Lavery CAPITAL

NUMBER 7, JANUARY 2016

lavery Lawyers Capital

Legal newsletter to investment fund / venture capital fund promoters, managers and investors

## LAVERY CAPITAL: A LEADER IN MONTREAL IN THE PRIVATE EQUITY, VENTURE CAPITAL AND INVESTMENT MANAGEMENT INDUSTRY

Creating and setting up private equity funds, hedge funds and venture capital funds are complex initiatives requiring specialized legal resources. Lavery Capital has developed enviable expertise in this industry by working closely with promoters to set up such structures in Canada and, in some cases, the United States and Europe, in conjunction with local firms. Through Lavery Capital's strong record of achievements, the firm Lavery sets itself apart in the legal services market by actively supporting promoters, managers, investors, businesses and other partners involved in the various stages of the implementation and deployment of private equity, venture capital and investment management initiatives.

# THE TSX VENTURE EXCHANGE REACHES OUT TO THE VC COMMUNITY

JOSIANNE BEAUDRY
jbeaudry@lavery.ca

GUILLAUME LAVOIE
glavoie@lavery.ca

The TSX Venture Exchange (the "TSX-V") has released a white paper which describes how it intends to become an attractive public market for early-stage companies from fast-growing sectors such as technology, clean technology, renewable energy and life sciences (the "high-growth sectors") and how it intends to ensure that private equity firms, venture capital ("VC") funds and angel investors consider the TSX-V as an effective strategy to exit the capital of such early-stage companies.

The question remains whether these changes will result in a smaller-size IPO on the TSX-V becoming an attractive exit for the VC funds invested in a large number of these companies.

## REVIEW OF SOME OF THE CHANGES AND STRATEGIES PROPOSED BY THE TSX-V

The TSX-V indicated that it intends to generally review its policies and tailor them to further reflect the needs of the companies from the high-growth sectors, recognizing that such policies were traditionally more adapted to the mining and oil and gas sectors. It also intends to hire a sales team dedicated to bring companies from these high-growth sectors to become listed on the TSX-V. The sales team will notably attempt to introduce the dealers community to companies from these sectors that can grow their business and create wealth for investors.

The TSX-V recognizes that the reluctance for such companies to become listed on the TSX-V is in part the consequence of the administrative and compliance costs resulting from such a listing. It therefore proposes specific changes to its rules that are aimed at reducing the costs and simplifying the process for a company wishing to be listed on the TSX-V.

One of the affected rules would be the sponsorship requirement. While this requirement can be waived, the TSX-V currently requires that an application to list on the TSX-V be sponsored by an existing member of the TSX-V or of the Toronto Stock Exchange. The TSX-V proposes to eliminate this requirement. Given that obtaining sponsorship typically takes several months and can cost a company between $50,000 and $100,000, the TSX-V believes that this change will allow companies wishing to achieve an IPO to save time and money.

Another set of rules that might be reviewed is the escrow requirements. Securities regulators and the TSX-V each impose escrow requirements on the securities of the company completing an IPO held by the directors, officers, principal shareholders and promoters of the company, which typically includes all the VC funds invested in such company.

These requirements result in the VC fund that has invested in the capital of the company requesting to be listed being typically required to enter into escrow agreements with an escrow agent whereby the shares or debt securities of the company held by the VC fund are put in escrow with the escrow agent for a period of 18 to 36 months after the IPO. The TSX-V has indicated in its white paper that it will abandon its own requirements and simply impose compliance with the requirements of the Canadian Securities Administrators (to which such companies were already subject to and which are similar to the escrow requirements of the TSX-V). Being subject to only one set of rules will simplify things in that regard.

The TSX-V also intends to increase its general use of technological tools, particularly by offering an automated online filing system for additional types of transactions (the white paper does not specify which ones). This is intended to allow companies to file routine transactions themselves rather than having to use the services of external lawyers, and therefore reduce their costs. The TSX-V also seeks to develop mobile and web-based tools to stream summaries of securities offerings by companies listed on the TSX-V in order to facilitate more direct communications between the issuers and their investors.

Other changes are proposed and can be found in the full version of the white paper available on the TSX-V's website.

## CAN THE TSX-V BE SUCCESSFUL IN ITS APPROACH?

All these changes aimed at increasing the listings by early-stage companies from the technology, clean technology, renewable energy and life science sectors should be welcomed by the VC community. IPOs remain an attractive exit for VC funds who often are major shareholders of these companies. It remains one of the best methods for a VC fund manager to establish a track record to attract investors for its follow-on funds in a context where such investors are often forced to rely on very few performance indicators to establish the skills of the VC fund manager and decide whether to invest in its follow-on funds or not. It should also be considered by entrepreneurs as one of the preferred methods of exit that they can provide to the VC funds that have invested in the capital of their company, given that it is one of the rare methods that will ensure to these entrepreneurs that they remain at the helm of the company. Other forms of exit, such as an acquisition or a secondary sale to a private equity fund focused on growth stage companies, will often result in forced changes to the management of the company, making the entrepreneur effectively lose the control of its business. In the context of an IPO, while the entrepreneur will have to report to its shareholders and may be vulnerable in the future to hostile take-over bids, the management team will generally remain in place in the short term (except for some additions to ensure that the necessary skills are present). Further, public markets remain the deepest source of capital, making IPOs being particularly well suited for these high-growth companies.

However, to be fully effective, these initiatives will need to receive the support of the Canadian Securities Administrators, given that the major costs associated with an IPO are those associated with the rules imposed by these securities regulators and not by the TSX-V.

In the meantime, Lavery intends to fully collaborate with the TSX-V in allowing it to become more attractive for these types of companies.

For any information regarding Lavery Capital, please contact us at laverycapital@lavery.ca.

## OUR TEAM

| | | |
|---|---|---|
| JOSIANNE BEAUDRY | jbeaudry@lavery.ca | 514 877-2998 |
| DOMINIQUE BÉLISLE | dbelisle@lavery.ca | 514 878-5506 |
| SIMON BISSON | sbisson@lavery.ca | 514 877-3062 |
| PHILIPPE DÉCARY | pdecary@lavery.ca | 514 877-2923 |
| JEAN-SÉBASTIEN DESROCHES | jsdesroches@lavery.ca | 514 878-5695 |
| ÉDITH JACQUES | ejacques@lavery.ca | 514 878-5622 |
| ANNE-SOPHIE LAMONDE | aslamonde@lavery.ca | 514 878-5528 |
| GUILLAUME LAVOIE | glavoie@lavery.ca | 514 877-2943 |
| ARIANA LISIO | alisio@lavery.ca | 514 878-5429 |
| JEAN MARTEL | jmartel@lavery.ca | 514 877-2969 |
| FRANÇOIS PARENT | fparent@lavery.ca | 514 877-3089 |
| LUC PARISEAU | lpariseau@lavery.ca | 514 877-2925 |
| ANDRÉ VAUTOUR | avautour@lavery.ca | 514 878-5595 |