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OTCQX Listing and Quotation Eligibility and Requirements for International Companies

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.

On May 23, 2014, OTC Markets Group, Inc., published its updated OTCQX Rules for International Companies version 6.7. This blog summarizes those rules. A complete copy of the rules is available on the OTC Link website, otcm Markets.com.

Background

The www.OTCMmarkets.com divides issuers into three (3) levels: OTCQX, OTCQB and OTC Pink.

The OTCQX has two tiers of quotation for U.S. companies: (i) OTCQX International Premier; and (ii) OTCQX International. International issuers on the OTCQX must meet specified eligibility requirements. Quotation is available for American Depository Receipts (ADR's) or foreign ordinary securities of companies traded on a Qualifying Foreign Stock Exchange.

International issuers on the OTCQB must either be fully reporting and current in their SEC reporting obligations or qualify for the Rule 12g3-2(b) exemption from SEC registration for foreign private issuers. In addition, OTCQB entities must meet minimum price standards, file annual reports and pay annual fees, but do not undergo additional quality review. See my blog [HERE](#) for information on OTCQB eligibility requirements for both U.S. and international issuers.

International issuers on the pink sheets are not required to be reporting with the SEC nor are they required to qualify for the Rule 12g3-2(b) exemption from SEC registration for foreign private issuers. Pink sheets are available to ADR's and foreign ordinary

securities of companies traded on a Qualifying Foreign Stock Exchange. However, such issuers are then further qualified based on the level of voluntary information provided to www.otcmarkets.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.

Exchange Act Rule 12g3-2(b)

Exchange Act Rule 12g3-2(b) permits foreign private issuers to have their equity securities traded on the U.S. over-the-counter market without registration under Section 12 of the Exchange Act (and therefore without being subject to the Exchange Act reporting requirements). The Rule is automatic for foreign issuers that meet its requirements. A foreign issuer may not rely on the rule if it is otherwise subject to the Exchange Act reporting requirements.

The Rule provides that an issuer is not required to be subject to the Exchange Act reporting requirements if:

- (i) the issuer currently maintains a listing of its securities on one or more exchanges in a foreign jurisdiction which is the primary trading market for such securities; and
- (ii) the issuer has published, in English, on its website or through an electronic information delivery system generally available to the public in its primary trading market (such as the OTC Market Group website), information that, since the first day of its most recently completed fiscal year, it (a) has made public or been required to make public pursuant to the laws of its country of domicile; (b) has filed or been required to file with the principal stock exchange in its primary trading market and which has been made public by that exchange; and (c) has distributed or been required to distribute to its security holders.

Primary Trading Market means that at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year.

In order to maintain the Rule 12g3-2(b) exemption, the issuer must continue to publish the required information on an ongoing basis and for each fiscal year.

The information required to be published electronically under paragraph (b) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:

- i. Results of operations or financial condition;
- ii. Changes in business;
- iii. Acquisitions or dispositions of assets;
- iv. The issuance, redemption or acquisition of securities;
- v. Changes in management or control;
- vi. The granting of options or the payment of other remuneration to directors or officers; and
- vii. Transactions with directors, officers or principal security holders.

At a minimum, a foreign private issuer shall electronically publish English translations of the following documents:

- i. Its annual report, including or accompanied by annual financial statements;
- ii. Interim reports that include financial statements;
- iii. Press releases; and
- iv. All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

OTCQX Rules for International Companies – Requirements

OTCQX provides an expedited application process for ADRs and foreign ordinary securities of companies traded on a Qualifying Foreign Stock Exchange.

A. To be eligible to be quoted on the OTCQX International, companies must:

- Have U.S. \$2 million in total assets as of the most recent annual or quarter end;
- As of the most recent fiscal year end, have at least one of the following: (i) U.S. \$2 million in revenues; (ii) U.S. \$1 million in net tangible assets; (iii) U.S. \$500,000 in net income; or (iv) U.S. \$5 million in global market capitalization;
- Meet one of the following penny stock exemptions under Rule 3a51-1 of the Exchange Act: (i) have a bid price of U.S. \$5 or more; or (ii) have net tangible

assets of U.S. \$2 million if the company has been in continuous operation for at least three years, or U.S. \$5,000,000 if the company has been in continuous operation for less than three years; or (iii) have average revenue of at least U.S. \$6,000,000 for the last three years;

- Be quoted by a market maker on the OTC Link (which requires a 15c2-11 application if the company is not already quoted on a lower tier of OTC Markets);
- Not be in bankruptcy or reorganization proceedings;
- Be included in a Recognized Securities Manual or be subject to the reporting requirements of the Exchange Act;
- Have its securities listed on a Qualifying Foreign Stock Exchange for a minimum of the preceding 40 calendar days; provided, however, that in the event the company's securities are listed on a non-U.S. exchange that is not a Qualified Foreign Stock Exchange, then at the company's request and subsequent to the company providing OTC Markets Group with personal information forms for each executive officer, director, and beneficial owner of 10% or more of a class of the company's securities and such other materials as OTC Markets Group deems necessary to make an informed determination of eligibility, OTC Markets Group may, upon its sole and absolute discretion, consider the company's eligibility for OTCQX International;
- Meet one of the following conditions: (i) be eligible to rely on the registration exemption found in Exchange Act Rule 12g-2(b) and be current and compliant in such requirements; or (ii) have a class of securities registered under Section 12(g) of the Exchange Act and be current in its SEC reporting requirements; or (iii) if such company is not eligible to rely on the exemption from registration provided by Exchange Act Rule 12g3-2(b) because it does not (A) meet the definition of "foreign private issuer" as that term is used in Exchange Act Rule 12g3-2(b) or (B) maintain a primary trading market in a foreign jurisdiction as set forth in Exchange Act Rule 12g3-2(b)(ii), and is not otherwise required to register under Section 12(g), be otherwise current and fully compliant with the obligations of a company relying on the exemption from registration provided by Exchange Act Rule 12g3-2(b).

B. To be eligible to be quoted on the OTCQX International Premier, companies must:

- Satisfy all of the eligibility requirements for OTCQX International set forth above;

- As of its most recent fiscal year end, (i) have (a) revenue of U.S. \$100 million; (b) global market capitalization of U.S. \$500 million, (c) aggregate cash flow for the three preceding years of U.S. \$100 million; and (d) minimum cash flow in each of the two preceding years of \$25 million; or (ii) have (a) revenue of U.S. \$75 million and (b) global market capitalization of \$750 million.

Principal American Liaison

All International companies that are quoted on the OTCQX must have either an Attorney Principal American Liaison (“PAL”) or an Investment Bank PAL, provided however, if the company’s OTCQX traded security is an ADR, the international company may have an ADR PAL. All PAL’s must be approved by OTC Markets Group. A company may appoint a new PAL at any time provided they maintain a PAL at all times.

Application to the OTCQX for International Companies

All international companies that are quoted on the OTCQX must submit an application and pay an application fee. The application consists of (i) OTCQX application for international companies; (ii) the contractual agreement with OTCQX for international companies; (iii) the OTCQX application fee; (iv) the OTCQX Agreement for international companies; (v) an application for the international company’s desired PAL if such PAL is not already pre-qualified; (vi) an appointment form for the DAD/PAL; and (vii) a copy of the company’s logo in encapsulated postscript (EPS) format.

The company and its PAL will receive confirmation of the application submittal within approximately five business days. The application is subject to review and comment by OTC Markets. OTC Markets may require additional conditions or undertakings prior to admission. Moreover, the application may be denied if, in the opinion of OTC Markets, trading would be likely to impair the reputation or integrity of OTC Markets Group or be detrimental to the interests of investors.

Initial Disclosure Obligations

An international company must post its initial disclosure documents on the OTC Markets website within 90 days of submission of its application to quote on the OTCQX and such posting must be confirmed with a notice by the company PAL. The filing of the initial disclosure is a precondition to acceptance of an application for quotation. Initial disclosure documents include: (i) SEC reports if the company is subject to the

Exchange Act reporting requirements; or (ii) if the company is not subject to the SEC reporting requirements, all information required to be made public pursuant to Exchange Act Rule 12g3-2(b) for the preceding 24 months, which information must be posted in English.

PAL Letter of Introduction

After the initial disclosure has been posed, the company must submit a PAL Letter of Introduction to OTC Markets Group.

Requirements for Ongoing Qualification for Quotation on the OTCQX

The following is a summary of the ongoing responsibilities for OTCQX International quoted securities:

- Eligibility Criteria – The International company must meet the above eligibility requirements as of the end of each most recent fiscal year;
- Compliance with Rules – OTCQX quoted companies must maintain compliance with the OTCQX rules, including disclosure requirements. Officers and directors of the company are responsible for compliance and are solely responsible for the content of information;
- Compliance with Laws – OTCQX quoted companies must maintain compliance applicable securities laws of its country of domicile and application U.S. federal and state securities laws. The company must comply with Exchange Act Rule 10b-17 and FINRA rule 6490 regarding notification and processing of corporate actions (such as name changes, splits and dividends). The company must cooperate with any securities regulators, whether in its country of domicile or in the U.S., including self-regulatory organizations;
- Blue Sky Manual Exemption – Companies must either properly qualify for a blue sky manual exemption or be subject to and current in its Exchange Act reporting requirements;
- Retention and Advice of PAL – Companies must have a PAL at all times and are required to seek the advice of such PAL as to their OTCQX obligations;
- Notification of Resignation or Dismissal of PAL – A company must immediately notify OTC Markets in writing of the resignation or dismissal of the PAL for any reason;
- Payment of Fees – a company must pay its annual fees to OTC Markets;

- Responding to OTC Markets Group Requests – OTCQX quoted companies are required to respond to OTC Markets comments and amend filings as necessary in response thereto;
- Ongoing Disclosure Obligations – (i) Companies subject to the Exchange Act reporting requirements must remain current in such reports; (ii) A company that is not an SEC Reporting Company must remain current and fully compliant in its obligations under Exchange Act Rule 12g3-2(b), if applicable, and in any event shall, on an ongoing basis, post in English through the OTC Disclosure & News Service or an Integrated Newswire, the information required to be made publicly available pursuant to Exchange Act Rule 12g3-2(b); (iii) provide a letter to its PAL at least once a year, no later than 210 days after the fiscal year end which states that the company (y) continues to satisfy the OTCQX quotation requirements; and (z) is current and compliant in its obligations under Exchange Act Rule 12g3-2(b) and that the information required under such rule is posted, in English, on the OTC Markets website or that the company is subject to the SEC reporting requirements and is current in such reporting requirements.
- PAL Letter – Within 225 days of each fiscal year end and after the posting of the company’s annual report, every company must submit an annual PAL letter.

Removal from OTCQX International

A company may be removed from the OTCQX if, at any time, it fails to meet the eligibility and continued quotation requirements subject to a 30-day notice and opportunity to address them. In addition, OTC Markets Group may remove the company’s securities from trading on OTCQX immediately and at any time, without notice, if OTC Markets Group, upon its sole and absolute discretion, believes the continued inclusion of the company’s securities would impair the reputation or integrity of OTC Markets Group or be detrimental to the interests of investors. In addition, OTC Markets can temporarily suspend trading on the OTCQX pending investigation or further due diligence review.

A company may voluntarily withdraw from the OTCQX with 24 hours’ notice.

Fees

Upon application for quotation on the OTCQX, companies must pay an initial non-refundable fee of \$5,000. In addition, companies must pay an annual non-refundable fee of \$15,000.

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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 host of LawCast.com, The Securities Law Network.

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