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OTC Markets Amends Listing Standards For OTCQB To Include Regulation A+ Issuers

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 the quotations rule and standards for the OTCQB, which changes become effective July 10, 2015. The OTC Markets rule amendments will allow a company to use its required Regulation A+ ongoing reporting requirements to satisfy the initial and ongoing OTCQB disclosure requirements.

Concurrently with this substantive amendment, OTCQB has made clarifying general amendments to its listing standards for all listed and prospective OTCQB companies. OTC Markets has invited comments on the proposed changes.

To summarize, the Regulation A related amendment to the OTCQB rules and regulations includes:

- The addition of definitions for “Regulation A” and “Regulation A Reporting Company”
- Initial Disclosure Obligations – a Regulation A Reporting Company can meet the OTCQB initial disclosure obligations by having filed all required reports on EDGAR, including annual audited financial statements;
- OTCQB Certification – clarifying amendment to the OTCQB Certification including that a Regulation A Reporting Company is required to file periodic reports with the SEC under Tier 2; and
- Ongoing Disclosure Obligations – a Regulation A Reporting Company must file all required periodic reports with the SEC, including audited financial statements.

The following is a summary of general amendments to the OTCQB rules:

- The initial bid price requirement (i.e., a minimum closing bid price on OTC Markets of \$.01 for each of the last 30 calendar days) has been updated such that the

minimum bid price must be met at both the time of application submittal and application approval;

- New guidelines for the re-admission to OTCQB after removal for non-compliance of the continued listed standards, including that OTC Markets may re-allow OTCQB quotation if (i) the company regains compliance within 30 calendar days of removal, and has not completed a corporation action during that time; (ii) the company regains compliance within 30 calendar days of removal, and has completed a corporate action, and the company submits a new OTCQB Certification; (iii) the company regains compliance following 30 calendar days and less than 6 months from the removal date and the company submits a new OTCQB Certification; and (iv) the company regains compliance more than 6 months from the removal date and submits a new OTCQB application and application fee. Note that re-admittance remains discretionary by OTC Markets; and
- A clarifying update allowing companies that have been removed, suspended or withdrawn from the OTCQB marketplace, to continue to use certain OTC Markets services.

Comprehensive refresher on OTCQB, including the new amendments

The OTC Markets divide issuers into three (3) levels of quotation marketplaces: OTCQX, OTCQB and OTC Pink. The OTC Pink, which involves the highest-risk, highly speculative securities, is further divided into three tiers: Current Information, Limited Information and No Information.

- To be eligible to be quoted on the OTCQB, all companies will be required to:
- Meet a minimum closing bid price on OTC Markets of \$.01 for each of the last 30 calendar days;
- In the event that there is no prior public market and a 15c2-11 application has been submitted to FINRA by a market maker, OTC Markets can waive the bid requirement at its sole discretion;
- In the event that a company is a seasoned public issuer that completed a reverse stock split within 6 months prior to applying to the OTCQB, the company must have a post reverse split minimum bid price of \$.01 at the close of business on each of the 5 consecutive trading days immediately before applying to the OTCQB;
- In the event the company is moving to the OTCQB from the OTCQX, it must have a minimum closing bid price of \$.01 for at least one (1) of the 30 calendar days immediately preceding;
- Companies may not be subject to bankruptcy or reorganization proceedings the company's application;

- Either be subject to the reporting requirements of the Securities Exchange Act of 1934 and be current in such reporting obligations, be a Tier 2 Regulation A reporting company and be current in such reporting obligations, or, if an international issuer, 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 be a bank current in its reporting obligations to its bank regulator;
- Not be in bankruptcy or reorganization proceedings;
- Be duly organized, validly existing and in good standing under the laws of each jurisdiction in which it is organized and does business;
- Submit an application and pay an application and annual fee;
- Maintain a current and accurate company profile on the OTC Markets website;
- Use an SEC registered transfer agent and authorize the transfer agent to provide information to OTC Markets about the company's securities, including but not limited to shares authorized, shares issued and outstanding, and share issuance history; and
- Submit an OTCQB Annual Certification confirming the accuracy of the current company profile and providing information on officers, directors and controlling shareholders.

All companies are required to post their initial disclosure on the OTC Markets website and make an initial certification. The initial disclosure includes:

- Confirmation that the Company is current in its SEC reporting obligations, whether subject to the Exchange Act reporting requirements or Regulation A+ reporting requirements, and has filed all reports with the SEC, that all financial statements have been prepared in accordance with U.S. GAAP, and that the auditor opinion is not adverse, disclaimed or qualified;
- International Companies - (i) Companies subject to the Exchange Act reporting requirements must be current in such reports; (ii) A company that is not an SEC Reporting Company must be current and fully compliant in its obligations under Exchange Act Rule 12g3-2(b), if applicable, and shall have posted 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) for the preceding 24 months (or from inception if less than 24 months); and all financial statements have been prepared in accordance with U.S. GAAP and that the auditor opinion is not adverse, disclaimed or qualified; and
- Verification that the company profile is current, complete and accurate.

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, Regulation A+ reporting, bank reporting or international reporting) and briefly describing the registration status of the company;
- If the company is an international company and relying on 12g3-2(b), that it is current in such obligations;
- 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;
- Identifies any third-party providers engaged by the company, its officers, directors or controlling shareholders, during the prior fiscal year and up to the date of the certification, to provide investor relations services, public relations services, stock promotion services or related services;
- Confirms the total shares authorized, outstanding and in the public float as of that date; and
- Names and shareholdings of all officers and directors and shareholders that beneficially own 5% or more of the total outstanding shares, including beneficial ownership of entity shareholders.

An application to OTCQB can be delayed or denied at OTC Markets' sole discretion if they determine that admission would be likely to impair the reputation or integrity of OTC Markets group or be detrimental to the interests of investors.

Requirements for Bank Reporting Companies

Bank reporting companies must meet all the same requirements as all other OTCQB companies except for the SEC reporting requirements. Instead, bank reporting companies are required to post their previous two years' and ongoing yearly disclosures that were and are filed with the company's bank regulator, on the OTC Markets website.

International Companies

In addition to the same requirements for all issuers as set forth above, 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).

Ongoing Requirements

- U.S. OTCQB companies will be required to remain current in their SEC reporting obligations, including either Exchange Act reports or Regulation A+ reports.
- A foreign 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);
- Banks must remain current in their banking reporting requirements;
- All OTC Markets posting and reports must be filed within 45 days following the end of a quarter or 90 days following the end of the fiscal year for US Exchange Act issuers, as required by Regulation A+ for Regulation A+ reporting issuers, and as soon as practicable but no later than 6 months following the end of the fiscal year end or 60 days following the end of a quarter for international companies; where applicable, file a notice of late filing allowing for 5 extra days on a quarterly report and 15 extra days on an annual or semi-annual report;
- All OTCQB companies will be required to post annual certifications on the OTC Markets website;
- All companies are required to comply with all federal, state, and international securities laws and must cooperate with all securities regulatory agencies;
- Must pay the annual fee;
- All companies must respond to OTC Markets inquiries and requests;
- All companies must maintain an updated company profile on the OTC Markets website and must submit a Company Update Form at least once every six months;
- All companies must file interim disclosures in the event the company undergoes a reverse merger or change of control and make new updated certifications and disclosure related to the new business and control persons;
- All OTCQB companies must meet the minimum bid price of \$.01 per share at the close of business of at least one of the previous thirty (30) consecutive calendar days; in the event that the price falls below \$.01, the company will begin a grace period of 180 calendar days to maintain a closing bid price of \$.01 for ten consecutive trading days; and
- Use an SEC registered transfer agent and authorize the transfer agent to provide information to OTC Markets about the company's securities, including but not limited to shares authorized, shares issued and outstanding, and share issuance history.

Officers and directors of the company are responsible for compliance with the ongoing requirements and the content of all information. Entities that do not meet the requirements of either OTCQX or OTCQB will be quoted on the OTC Pink.

Fees

Newly applying entities must pay an initial application fee of \$2,500, which fee is waived for existing OTCQB entities. All OTCQB companies will be required to pay an annual fee of \$10,000.

Removal/Suspension from OTCQB

A company may be removed from the OTCQB 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 OTCQB 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 OTCQB pending investigation or further due diligence review.

A company may voluntarily withdraw from the OTCQB with 24 hours' notice.

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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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