

Also Visit – [LawCast.com](http://LawCast.com)  
*The Securities Law Network*

August 1, 2014



## OTC Markets has Modified its OTCQB Eligibility Criteria Effective May 1, 2014

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

OTC Markets has unveiled changes to be quoted on the OTCQB, which changes become effective May 1, 2014. The OTC Markets changes are designed to attract venture investors to provide more information to investors and to improve such information with Real-Time Level 2 quotes. The OTC Markets press and informational releases related to the change concentrate on the push to create a successful venture-stage marketplace by removing underperforming companies.

### **Background**

The [www.OTCMarkets.com](http://www.OTCMarkets.com) divides issuers into three (3) levels: OTCQX, OTCQB and OTC Pink.

Issuers on the OTCQX must be fully reporting and current in their reporting obligations with the SEC and also undergo a quality review by industry professionals. Issuers on the OTCQB must be fully reporting and current in their reporting obligations with the SEC but do not undergo additional quality review.

Issuers on the pink sheets are not required to be reporting with the SEC. However, such issuers are then further qualified based on the level of voluntary information provided to the [www.otcm Markets.com](http://www.otcm Markets.com). Issuers with no information are denoted by a skull and crossbones, issuers with limited financial and business information are classified as “limited information,” and issuers which provide information as set forth in the OTC Markets Pink Alternative Reporting Standard are denoted with a “current information” symbol.

Effective January 3, 2013, OTC Markets modified its OTC Markets Pink Alternative Reporting Standard for current information status. In particular, it streamlined its disclosure guidelines to align them more closely with the SEC Rule 15c2-11 guidelines, eliminated the requirement for an attorney letter where audited financial statements are provided, and reduced the requirement for attorney letters from every quarter to just once a year upon the filing of an annual report. The prior Pink Alternative Reporting Standard was more analogous to an SEC registration statement than the SEC Rule 15c2-11 guidelines. The streamlined disclosure allowed more companies to provide current information, which weren't quite ready to provide the type of information required of a company subject to the SEC reporting requirements.

### **The New OTC Markets OTCQB Eligibility Criteria**

To be eligible to be quoted on the OTCQB, companies will be required to:

- Meet a minimum bid price of \$.01 or be downgraded to OTC Pink;
- Submit an application and pay an application and annual fee;
- Submit an OTCQB Annual Certification confirming the accuracy of the current company profile and providing information on officers, directors and controlling shareholders.

Moreover, international reporting companies listed on a qualified foreign stock exchange are now eligible for the OTCQB upon submittal of an application and fee, and banks that do not report to the SEC are required to post their regulatory filings on [otcmarkets.com](http://otcmarkets.com). Entities that do not meet the requirements of either OTCQX or OTCQB will be quoted on the OTC Pink.

The changes related to the minimum bid requirements will become effective on May 1, 2014. All OTCQB companies that do not meet the minimum bid price of \$.01 per share at the close of business of at least one of the previous thirty consecutive calendar days will be moved to the OTC Pink.

All new companies that are not already quoted on the OTCQB on April 30, 2014 will be required to submit an application, pay a fee and follow certain procedures to become traded on the OTCQB. Companies' securities will no longer be automatically reported on the OTCQB when they have an active 211 and are fully reporting to the SEC.

Those companies currently quoted on the OTCQB which have not been moved to OTC Pink for failure to meet the minimum bid requirement will be required to meet all the new eligibility standards, including an application and fee and certification regarding company profile information, within 120 days of their next fiscal year end starting with companies with a fiscal year end of March 31, 2014. Companies that fail to comply will be downgraded to OTC Pink.

### **Requirements for SEC Reporting Companies**

All SEC Reporting companies will be required to meet the minimum bid price of \$.01. Newly applying companies must meet the minimum bid price at the close of business for each the last 30 calendar days and then for at least one of every 30 calendar days going forward.

Newly applying entities must pay an initial application fee of \$2,500, which fee is waived for existing OTCQB entities. Moreover, all OTCQB companies will be required to pay a steep annual fee of \$10,000. OTC Markets is offering a discounted fee to existing OTCQB companies that submit their application in 2014 even if those companies are not required to comply until 2015 due to the timing of their next fiscal year end. The discounted fee is \$7,500 annual for the first two years.

All companies will be required to file an initial and annual certification on the OTC Markets website, signed by the CEO and/or CFO, stating:

- The company's reporting standing (i.e., whether SEC reporting, bank reporting or international reporting) and briefly describing the registration status of the company;
- That the company is current in its reporting obligations to its regulator and that such information is available either on EDGAR or the OTC Markets website;
- States the law firm and/or attorneys that assist the company in preparing its annual report or 10-K;
- Confirms that the company profile on the OTC Markets website is current and complete;
- Confirms the total shares outstanding and in the public float as of the most recent fiscal year end; and

- Names and shareholdings of all officers and directors and shareholders that beneficially own 5% or more of the total outstanding shares.

Many OTCQB companies will find this annual fee prohibitive on top of the annual audit, legal and XBRL fees associated with reporting to the SEC. I suspect there will be a sharp rise in reporting OTC Pink entities starting May 1, 2014 and continuing for the next few years.

OTCQB companies will be required to remain current in their SEC reporting obligations. Foreign entities not required to file SEC reports will be required to maintain current information on otcmarkets.com. All OTCQB companies will be required to post an initial and then annual certifications on the OTC Markets website.

### **Requirements for Bank Reporting Companies**

In addition to the same minimum bid price, application and annual certification and fee requirements as SEC Reporting companies, bank reporting companies are required to post their previous two years' and ongoing yearly disclosure that was and is filed with the company's bank regulator, on the OTC Markets website.

### **International Reporting Companies**

In addition to the same minimum bid price, application and annual certification and fee requirements as SEC Reporting companies do, foreign issuers must be listed on a Qualified Foreign Exchange and be compliant with SEC Rule 12g3-2(b). Moreover, a foreign entity must submit a letter of introduction from a qualified PAL which states that the PAL has a reasonable belief that the company is in compliance with SEC Rule 12g3-2(b), is listed on a Qualified Foreign Exchange, and has posted required disclosure on the OTC Markets website. A foreign entity must post two years' historical and ongoing quarterly and annual reports, in English, on the OTC Markets website which comply with SEC Rule 12g3-2(b).

### **Impact on PIPE Resale Registration Statements, Including Equity Line Transactions**

The SEC will permit a company to register the "resale" of securities in a PIPE or equity line transaction prior to its exercise of the put if the transactions meet the following conditions:

- the company must have “completed” the private transaction of all of the securities it is registering for “resale” prior to the filing of the registration statement;
- the “resale” registration statement must be on the form that the company is eligible to use for a primary offering; and
- in the prospectus, the investor(s) must be identified as underwriter(s) as well as selling shareholder(s).

As long as these criteria are met, the SEC will allow pricing based on a formula tied to market price as long as there is an existing market for the securities as evidenced by trading on a national securities exchange or through the OTC Bulletin Board or the OTCQX or OTCQB marketplaces. The OTC Pink is not included in the SEC list of marketplaces. As the OTC Pink is not considered a market: (1) there can be no at-the-market pricing of securities registered for resale by an issuer on behalf of its selling shareholders; and (2) there could be no equity lines or similar financing transactions and no registration of underlying convertible equities which are priced based on a formula tied to the trading price (usually a discount to market) for OTC Pink quoted securities.

### **Conclusion**

It seems an effort is being made to increase the quality of companies on the OTCQB while at the same time increasing the quality of the companies on the OTC Pink as more SEC reporting companies fail to meet the minimum bid price requirement or opt out of paying the high annual fee.

## The Author

Attorney Laura Anthony  
Founding Partner  
Legal & Compliance, LLC  
Corporate, Securities and Going Public Attorneys  
LAnthony@LegalAndCompliance.com

Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the Producer and host of LawCast.com, The Securities Law Network.

Contact Legal & Compliance, LLC. Inquiries of a technical nature are always encouraged. Follow me on Facebook, LinkedIn, YouTube, Google+, Pinterest and Twitter.

Download our mobile app at iTunes and Google Play.

## Disclaimer

Legal & Compliance, LLC makes this general information available for educational purposes only. The information is general in nature and does not constitute legal advice. Furthermore, the use of this information, and the sending or receipt of this information, does not create or constitute an attorney-client relationship between us. Therefore, your communication with us via this information in any form will not be considered as privileged or confidential.

This information is not intended to be advertising, and Legal & Compliance, LLC does not desire to represent anyone desiring representation based upon viewing this information in a jurisdiction where this information fails to comply with all laws and ethical rules of that jurisdiction. This information may only be reproduced in its entirety (without modification) for the individual reader's personal and/or educational use and must include this notice.

© Legal & Compliance, LLC 2015