



## Section G VCPs

### Policy 30 : Venture Capital Pool Companies

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#### ***Scope of Policy\****

\*Policy last amended April 1999

The Exchange's Venture Capital Pool ("VCP") program is designed to provide entrepreneurs with a means of raising a limited amount of capital (\$300,000 - \$700,000) to be used to investigate business opportunities which would provide the basis for a listing as a Venture Company on the Exchange.

At the initial listing stage, the VCP will have no significant assets or business and no predetermined plans or agreements relating to the acquisition of a specific asset or business. In order to be listed, the company's board of directors must have a successful history of involvement with listed companies. Essentially, the successful track records of the directors are the only assets of the VCP at the initial listing stage.

The VCP program is designed to facilitate "blind pools" where companies use the funds raised to investigate business opportunities, rather than fund pre-existing deals which have already been negotiated prior to listing.

On the strength of its board, the VCP will undertake an IPO. The IPO proceeds, together with the seed capital, are not to exceed \$700,000. The company must use these funds to identify and evaluate an appropriate business opportunity which is suitable to obtain a listing as a Venture Company on the Exchange. Once the Qualifying Transaction, which is the purchase of the business or asset is completed, the company will have met the initial listing requirements of the Exchange and become a Venture Company on the Exchange.

**The Exchange will not accept Qualifying Transactions (as defined below) which are Non-Arm's Length Transactions to parties related to the VCP and are announced within six months of listing. For both Arm's Length and Non Arm's Length Transactions, if it appears that the Qualifying Transaction was at a stage where it should have been listed as an IPO, the Exchange may refuse to accept the Qualifying Transaction.**

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## **30.1 Definitions**

**“agreement in principle”** means any formal or informal, written or oral agreement, or any letter of intent, memorandum of understanding, agreement in principle or other similar commitment which:

- a) identifies the subject matter and parties of the transaction;
- b) contains the consideration for the transaction or the means by which the consideration will be determined; and
- c) identifies the conditions to further agreements or consummation of the transaction.

**“control person”** means

- a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment, or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer.

**“completion of the Qualifying Transaction”** means the date on which all of the following have occurred:

- a) the shareholders’ meeting at which the proposed Qualifying Transaction is approved has been held;
- b) all post-meeting documentation has subsequently been filed with the Exchange; and

- c) a notice has been issued by the Exchange confirming that the Qualifying Transaction has been completed and that the company is no longer considered a VCP.

**“majority of the minority approval”** means a vote at a properly constituted meeting of the shareholders of the VCP which must be passed by at least 50 percent plus one vote of the votes cast by shareholders who vote at the shareholders’ meeting, other than parties related to the Qualifying Transaction.

**“parties related to the VCP”** means:

- a) the promoters, officers, directors, and other Insiders of the VCP;
- b) an issuer 20% or more of which the voting securities are beneficially owned, directly or indirectly, by one or more of the persons or companies referred to in clause a), or over which one or more of the persons or companies referred to in clause a) has control or direction (or a combination of beneficial ownership and control or direction); and
- c) an associate or affiliate of a person or company referred to in clause a).

**“parties related to the Qualifying Transaction”** means:

- a) the vendors of the significant asset(s) and the promoters, officers, directors, and other Insiders of such party(ies) to the Qualifying Transaction;
- b) an issuer 20% or more of which the voting securities are beneficially owned, directly or indirectly, by one or more of the persons or companies referred to in clause a), or over which one or more of the persons or companies referred to in clause a) has control or direction (or a combination of beneficial ownership and control or direction); and
- c) an associate or affiliate of a person or company referred to in clause a).

**“Qualifying Transaction”** means a transaction whereby a VCP:

- a) issues or makes issuable securities representing more than 25 percent of its securities issued and outstanding immediately prior to the issuance, in consideration for the acquisition of significant assets;
- b) enters into an arrangement, amalgamation, merger or reorganization with another issuer with significant assets, whereby the ratio of securities which are distributed to the security holders of the VCP and the other issuer results in the securityholders of the other issuer acquiring control of the resulting entity; or
- c) otherwise acquires significant assets,

but excludes a transaction whereby, prior to completion of the Qualifying Transaction, a VCP issues for cash securities representing more than 25 percent of its securities issued and outstanding immediately prior to the issuance.

“**significant assets**” means assets (other than cash) or securities of another issuer which, when acquired by the VCP, results in the VCP meeting the minimum listing requirements under Policy 1 of the Exchange for an issuer other than a VCP.

“**VCP**” means a company that:

- a) files and receives a receipt for a preliminary VCP Prospectus under this Policy; and
- b) has no significant assets or business, and
  - i) has no predetermined plans for, or agreements in principle relating to the acquisition of a specific asset or business; or
  - ii) subsequent to filing of a final Prospectus under this Policy, has a specific plan or plans for the acquisition of an asset or business, but has not yet reached the stage of completion of the Qualifying Transaction.

“**VCP Prospectus**” means a preliminary Prospectus or a final Prospectus filed with the Exchange and the Commission by a VCP under this Policy.

## **30.2 Procedure**

### **Overview**

- 30.2.1 The VCP concept involves a two stage process. Stage One involves the filing and clearing of a final VCP Prospectus through the Exchange and the B.C. Securities Commission (the “Commission”). The Exchange will undertake the primary review of the VCP Prospectus. The Executive Director retains full discretion to determine whether or not to issue a receipt for the VCP Prospectus. Upon successful completion of the public offering, the company’s shares will be listed on the Exchange. As with a non-VCP listing, the VCP will be obligated to retain a sponsor to conduct an initial review of the company, and obtain PAS approval prior to filing the preliminary VCP Prospectus.\*

\*Last amended March 1999

- 30.2.2 Stage Two involves the filing and clearing of a comprehensive Information Circular with the Exchange prior to the completion of the company’s first Qualifying Transaction, and the approval of the Qualifying Transaction by the majority of the minority shareholders. The VCP will be obligated to retain a sponsor at this stage to conduct a full sponsorship review of the company and the Qualifying Transaction.\*

\*Last amended March 1999

## ***Stage One - Initial Public Offering***

30.2.3

*Step 1.* The company's sponsor prepares and files a simplified PLAFS or the equivalent information with the Exchange pursuant to Policy 5.\*

\*Last amended March 1999

*Step 2.* PAS clearance of VCP.\*

\*Last amended March 1999

*Step 3* The company prepares and files its Application for Listing with the Exchange in accordance with Policy 2 and files its preliminary VCP Prospectus with the Exchange and the Commission.

*Step 4.* The Exchange reviews the listing documentation and the VCP Prospectus material and comments on the documentation.

*Step 5.* The company responds to the Exchange and resolves all deficiencies.

*Step 6.* The company files its final VCP Prospectus with the Exchange and the Commission and the Commission issues a receipt on the effective date.

*Step 7.* The Exchange conditionally approves the listing of the shares of the company on or immediately after the effective date.

*Step 8* The Sponsor advises the Exchange of the offering day by no later than 11:00 a.m. on the trading day immediately preceding the offering day. The Exchange issues a Notice on the trading day immediately preceding the offering day.

*Step 9.* The company completes its public offering.

*Step 10.* The company files its distribution list or a letter confirming distribution requirements have been met with the Exchange (within 5 business days of the completion of the offering).

*Step 11.* The Exchange reviews the final listing documentation to ensure the share distribution requirements have been met.

*Step 12.* Conditional status is removed and the company's shares commence trading. The Exchange will issue a Notice announcing the commencement of trading.

## ***Stage Two - Qualifying Transaction***

30.2.4

*Step 1.* Upon an agreement in principle being reached with respect to a Qualifying Transaction, the company shall immediately issue a comprehensive press release, which shall include at a minimum:

- a) The names and backgrounds of any new directors, senior officers or control persons of the company as a result of the Qualifying Transaction;
  - b) Name of VCP company;
  - c) Full name of the company to be acquired by the VCP and place of incorporation;
  - d) Names of all Insiders of the company to be acquired by the VCP and the names of beneficial shareholders where the Insider is a corporation;
  - e) Description of proposed business;
  - f) Date of agreement respecting the Qualifying Transaction;
  - g) Description of terms of the Qualifying Transaction including the amount of proposed consideration, details regarding the Trading Shares, and terms of Escrow Share agreement;
  - h) Description of any financing arrangements for or in conjunction with the Qualifying Transaction including the amount, security, terms and use of proceeds of any funds advanced by the listed company to the unlisted entity;
  - i) Approvals required (shareholders, Exchange, and any other);
  - j) Closing requirements; and
  - k) All other requirements of Policy 7.
- Step 2.* The company's securities will be halted from trading until the Exchange has received confirmation from a Member of the Exchange that it has agreed to act as a Sponsor in respect of the Qualifying Transaction.
- Step 3.* The Sponsor prepares and files PAS materials with the Exchange pursuant to Policy 5.\*
- \*Last amended March 1999
- Step 4.* PAS clearance of the Qualifying Transaction.\*
- \*Last amended March 1999
- Step 5.* A draft Information Circular containing disclosure of all material facts relating to the Qualifying Transaction along with all necessary supporting documentation must be filed with the Exchange. The company's shares will be halted from trading in the event that the materials required pursuant to this step are not filed with the Exchange within 60 days of completion of Step 2.
- Step 6.* The Exchange reviews the draft Information Circular and supporting documentation and responds with any deficiencies to the company.

- Step 7.* The company resolves all deficiencies and files its final documentation with the Exchange. Once the documentation has been accepted by the Exchange, the notice of meeting, proxy and Information Circular is mailed to the security holders of the company and filed with the Exchange and the Commission.
- Step 8.* The security holders meeting is held to approve the Qualifying Transaction by means of majority of the minority approval.
- Step 9.* Post meeting documentation is filed with the Exchange.
- Step 10.* The VCP status is removed and the company trades as a Venture Company.

### **30.3 General Requirements of a VCP**

#### ***Business of a VCP***

- 30.3.1 The business objective of a VCP shall be to identify and evaluate assets or businesses with a view to completing a Qualifying Transaction approved by the Exchange and the majority of the minority shareholders in accordance with this Policy.
- 30.3.2 Until the completion of the Qualifying Transaction, the VCP shall not carry on any business other than the identification and evaluation of assets or businesses in connection with the potential Qualifying Transaction.

#### ***Disclosure of Ownership of VCP Shares***

- 30.3.3 Trusts, corporations or other entities shall not hold seed shares of a VCP unless the name of the individual or individuals who beneficially own such securities is disclosed to the Exchange. If the beneficial owner of these securities is not an individual, the name of the individual or individuals who beneficially own the intermediary entity or entities that hold the securities of the VCP shall be disclosed to the Exchange.

### **30.4 Minimum VCP Listing Requirements**

- 30.4.1 The following minimum initial listings requirements must be satisfied by any company applying to be listed with the Exchange and will qualify an applicant for VCP status.
- a) The company must have at least one director resident in the Province of British Columbia;
  - b) The company must comply with the requirements of Policy 1.2.2;

- c) The minimum price per share at which the applicant company's shares were sold while it was a private company (i.e. "Seed Capital Shares") must have been equal to or greater than 50% of the price at which the shares are sold pursuant to the VCP's IPO and in all circumstances must not be less than \$0.10 per share;
- d) The minimum total amount of equity capital raised by the applicant company through the issuance of Seed Capital Shares must have been equal to or greater than \$100,000. A minimum of \$100,000 must have been subscribed by directors or officers of the VCP;
- e) The minimum price, net to the applicant company's treasury, at which the applicant company's securities are issued during its IPO must be equal to or greater than \$0.15 per share and must not exceed a price of \$0.30 per share. Unit offerings will not be allowed in connection with a VCP's IPO;
- f) The combined minimum net proceeds to the treasury of the applicant company which resulted from the issuance of its Seed Capital Shares and the issuance of its securities during its IPO must have been equal to or greater than \$300,000 and must not exceed \$700,000. The gross proceeds from the public offering shall not be less than \$200,000 and shall not exceed \$500,000;
- g) The company must have at least 1,000,000 of the issued and outstanding securities free of any Resale Restrictions upon completion of the IPO;
- h) At least 300 of the company's shareholders, excluding parties related to the VCP, must beneficially own at least 1,000 common shares free of any Resale Restrictions upon completion of the IPO;
- i) The maximum number of securities which may be directly or indirectly purchased by one purchaser in the IPO shall be 2% of the total number of securities issued pursuant to the public offering; and
- j) The VCP's IPO must not result in a dilution to the public shareholders in excess of 40% (calculated in accordance with Section 30.5.5 – Dilution)

## **30.5 VCP IPO Requirements**

### ***Underwriters and Agents***

30.5.1 A VCP Prospectus offering shall have an underwriter or agent that is:

- a) registered under the Securities Act as an underwriter; and
- b) a Member of the Exchange.

### ***Conditional Listing Approval***

30.5.2 Securities shall not be offered under a VCP Prospectus unless the securities have been conditionally approved for listing by the Exchange pursuant to this Policy.

\*\* See Policy 2.2 for the process and documentation required to apply for a Conditional Listing on the Exchange.

### ***Restrictions on Trading***

30.5.3 Other than the initial distribution of securities under a VCP Prospectus and the grant of options by the VCP to an officer or director of the VCP, securities of the VCP shall not be traded during the period between the date of the receipt for the preliminary VCP Prospectus and the time the securities commence trading on the Exchange.

### ***Securities***

- 30.5.4
- a) Only voting common shares and options granted in accordance with Section 30.6 shall be offered or qualified under an initial VCP Prospectus.
  - b) A VCP shall not issue warrants or undertake a rights offering prior to completion of the Qualifying Transaction.
  - c) A VCP shall not issue securities as consideration for agent's fees or commissions, except as permitted by section 30.6 of this Policy.\*

\*Last amended April 1999

### ***Dilution***

- 30.5.5
- a) Dilution in a VCP Prospectus shall be calculated on the basis of total gross proceeds to the VCP of securities:
    - i) to be sold under the VCP Prospectus; and
    - ii) sold prior to the filing of the preliminary VCP Prospectus;without deduction of expenses incurred by the VCP in connection with the offering.
  - b) If an offering has a minimum and maximum subscription, dilution based on the minimum subscription and the maximum subscription shall be disclosed in the VCP Prospectus.

### ***Disclosure Required in a VCP Prospectus***

- 30.5.6 In addition to complying with all applicable requirements of securities legislation relating to form and content of a Prospectus, a VCP Prospectus shall:
- a) be prepared in accordance with either Form 12A or Form 14A of the *Securities Act*, except as otherwise provided in this Policy;

- b) include both on the cover page and in the body of the VCP Prospectus under the heading “Risk Factors”, disclosure that the VCP does not have business operations or assets other than seed capital, and has no written or oral agreements for the acquisition of a business or asset at the time of the offering and the offering is suitable only for those investors who are willing to rely solely on the management of the VCP and who can afford to lose all of their investment;
  - c) describe the shareholder approval process for the Qualifying Transaction including that the shareholders will receive an Information Circular for the meeting that will include full, true and plain disclosure of all material facts relating to the securities of the issuer, assuming completion of the Qualifying Transaction, and that the shareholders will also be entitled to attend a meeting to seek approval of the majority of the minority for the transaction;
  - d) disclose the restrictions on payments to parties related to the VCP as provided in Section 30.7.1, 30.7.3 and 30.7.4; and
  - e) disclose the type of business opportunities that the VCP is likely to pursue.
- 30.5.7 Pursuant to the Securities Act, a Prospectus must make full true and plain disclosure of all material facts relating to the securities offered under the Prospectus. If a VCP intends to enter into a specific proposed Qualifying Transaction that is not yet at the stage of an agreement in principle, but is at the stage where disclosure is required under the *Securities Act*, the Prospectus should contain sufficient disclosure to enable a potential investor to make a reasoned assessment of:
- a) the nature and magnitude of the proposed Qualifying Transaction;
  - b) the nature and magnitude of the consideration to be given by the VCP in the proposed Qualifying Transaction; and
  - c) the likelihood of the completion of the proposed Qualifying Transaction.
- \*\* See BCSC NIN #98/23 for further guidance on this issue.

## **30.6 Options**

### ***Options to Underwriter or Agent***

- 30.6.1 a) No option or right to subscribe for securities of a VCP shall be granted to the underwriter in an underwritten offering or to an agent in a best efforts offering, unless:
- i) the option or right is a single, non-transferable option or right;

- ii) the number of securities subject to the option or right does not exceed 10 percent of the total number of securities offered under the VCP Prospectus;
  - iii) the exercise price per security under the option or right is not less than the offering price per security to the public; and
  - iv) the exercise period does not exceed 18 months from the date of listing of the VCP on the Exchange.
- b) If an option or right to subscribe for shares of a VCP is granted to the underwriter or agent as consideration for acting as underwriter or agent, the option or right may be exercised in whole or in part prior to the completion of the Qualifying Transaction by the VCP, provided that no more than 50 percent of the aggregate number of shares which can be acquired by the underwriter or agent on exercise of the option or right may be sold by the underwriter or agent prior to completion of the Qualifying Transaction.

### ***Incentive Stock Options to Parties Related to the VCP***

- 30.6.2 No incentive stock option to acquire securities of a VCP shall be granted to an employee of or a party related to the VCP unless:
- a) the total number of securities reserved under option for issuance to employees of, and parties related to the VCP does not exceed 10% of the securities to be outstanding after the offering under the VCP Prospectus;
  - b) the exercise price per security under the option granted to an employee or a party related to the VCP prior to the completion of the IPO and commencement of trading on the Exchange is not less than the offering price per security to the public; and
  - c) shares issued pursuant to the exercise of an option are to be escrowed until the completion of the Qualifying Transaction.\*

\*New subpoint March 1999

Stock option grants by VCP companies shall, in all other respects, comply with the provisions of Policy 23 applicable to Venture companies.

## **30.7 Use of Proceeds**

### ***Prohibited Payments to Parties Related to the VCP***

- 30.7.1 (a) Except as provided in sections 30.6.2 and 30.7.2, until the completion of the Qualifying Transaction, no payment shall be made, directly or indirectly, by a VCP to a party related to the VCP by any means including:
- i) remuneration, which includes:
    - A) salaries;
    - B) consulting fees;

- C) management/directors' fees;
  - D) finders' fees;
  - E) loans;
  - F) advances; and
  - G) bonuses, including bonuses relating to the Qualifying Transaction; and
- ii) deposits and similar payments described in paragraph 30.7.3(b).
- b) No payment referred to in section 30.7.1(a) shall be made by a VCP on or after the completion of the Qualifying Transaction if the payment relates to services rendered or obligations incurred prior to or in connection with the Qualifying Transaction.

***Exceptions to the Prohibitions on Payments to Parties Related to the VCP***

30.7.2 Subject to Sections 30.3.1, 30.3.2, 30.7.3 and 30.7.4 a VCP may:

- a) compensate a party related to the VCP for:
  - i) reasonable expenses for office supplies, office rent and related utilities;
  - ii) reasonable expenses for equipment leases; and
  - iii) legal services, provided that:
    - A) if the lawyer receiving the remuneration is a sole practitioner, or a member of an association of sole practitioners, the lawyer is not a promoter of the VCP; and
    - B) if the legal services are provided by a firm of lawyers, no member of the law firm is a promoter of the VCP; and
- b) reimburse a party related to the VCP for reasonable out-of-pocket expenses incurred in pursuing the business of the VCP.

### ***Permitted Use of Proceeds***

- 30.7.3 Subject to Sections 30.3.1, 30.3.2 and 30.7.1, and except as otherwise provided in section 30.7.4, until the completion of the Qualifying Transaction, the gross proceeds of all securities issued by the VCP shall be used:
- a) only to identify and evaluate assets or businesses, for expenses such as:
    - i) business valuations;
    - ii) engineering reports; and
    - iii) fees for legal and accounting advice relating to the identification and evaluation of assets or businesses and the obtaining of securityholder approval for the proposed Qualifying Transaction; except that
  - b) up to an aggregate of \$25,000 may be used on any form of non-refundable deposits and up to an aggregate of \$100,000 may be used on any form of refundable deposit.

### ***Restrictions on Use of Proceeds***

- 30.7.4
- a) Until the completion of the Qualifying Transaction, no more than 30 percent of the gross proceeds of all securities issued by a VCP shall be used for purposes other than as provided in Section 30.7.3. Expenditures that are not included in Section 30.7.3 include:
    - i) listing and filing fees (including SEDAR fees);
    - ii) underwriters' or agents' fees or commissions;
    - iii) other costs of the issue of securities, including legal and audit expenses relating to the preparation and filing of the VCP Prospectus; and
    - iv) administrative and general expenses of the VCP, including:
      - A) office supplies, office rent and related utilities;
      - B) printing costs, including printing of the VCP Prospectus;
      - C) equipment leases; and
      - D) fees for legal advice and audit expenses relating to matters other than those described in subparagraph 30.7.3(iii).
  - b) Until the completion of the Qualifying Transaction, no proceeds of the issue of securities of a VCP shall be used to acquire or lease a vehicle.

- 30.7.5 The restrictions on expenditures in this Policy continue to apply until completion of the Qualifying Transaction. As a result of the definition of completion of the Qualifying Transaction, such restrictions on expenditures continue to apply following shareholder approval of the proposed Qualifying Transaction if the transaction fails to close and the Exchange does not issue a notice confirming that the company is no longer considered a VCP. Accordingly, the principals of a VCP who identify a potential Qualifying Transaction prior to spending the entire amount of proceeds raised by the VCP and who, after shareholder approval, spend the balance of the proceeds for purposes which are otherwise prohibited under this Policy, risk being in breach of the policy if the Qualifying Transaction subsequently does not close. In the event that the VCP completes a Qualifying Transaction prior to spending the entire proceeds on identifying and evaluating properties or businesses, the VCP may use the remaining funds to finance or partly finance the acquisition of, or participation in such properties or businesses.

### ***Private Placements for Cash***

- 30.7.6 Until the completion of the Qualifying Transaction, a VCP shall not issue for cash securities representing more than 25 percent cumulative of its securities issued and outstanding unless:
- a) the consent of the Exchange is obtained prior to the issuance of the securities; and
  - b) the requirements of Sections 30.7 - Use of Proceeds and 30.8 - Escrow are met in connection with the proposed issuance of securities.

## **30.8 Escrow**

### ***Escrow of Securities Issued at a Discount***

- 30.8.1 All securities of a VCP of the class offered under the VCP Prospectus, and issued prior to the offering under the VCP Prospectus at an issuance price per security which is less than the issuance price of securities offered under a VCP Prospectus, shall be held in escrow under an escrow agreement in accordance with this Policy.

\*\* See Appendix 30A for form of Escrow Agreement.

### ***Escrow of Securities Held by Parties Related to the VCP***

- 30.8.2 In addition to the requirements of Section 30.8.1, securities of a VCP:
- a) beneficially owned, directly or indirectly at the time of the offering under the VCP Prospectus;
  - b) acquired pursuant to the offering under the VCP Prospectus; or

- c) acquired from treasury after the offering under a VCP Prospectus but prior to completion of the Qualifying Transaction
- d) DELETED\*

\*Last amended June 1998

by the parties related to the VCP shall be held in escrow under an escrow agreement in accordance with this Policy.

### ***Escrow of Securities Issued Pursuant to Qualifying Transaction***

- 30.8.3
- a) Securities issued in conjunction or contemporaneous with or in contemplation of a Qualifying Transaction, which are acquired by a Private Placement or any other manner by a control person (determined after giving effect to the issuance) or by any parties related to the VCP shall be subject to escrow restrictions as prescribed by this Policy and/or Policy 19.
  - b) At its discretion, the Exchange may impose escrow restrictions on all or any portion of the securities issued to parties related to the VCP or Qualifying Transaction in conjunction or contemporaneous with or in contemplation of the Qualifying Transaction in accordance with this Policy and/or Policy 19.

### ***Escrow of Securities Held by Control Persons***

- 30.8.4
- In addition to any securities required to be held in escrow under Sections 30.8.1 and 30.8.2, all securities of the VCP acquired by a control person in the secondary market prior to completion of the Qualifying Transaction shall be held in escrow pursuant to the terms and conditions of this Policy.

### ***Holding Companies***

- 30.8.5
- Where securities of a VCP required to be held in escrow are held by a holding company during the duration of the escrow agreement, the holding company shall not carry out any transactions which would result in a change of control of the holding company without the consent of the Exchange. The shareholders of the holding company shall sign undertakings to the Exchange not to transfer their shares without the consent of the Exchange.

### ***Release from Escrow***

30.8.6 Securities escrowed under a VCP escrow agreement shall be released as to one-third of the escrowed securities on each of the first, second and third anniversaries of the completion of the Qualifying Transaction.

\*\* Please note that this escrow release criteria may change once the Proposal for a National Escrow Regime is finalized.

30.8.7 The Exchange will consider, in appropriate circumstances, a release from escrow of all securities subject to escrow pursuant to the provisions of this Policy where such escrowed securities have been acquired by a bona fide, arm's length third party (from all parties related to the VCP) pursuant to a formal takeover bid, plan of arrangement, amalgamation, merger or other similar transaction.

### ***Transfers***

30.8.8 Transfers of shares escrowed pursuant to this Policy require the prior written consent of the Exchange. The Exchange will generally permit a transfer of shares held in escrow in an arm's length Qualifying Transaction to incoming principals.\*

\*Last amended June 1998

## **30.9 Qualifying Transaction**

### ***Initial Listing Requirements***

30.9.1 When a listed company undergoes a Qualifying Transaction the resulting company must satisfy the Exchange's Initial Listing Requirements for its listing category (see Rules B.1.11 to B.1.13) and have Prospectus-level disclosure of all material facts.

30.9.2 In order to satisfy the Exchange's Initial Listings Requirements in Rules B.1.13.1 (the prior expenditure requirement), the phrase "the applicant company" will be deemed to be the owner(s) or vendor(s) of the significant asset(s) in the Qualifying Transaction (the "target company"). In order to satisfy the Exchange's Initial Listing Requirements in Rule B.1.13.3 (the seed capital requirement), the phrase "the applicant company" will be deemed to mean the target company; and the target company may, in appropriate circumstances satisfy the seed share capital requirement by filing a valuation it in accordance with the guidelines in Policy 20. In order to satisfy the Exchange's Initial Listing Requirements in Rule B.1.13.5 (the minimum combined seed capital and IPO proceeds requirement), the phrase "the applicant company" will be deemed to include both the VCP and the target company, so that upon completion of a Qualifying Transaction:

- a) if the applicant company is other than a natural resource company, the combined value of the target company or the share capital raised by the target company since its incorporation and the proceeds from financings undertaken as part of the Qualifying Transaction must be a minimum of \$850,000, of which, \$300,000 must have been already spent by the target company on its proposed business; or
- b) if the applicant company is a natural resource company, the combined value of the target company or the share capital raised by the target company since its incorporation and the proceeds from financings undertaken as part of the Qualifying Transaction must be a minimum of \$450,000, of which \$100,000 must have been spent by the target company prior to the announcement of the Qualifying Transaction on the exploration or development of resource properties which are the subject of the proposed business. An additional \$100,000 must be available for the initial phase recommended program of exploration or development of the resource property of the applicant company.

### ***Initial Documentation Required for Qualifying Transaction***

30.9.3 The following documents are required to be filed with the Exchange in connection with the Qualifying Transaction:

- a) A copy of the draft Information Circular, the draft notice of meeting and the draft form of proxy;
- b) A covering letter from the lawyer for the listed company (or, with the consent of the listed company, from the lawyer for the unlisted entity) giving notice of the proposed Qualifying Transaction and providing the following information:
  - i) the name of the listed company;
  - ii) a summary of the transaction and identification of any unusual terms;
  - iii) the particular registration and Prospectus exemptions, if any, being relied upon if shares are to be issued as part of the transaction; and
  - iv) a list of the documents enclosed;
- c) One copy of each material contract that the company (or any corporation in which the company is proposing to acquire securities) has entered into in the last year, which has not been previously filed with the Exchange;
- d) A copy of each engineering report or valuation report required to be filed with the Exchange (pursuant to Policy 19) and a letter of qualifications and independence from the author of each report;

- e) A Form 4B from all individuals who are parties related to the VCP and from those individuals who will constitute parties related to the VCP upon completion of the Qualifying Transaction;
- f) A copy of a Sponsorship Agreement between the company and its sponsor;
- g) A copy of the Sponsorship Acknowledgement Letter, if not previously filed;
- h) A copy of the audited financial statements, unaudited financial statements (subject to review engagement report) and pro forma financial statements (subject to compilation report) required by Local Policy Statement 3-02 (with the date the certificate referred to in 30.9.4 is signed as the deemed final receipt date);
- i) Management prepared financial statements to the most recent month's end;
- j) Copies of Insider reports relating to the transactions in the securities of the VCP by the VCP's Insiders for the period during which the VCP has traded on the Exchange; and
- k) The filing fee applicable to a Reverse Takeover.

### ***Final Documentation***

30.9.4 When a company has cleared all comments raised by the Exchange, the company will be required to file the following documents with the Exchange:

- a) A copy of the Information Circular including the notice of meeting and the form of proxy and containing a manually executed certificate page and if financial statements are required to be included in the Information Circular, a manually executed balance sheet and auditor's report. The certificate page must be signed by those individuals who would sign a Prospectus certificate under section 68 of the Act, and must state the following:

“The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities of the issuer, assuming the completion of the Qualifying Transaction.
- b) A copy of any material contract of an agreement previously filed with the Exchange in draft form;

- c) A consent letter from any auditor, engineer, appraiser or other expert named in the Information Circular as having prepared or rendered an opinion on any part of the circular or named as having prepared a report filed in connection with the Information Circular, consenting to the inclusion or reference in the Information Circular of the expert's report, opinion or valuation, and stating he has read the summary of the report contained in the Information Circular and he has no reason to believe that there are any misrepresentations contained in it;
- d) A copy of the directors' resolution, certified by an officer of the company, approving the Information Circular;
- e) Where the proposed transaction involves the acquisition of securities of another corporation, dealing at arms length with the VCP, a consent letter signed by the Chief Executive Officer and Chief Financial Officer or the Chief Executive Officer and a director of the corporation proposed to be acquired, stating that to the best of their knowledge and belief the disclosure in the Information Circular regarding the corporation proposed to be acquired contains no misrepresentations.
- f) Signed certificate(s) from the consultant retained by the sponsoring Member pursuant to Local Policy 3-17, and any specialist required to be retained by the sponsoring Member in the form required by Part 9 of Local Policy 3-17, whether or not the listed company will be conducting a distribution by Prospectus or Exchange Offering Prospectus; and
- g) The certificate and undertaking of the sponsoring Member in the form required by Section 4.3 of Local Policy 3-17 whether or not the listed company will be conducting a distribution by Prospectus or Exchange Offering Prospectus.

### ***Post Meeting Documentation***

30.9.5 The following documentation is required to be filed with the Exchange prior to the Exchange consenting to the issuance of shares in relation to the Qualifying Transaction:

- a) A certified copy of the Scrutineer's Report which details the results of the vote on the resolution to approve the Qualifying Transaction confirming that no parties related to the Qualifying Transaction voted on the resolution;
- b) A copy of the escrow agreement required to be entered into pursuant to Section 30.8 of this Policy; and
- c) A legal opinion or officers' certificate stating all closing conditions, including confirmation of distribution, except Exchange approval have been satisfied.\*

\*Last amended June 1998

### **30.10 Information Circular**

- 30.10.1 The Information Circular submitted to the Exchange and mailed to shareholders in connection with a Qualifying Transaction must contain full, true and plain disclosure of all material facts relating to the securities of the issuer assuming completion of the Qualifying Transaction and is to contain Prospectus level disclosure, and is to comply with all other applicable requirements of the *Securities Act* as they apply to the form and content of a Prospectus and Information Circular.
- 30.10.2 Disclosure requirements for a Prospectus which are not applicable (eg., disclosure of the Plan of Distribution, Purchaser's Statutory Rights, etc.) need not be disclosed in the Information Circular.
- 30.10.3 The following is a summary of some of the items that would commonly require Prospectus level disclosure in an Information Circular for a Qualifying Transaction:
- a) where a Qualifying Transaction involves the acquisition of a business by the purchase of assets or securities in another corporation, disclosure regarding the business, its operating results, its principal assets, and if it is a corporation, its directors and officers, and the material contracts it has entered into. In addition, current audited financial statements of the business or corporation are to be included in the Information Circular;
  - b) the salient aspects of any technical report(s) required to be filed with the Exchange, the escrow agreement to be entered into pursuant to Section 30.8 of this Policy and any material contracts entered into in connection with the Qualifying Transaction;
  - c) if any changes are proposed in the directors or officers of the company, details regarding the identities of the proposed new management team and the track record of all individuals proposed to be added to the management team;
  - d) details regarding any promoters' fees, finders' fees or commissions to be paid in connection with the Qualifying Transaction and any interest of any of the parties related to the Qualifying Transaction;
  - e) the current shareholdings of the directors, officers and Insiders of the company and their shareholdings after giving effect to the Qualifying Transaction;
  - f) the current loan and capital structure of the company and the loan and capital structure to exist after giving effect to the Qualifying Transaction;
  - g) the monthly trading history of the company's shares, including high, low and volume; and
  - h) any risks associated with the Qualifying Transaction.

## **30.11 Other Requirements**

### ***Exchange Review of Qualifying Transactions***

- 30.11.1 As part of the review of the Qualifying Transaction, the Exchange will review the expenses, disclosure, trading history and other transactions undertaken by the VCP during its listing to determine compliance with Exchange policies. The Exchange may refuse to accept the Qualifying Transaction if significant concerns arise from its review, which need not be limited to concerns with the items specifically listed above.

### ***Application of Other VSE Policies***

- 30.11.2 The Rules and policies applicable to VCP companies are set out in this Policy. This Policy shall apply notwithstanding and in substitution for any other provision or the policies of the Exchange. Subject to section 30.11.3, the provisions of this Policy shall cease to apply once a Notice has been issued by the Exchange confirming that the Qualifying Transaction has been completed and that the company is no longer considered a VCP. To the extent that this Policy does not address a matter covered elsewhere in the policies of the Exchange, the Rules and the policies of the Exchange applicable to Venture companies shall apply, including, without limitation, the following policies:

Policy 8, Policy 17, Policy 19, Policy 20, Policy 23 (except to the extent modified by Section 30.6 of this Policy) and Policy 25.

### ***Subsequent Qualifying Transactions***

- 30.11.3 The Exchange may require that a subsequent Qualifying Transaction(s) comply with some or all of the requirements of this Policy where the proposed subsequent Qualifying Transaction occurs within 6 months of the completion of the company's first Qualifying Transaction, is with parties related to the VCP, and is considered by the Exchange to be more significant to the company than the first Qualifying Transaction. In making this assessment, the Exchange will consider factors such as the purchase price of the assets acquired and the estimated cash flow to be derived from the acquired assets as well as any other factors considered to be relevant.

### ***Multiple Filings***

- 30.11.4 The Exchange will generally not grant conditional approval for listing of a VCP where a director, officer or promoter of that company is associated with more than three VCP companies which have not completed a Qualifying Transaction.

### ***Dividend in Specie Distributions***

- 30.11.5 The Exchange will normally not grant conditional approval for listing of a company whose public distribution has resulted from a dividend in specie of a VCP which has not completed a Qualifying Transaction.

### ***Consulting Fees***

- 30.11.6 The Exchange may seek the opinion of an independent engineer, appraiser or other expert in determining the reasonableness of a technical report or business valuation filed with the Exchange. In such circumstances, the VCP or issuer resulting from the Qualifying Transaction will be billed for the Exchange's costs arising from such valuation services.

### ***Trading Halts, Suspension and Delisting***

- 30.11.7 The Exchange may suspend from trading or delist the securities of a VCP where the company has failed to complete a Qualifying Transaction within 18 months of the date of listing. If the Qualifying Transaction is not completed within 3 years from the date of listing, the company will be delisted.
- 30.11.8 The Exchange will halt trading if a company which has announced a Qualifying Transaction has not yet secured a Member to act as a Sponsor for the Qualifying Transaction. The Member must contact the Surveillance Department of the Exchange and confirm its sponsorship to prevent the initial halt or to resume trading once trading in the shares has been halted. In addition, a trading halt will also be imposed where the company has not filed the supporting documents required by Section 30.9.1 of this Policy within 60 days of the date of filing the Sponsorship Acknowledgement Letter. The halt will remain in effect until either the Exchange receives and reviews the documentation required in Section 30.9.1 of this Policy and the Information Circular has been mailed to the shareholders or the company issues a press release that the proposed Qualifying Transaction is not proceeding.

### ***Refusal of Qualifying Transaction***

- 30.11.9 Notwithstanding a transaction may meet the definition of a Qualifying Transaction, the Exchange may not approve a Qualifying Transaction where the listed company fails to meet the minimum listing requirements under Policy 1 upon completion of the Qualifying Transaction or for any other reason at the sole discretion of the Exchange.

### ***Member's Ownership of Securities***

- 30.11.10 At the time of listing, the aggregate number of securities owned directly or indirectly by the Member, its employees and affiliates, (the "Pro Group") and associates of the Pro Group, cannot exceed 20% of the total issued and outstanding listed securities of the company, excluding securities reserved for issuance at a future date.\*

\*Last amended June 1998

- 30.11.11 Shares of a VCP issued to the Pro Group in connection with or in contemplation of the Qualifying Transaction will be subject to a six month hold period after completion of a Qualifying Transaction, except where they are otherwise subject to a prescribed hold period. Pro Group shareholders shall be obligated to complete an undertaking to the Exchange confirming such hold period.\*

\*Last amended June 1998

### ***Reverse Takeover***

- 30.11.12 The Exchange will not permit any further transaction or series of transactions by a VCP which would constitute a Reverse Takeover prior to the expiry of one year following completion of the Qualifying Transaction.

### ***Application of Securities Act, Rules, Policies and Notices***

- 30.11.13 Securities legislation thresholds for prospectus disclosure, material change announcements and prohibitions on tipping and insider trading apply to a VCP, and parties related to the VCP or Qualifying Transaction, to the same extent as to a reporting issuer. The Exchange will review all insider reports filed by parties related to a VCP.

The British Columbia Securities Commission has issued a notice (NIN #98/23) to provide guidance as to when negotiations with a prospective target for a Qualifying Transaction are likely be a material fact or material change and what disclosure is required in those circumstances.