance by business segments or lines of business</li></ul>
Liquidity and capital resources	<ul style="list-style-type: none"><li data-bbox="778 682 1499 725">■ Incomplete working capital discussion</li><li data-bbox="778 786 1765 829">■ Unclear disclosure of liquidity needs and how funded</li><li data-bbox="778 891 1705 979">■ Going concern uncertainty in financial statements unaccompanied by MD&amp;A discussion</li></ul>

# Regulatory Issues

## Management Discussion & Analysis (cont'd)

Area	Common Deficiencies
Related party transactions	<ul style="list-style-type: none"><li data-bbox="780 425 1837 511">■ Discloses the relationship or position of the related party but not their identity</li><li data-bbox="780 576 1779 615">■ Specific business purpose of transaction not disclosed</li></ul>
Risk disclosure	<ul style="list-style-type: none"><li data-bbox="780 645 1818 731">■ Laundry list of risks – no detail or discussion included on impact on business</li><li data-bbox="780 796 1740 882">■ Irrelevant risks – not relevant to entity's business or circumstances</li><li data-bbox="780 948 1619 986">■ Unclear discussion of how risks are managed</li></ul>

# Regulatory Issues

## ■ Escrow

- Escrow policy set out in NP 46-201 *Escrow for Initial Public Offerings*
- Purpose to tie principals to issuer for a period following IPO to carry out plans described in prospectus
  - Issues associated with cheap shares left to management, underwriters and stock exchanges
- “Principals” includes senior officers, directors, promoters and large shareholders
- Share releases
  - Over 18 months for TSX issuers and TSXV Tier 1 issuers (“established issuer”)
  - Over 36 months for smaller issuers (“emerging issuer”)

# Regulatory Issues

- Cheap shares
  - Concern where large number of shares issued for nominal consideration prior to IPO, particularly if
    - Business has limited history of operations
    - Small IPO financing
  - Two concerns
    - Can be used for market manipulation
    - IPO investors receive disproportionately low percentage of ownership compared to percentage of capital they invest in IPO

# Regulatory Issues

- Cheap shares (cont'd)
  - Guidance provided in CSA Staff Notice 41-305 *Share Structure Issues – Initial Public Offerings*
    - Considers qualitative and quantitative factors
    - We may object to share structure in certain circumstances
    - Staff Notice not meant to provide certainty in every scenario



# Regulatory Issues

- Additional requirements for mining companies
  - Technical report required for each material mineral property on which proceeds of prospectus offering being spent
    - Recommended work program
      - Prepared by independent qualified person (“QP”)
      - At least sufficient to advance property to next decision point
  - Proceeds of prospectus offering sufficient to:
    - Complete work program to next decision point
    - Satisfy property payments and company’s short-term liquidity requirements

# Regulatory Issues

- Additional requirements for mining companies (cont'd)
  - Decision point
    - Exploration results sufficient to determine whether or not property merits:
      - Further work being conducted on it
      - Going back to the market to raise additional financing to fund the additional work
      - Could be less than complete program
    - Generally Phase 1 of the recommended program
  - Disclosure in prospectus should align with technical report
    - Stage of development
    - Nature and cost of program
    - Objectives and outcomes of program
  - Meet stock exchange original listing requirements

# Outcomes of Prospectus Reviews

- Disclosure enhancements in prospectus
- Changes in structure of offering
- Other

# Dealing with the OSC

- Responding to OSC comment letters
  - Provide a comprehensive response to each question asked
  - Include detailed analysis, if requested, which reconciles to financial statements and other filings
  - Cite authoritative accounting references in response to questions related to financial statements
  - Call for clarification
  - Address observations in future filings

Questions?

# Contact Information

**Elizabeth Topp**

Senior Legal Counsel, Corporate Finance

Email: [etopp@osc.gov.on.ca](mailto:etopp@osc.gov.on.ca)

Phone: 416-593-2377

**Rick Whiler**

Senior Accountant, Corporate Finance

Email: [rwhiler@osc.gov.on.ca](mailto:rwhiler@osc.gov.on.ca)

Phone: 416-593-8127

**Julius Jn-Baptiste**

Legal Counsel, Corporate Finance

Email: [jjnbaptiste@osc.gov.on.ca](mailto:jjnbaptiste@osc.gov.on.ca)

Phone: 416-595-8939