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SEC Suspends Trading On 128 OTC Markets 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 March 2, 2015, the Securities and Exchange Commission (SEC) suspended the trading in 128 dormant shell companies trading on the OTC Link. The SEC suspended the trading in these shell companies because of questions regarding the accuracy and adequacy of publicly disseminated information concerning the companies' operating status, if any.

The SEC notes in its release that OTC Markets had been unable to contact each of the issuers for more than one year. None of the subject issuers had filed any information or updated with either OTC Markets or the SEC in over a year. The SEC staff then independently attempted to contact the issuers and was able to contact 10 of the 128 companies and confirm from those ten that they had either ceased operations or gone private.

The trading suspensions are part of an SEC initiative tabbed Operation Shell-Expel by the SEC's Microcap Fraud Working Group. As part of the initiative, the SEC Enforcement Division's Office of Market Intelligence utilizes technology to search OTC traded securities and identify dormant companies. The SEC has a concern that unscrupulous individuals will take over the companies without the legal right to do so (corporate hijacking) and use the company to conduct a pump-and-dump scheme.

Since 2012, Operation Shell-Expel has suspended trading in more than 800 OTC companies. The federal securities laws allow the SEC to suspend trading in any stock for up to 10 business days. Once a company is suspended from trading, it cannot be quoted again until it provides updated information including complete disclosure of its business and accurate financial statements. In addition to providing the necessary

information, to begin to trade again, a company must enlist a market maker to file a new 15c2-11 application with FINRA.

For a company with a trading suspension, this is a difficult process if not impossible. Many market makers are unwilling to take on the assignment and when they do, the comment process with FINRA can be lengthy and arduous. FINRA is charged with regulating the OTC Markets and taking measures to prevent potential fraud. In the case of a defunct or dormant entity, FINRA will exercise its full authority to conduct an in-depth review of the company history and associated people. Moreover, even if a 211 application is approved by FINRA, DTC may still refuse to qualify the security for electronic trading.

Bottom line, short of a new registration statement and going public process, these companies have effectively been removed from the public company trading system.

The SEC continues to send the message that companies without current information will not be allowed to trade. Moreover, the SEC has become much quicker at identifying and shutting down dormant shell companies.

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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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