

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

May 31, 2016



## **OTC Markets Amends IPO Listing Standards for OTCQX**

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 OTCQX, which proposed changes are scheduled to become effective on June 13, 2016. The proposed amendments are intended to address and accommodate companies completing an IPO onto the OTCQX and which accordingly have no prior trading history. Such entities either would have a recently cleared Form 211 with FINRA or are completing the 211 application process through a market maker, at the time of their OTCQX application. The initial qualification changes apply to OTCQX Rules for U.S. Companies, U.S. Banks and International Companies.

The OTCQX previously amended its listing standards effective January 1, 2016 to increase the quantitative criteria for listing and to add additional qualitative requirements further aligning the OTCQX with a national stock exchange.

The new amendments will (i) allow companies that meet the \$5 bid price test to use unaudited, interim financials to meet certain OTCQX financial standards; and (ii) provide a phase-in compliance period for US companies to meet the OTCQX corporate governance requirements.

**A complete summary of all OTCQX listing requirements is included below.**

### **Morningstar Collaboration**

In addition, effective May 6, 2016 OTC Markets collaborated with Morningstar, an independent research and equity ratings firm, to provide research and ratings on all OTCQX companies. The research reports are available on a company's quote page on the OTC Markets website. As part of each Morningstar report, the company's equity is rated as to valuation, illustrating an over or under valuation, based on the Morningstar analysis. The Morningstar reports are updated daily.

Morningstar reports are also published under the research section of each OTCQX company's quote page on the OTC Markets website.

A well-known issue for all small- and micro-cap companies is a lack of independent research or analysts' coverage. I've reviewed several of the Morningstar reports and they provide very good information.

### **Specific Amendments for Listing**

#### **Compliance with penny stock exemptions under Rule 3a51-1 of the Exchange Act**

To be eligible to trade on the OTCQX tier of OTC Markets, all companies must meet one of the following penny stock exemptions under Rule 3a51-1 of the Exchange Act: (i) have a bid price of \$5 or more as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application, and as of the most recent fiscal year-end have at least one of the following: (w) net income of \$500,000; (x) net tangible assets of \$1,000,000; (y) revenues of \$2,000,000; or (z) total assets of \$5,000,000; or (ii) have net tangible assets of \$2 million if the company has been in continuous operation for at least three years, or \$5,000,000 if the company has been in continuous operation for less than three years, which qualification can be satisfied as of the end of a fiscal period or as a result of an interim capital raise; or (iii) have average revenue of at least \$6,000,000 for the last three years.

The OTCQX is amending its eligibility requirements to allow for the use of CEO or CFO certified pro forma financial statements to satisfy the financial qualitative criteria associated with the \$5 bid price penny stock exemption, where the company has not had a prior public market for its securities and where the company has an approved Form 211 with a bid price greater than \$5 per share.

A company seeking to rely on pro forma financial statements must file such statements through the EDGAR database or on OTC Markets, and such statements must be certified by the company CEO or CFO. A company may also rely on its annual, quarterly or current financial statements filed with EDGAR in accordance with the registration requirements under the Securities Act of 1933 (such as a Form S-1) or Securities Exchange Act of 1934 (such as a Form 10) or its Exchange Act reports (i.e., Form 10-Q or 10-K) as long as such financial statements reflect information as of the most recent fiscal year-end.

In addition, a company must make a written request to OTC Markets for a waiver of the requirement that it maintain a bid price over \$5 per share as of the close of business on each of the 30 consecutive days prior to the date of the application. OTC Markets may grant or deny the waiver at its sole discretion.

This amendment will allow a company that is completing the IPO process and has an approved 15c2-11 at \$5.00 or greater to meet the penny stock exemption for OTCQX eligibility. In addition, such company will not need to wait until its current fiscal year-end audit is completed to satisfy the qualification criteria. This will be especially helpful for a company that is completing an IPO in Q1 of its fiscal year.

The amendment related to compliance with the penny stock exemptions applies to all issuers seeking application on the OTCQX including U.S. companies, international companies and banks.

## **Corporate Governance Eligibility Criteria**

The OTC Markets are also amending the requirements related to its corporate governance eligibility criteria for U.S. companies applying to the OTCQX in conjunction with an initial public offering. The amendment will allow a phase-in period to satisfy full compliance with the corporate governance requirements. The corporate governance amendments apply to U.S. and U.S. Premier applicants only.

Effective January 1, 2016, to list on OTCQX, U.S. companies are required to (i) have a minimum of 2 independent board members; (ii) have an audit committee comprised of a majority of independent directors; and (iii) conduct an annual shareholders meeting and submit annual financial reports to shareholders at least 15 calendar days prior to such meeting.

The new amendments, scheduled to be effective June 13, 2016, will allow a phase-in for compliance with these requirements for companies making application to the OTCQX in connection with its initial public offering and initial Form 211 application to FINRA. In particular: (i) at least one member of the board of directors and the audit committee must be independent at the time of the OTCQX application; and (ii) at least 2 members of the board of directors and a majority of the members of the audit committee must be independent at the later of 90 days after the company begins trading on the OTCQX or the company's next shareholder meeting. Moreover, the company's next shareholder meeting must be held within one year of the company joining OTCQX.

## **A Complete Summary of OTCQX Initial and Ongoing Listing Requirements**

The following is a complete summary of the OTCQX listing standards as in effect on January 1, 2016 and including the proposed amendments scheduled to go effective June 13, 2016.

The OTCQX divides its listing criteria between U.S. companies and international companies, though they are very similar. The OTCQX has two tiers of quotation for U.S. companies: (i) OTCQX U.S. Premier (also eligible to quote on a national exchange); and (ii) OTCQX U.S. and two tiers for international companies: (i) OTCQX International Premier; and (ii) OTCQX International. Quotation is available for American Depository Receipts (ADR's) or foreign ordinary securities of companies traded on a Qualifying Foreign Stock Exchange, and an expedited application process is available for such companies. The OTCQX also has specific listing criteria and rules for banks, which criteria and rules are not included in this blog.

Issuers on the OTCQX must meet specified eligibility requirements. Moreover, OTC Markets have the discretionary authority to allow quotation to substantially capitalized acquisition entities that are analogous to SPAC's.

## OTCQX – Requirements for Admission

To be eligible to be quoted on the OTCQX U.S., companies must:

- Have \$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) \$2 million in revenues; (ii) \$1 million in net tangible assets; (iii) \$500,000 in net income; or (iv) \$5 million in market value of publicly traded securities;
- Have a market capitalization of at least \$10 million on each of the 30 consecutive calendar days immediately preceding the company's application;
- Meet one of the following penny stock exemptions under Rule 3a51-1 of the Exchange Act: (i) have a bid price of \$5 or more as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application and, as of the most recent fiscal year-end, have at least one of the following: (a) net income of \$500,000; (b) net tangible assets of \$1,000,000; (c) revenues of \$2,000,000; or (d) total assets of \$5,000,000; or (ii) have net tangible assets of \$2 million if the company has been in continuous operation for at least three years, or \$5,000,000 if the company has been in continuous operation for less than three years, which qualification can be satisfied as of the end of a fiscal period or as a result of an interim capital raise; or (iii) have average revenue of at least \$6,000,000 for the last three years;
- Effective June 13, 2016, a company may satisfy the financial qualitative criteria associated with the \$5 bid price penny stock exemption, where the company has not had a prior public market for its securities and where the company has an approved Form 211 with a bid price greater than \$5 per share by using its most recent annual, quarterly or current event report filed through EDGAR or a pro forma financial statement, signed and certified by the CEO or CFO, posted through EDGAR or the OTC Markets Disclosure and News Service. In such case, the company may apply in writing for an exemption from the requirement to maintain a bid price over \$5 per share as of the close of business on each of the 30 consecutive days prior to the company's application day, which exemption may be granted by OTC Markets at its sole and absolute discretion;

- Not be a blank check or shell company as defined by the Securities Act of 1933 (“Securities Act”);
- Not be in bankruptcy or reorganization proceedings;
- Be in good standing in its state of incorporation and in each state in which it conducts business;
- Have a minimum of 50 beneficial shareholders owning at least one round lot (100 shares) each;
- Be quoted by at least one market maker on the OTC Link;
- Have a minimum bid price of \$0.25 per share for its common stock as of the close of business on each of the 30 consecutive calendar days immediately preceding the company’s application for OTCQX. If (i) there has been no prior public market for the company’s securities in the S. and (ii) FINRA has approved a Form 211, then the company may apply to OTC Markets for an exemption from the minimum bid price requirements, which exemption is at the sole discretion of OTC Markets. In the event that the company is a Seasoned Public Issuer (i.e., has been in operation and quoted on either OTC Link, the OTCBB or an exchange for at least one year) that completed a reverse stock split within 6 months prior to applying for admission to OTCQX U.S., the company must have a minimum bid price of \$0.25 per share for its common stock as of the close of business on each of the 5 consecutive trading days immediately preceding the company’s application for OTCQX, after the reverse split;

- Have GAAP compliant (i) audited balance sheets as of the end of each of the two most recent fiscal years, or as of a date within 135 days if the company has been in existence for less than two fiscal years, and audited statements of income, cash flows and changes in stockholders' equity for each of the fiscal years immediately preceding the date of each such audited balance sheet (or such shorter period as the company has been in existence), and must include all going concern disclosures including plans for mitigation; and GAAP compliant (ii) unaudited interim financial reports, including a balance sheet as of the end of the company's most recent fiscal quarter, and income statements, statements of changes in stockholders' equity and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year;
- Be included in a Recognized Securities Manual or be subject to the reporting requirements of the Exchange Act; and
- Have an OTCQX Advisor.

To be eligible to be quoted on the OTCQX U.S. Premier, companies must:

- Satisfy all of the eligibility requirements for OTCQX U.S. set forth above;
- Meet one of the following: (i) Market Value Standard – have at least (a) \$15 million in public float and (b) a market capitalization of at least \$50 million, each as of the close of business on each of the 30 consecutive days immediately preceding the company's application; or (ii) Net Income Standard – have at least (a) \$1 million in public float; and (b) a market capitalization of at least \$10 million, each as of the close of business on each of the 30 consecutive days immediately preceding the company's application; and (c) \$750,000 in net income as of the company's most recent fiscal year-end;
- Have at least 500,000 publicly held shares;
- Have a minimum of 50 beneficial shareholders owning at least one round lot (100 shares) each;
- Have a minimum of 100 beneficial shareholders owning at least one round lot (100 shares) each;



- Have a minimum bid price of \$4.00 per share for its common stock as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application for OTCQX. If (i) there has been no prior public market for the company's securities in the S. and (ii) FINRA has approved a Form 211 and (iii) the bid price is equal to or greater than \$1.00, then the company may apply to OTC Markets for an exemption from the 30-day minimum bid price requirements, which exemption is at the sole discretion of OTC Markets. In the event that the company is a Seasoned Public Issuer (i.e., has been in operation and quoted on either OTC Link, the OTCBB or an exchange for at least one year) that completed a reverse stock split within 6 months prior to applying for admission to OTCQX U.S., the company must have a minimum bid price of \$4.00 per share for its common stock as of the close of business on each of the 5 consecutive trading days immediately preceding the company's application for OTCQX, after the reverse split;
- Have at least \$4 million in stockholder's equity;
- Have a 3-year operating history; and
- Conduct annual shareholders' meetings and submit annual financial reports to its shareholders at least 15 calendar days prior to such

To be eligible to be quoted as an OTCQX U.S. Acquisition Company, companies must:

- Satisfy all of the eligibility requirements for OTCQX U.S. set forth above;
- Have a minimum bid price of \$5.00 per share for its common stock as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application for OTCQX; and
- Be subject to the reporting requirements of the Exchange Act.
- Corporate Governance Requirements for all OTCQX U.S., U.S. Premier and U.S. Acquisition Companies:
  - Have at least 2 independent board members on the board of directors;
  - Have an audit committee comprised of a majority of independent directors; and

- Conduct annual shareholders' meetings and submit annual financial reports to its shareholders at least 15 calendar days prior to such.

Effective June 13, 2016, the OTCQX will allow a phase-in for compliance with these requirements for companies making application to the OTCQX in connection with its initial public offering and initial Form 211 application to FINRA. In particular: (i) at least one member of the board of directors and the audit committee must be independent at the time of the OTCQX application; and (ii) at least 2 members of the board of directors and a majority of the members of the audit committee must be independent at the later of 90 days after the company begins trading on the OTCQX or the company's next shareholder meeting. Moreover, the company's next shareholder meeting must be held within one year of the company joining OTCQX.

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) 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 \$5 or more as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application, and as of the most recent fiscal year-end have at least one of the following: (a) net income of \$500,000; (b) net tangible assets of \$1,000,000; (c) revenues of \$2,000,000 or (d) total assets of \$5,000,000; 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 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;

Effective June 13, 2016, a company may satisfy the financial qualitative criteria associated with the \$5 bid price penny stock exemption, where the company has not had a prior public market for its securities and where the company has an approved Form 211 with a bid price greater than \$5 per share by using its most recent annual, quarterly or current event report filed through EDGAR or a pro forma financial statement, signed and certified by the CEO or CFO, posted through EDGAR or the OTC Markets Disclosure and News Service. In such case, the company may apply in writing for an exemption from the requirement to maintain a bid price over \$5 per share as of the close of business on each of the 30 consecutive days prior to the company's application day, which exemption may be granted by OTC Markets at its sole and absolute discretion.

- Be quoted by at least one 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 a shell company or blank check company;
- Not be in bankruptcy or reorganization proceedings;
- Have a minimum of 50 beneficial shareholders owning at least one round lot (100 shares) each;
- Have a minimum bid price of \$0.25 per share for its common stock as of the close of business on each of the 30 consecutive calendar days immediately preceding the company's application for OTCQX. If there has been no prior public market for the company's securities in the S., FINRA must have approved a Form 211 with a minimum bid price of \$0.25 or greater. If the company is applying to the OTCQX immediately following a delisting from a national securities exchange, it must have a minimum bid price of at least \$0.10.
- 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, at its sole and absolute discretion, consider the company’s eligibility for OTCQX International;
- Have a global market capitalization of at least \$10 million on each of the 30 consecutive calendar days immediately preceding its application day;
- 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); and
- Have a Principal American Liaison (PAL).

### **Explanation of 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.

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;
- Have a global market capitalization of at least \$1 billion on each of the 30 consecutive calendar days immediately preceding its application day; and
- Have one of the following over the prior 6 months: (i) average weekly trading volume of at least 200,000 shares; or (ii) average weekly trading volume of at least \$1 million.

### **Application to the OTCQX**

All U.S. companies that are quoted on the OTCQX must submit an application and pay an application fee. The application consists of (i) the application with information related to the company; (ii) the contractual agreement with OTCQX for quotation; (iii) personal information for each executive officer, director and beneficial owner of 5% or more of the securities, except for companies already traded on a foreign exchange or moving from a recognized U.S. exchange; (iv) designation of the OTCQX Advisor; (v) appointment form for the OTCQX Advisor; and (vi) a digital company logo.

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; (ii) 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 PAL; and (vii) a copy of the company's logo in encapsulated postscript (EPS) format.

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**

A company must post its initial disclosure documents on the OTC Markets website as a precondition to acceptance of an application for quotation, and such posting must be confirmed with a letter by the company OTCQX ADVISOR/PAL.

Initial disclosure documents include: (i) SEC reports if the company is subject to the Exchange Act reporting requirements; (ii) current information in accordance with OTC Markets disclosure guidelines including financial statements; (iii) if the company is a Regulation A reporting company, it must be current in such reporting requirements; (iv) if the company was an SEC Reporting Company immediately prior to joining OTCQX and has a current 10-K on file with the SEC, or was a Regulation A Reporting Company immediately prior to joining OTCQX and has a current 1-K on file with the SEC, the company is not required to post an information statement through the OTC Markets, but subsequent to joining OTCQX must post all annual, quarterly, interim and current reports required pursuant to the Disclosure Guidelines; and (v) for international companies 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.

A company must supplement and update any changes to the initial disclosure within 30 days of acceptance of its application for quotation. International companies must follow initial disclosure with a PAL Letter of Introduction.

## **Requirements for Ongoing Qualification for Quotation on the OTCQX**

The following is a summary of the ongoing responsibilities for U.S. OTCQX quoted securities:

- Compliance with Rules – OTCQX quoted companies must maintain compliance with the OTCQX rules including disclosure requirements. The company's OTCQX ADVISOR/PAL is responsible for reporting their/its potential conflicts of interest;
- Compliance with Laws – OTCQX quoted companies must maintain compliance with state and federal securities laws and must cooperate with any securities regulators, 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 their Exchange Act reporting requirements;
- Retention and Advice of OTCQX ADVISOR – Companies must have an OTCQX ADVISOR at all times and are required to seek the advice of such OTCQX ADVISOR as to their OTCQX obligations;
- Duty to Inform OTCQX ADVISOR – As part of its duty to seek advice from its OTCQX ADVISOR, a company has an obligation to provide disclosure and information to the OTCQX ADVISOR, including “complete access to information regarding the company, including confidential and propriety information”; access to personnel; updated personal information forms; and timely responses to requests for information or documents;
- Notification of Resignation or Dismissal of OTCQX ADVISOR – A company must immediately notify OTC Markets in writing of the resignation or dismissal of the OTCQX ADVISOR for any reason;
- Payment of Fees – a company must pay its annual fees to OTC Markets;



- Sales of Company Securities by Affiliates – Prior to transacting in the company's securities through a broker-dealer, each officer, director or other affiliate of the company shall make its status as an affiliate of the company known to the broker-dealer;
- Distribution and Publication of Proxy Statements – The company shall solicit proxies for all meetings of shareholders. If the company is a Regulation A Reporting Company, the company shall publish, on EDGAR through SEC Form 1-U, copies of all proxies, proxy statements and all other material mailed by the company to its shareholders with respect thereto, within 15 days of the mailing of such material. If the company is not an SEC Reporting Company or a Regulation A Reporting Company, the company shall publish, through the OTC Markets, copies of all proxies, proxy statements and all other material mailed by the company to its shareholders with respect thereto, within 15 days of the mailing of such material;
- Redemption Requirements – All redemptions must be either by lot or pro rata and require 15 days' notice;
- Changes in Form or Nature of Securities – All changes in form, nature or rights associated with securities quoted on the OTCQX require 20 days' advance notice to OTC Markets;
- Transfer Agent – Companies are required to use the services of a registered transfer agent and authorize such transfer agent to share information with OTC Markets;
- Accounting Methods – Any change in accounting methods requires advance notice of such change and its impact, to OTC Markets;
- Change in Auditors – All changes in auditor requires prompt notification and a letter from such auditor analogous to Form 8-K requirements;
- 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) Companies not subject to the Exchange Act reporting requirements must remain current with the annual, quarterly and current reporting requirements of OTC Markets, including posting annual audited financial statements prepared in accordance with GAAP and audited by a PCAOB auditor; (iii) Regulation A reporting companies shall maintain current compliance with their Regulation A reporting requirements and within 45 days of the end of the first and third fiscal quarters shall file quarterly disclosure including all information required in a semi-annual report (i.e., the company shall file quarterly and not just semi-annual reports); (iv) file a notification of late filing when necessary; (v) quickly release disclosure of material news and recent developments, whether positive or negative, through a press release on the OTC Markets website (in addition to SEC filings); (vi) an OTCQX company should also act promptly to dispel unfounded rumors which result in unusual market activity or price variations;
- General requirements regarding integrity – OTCQX quoted companies are expected to act professionally and uphold the OTC Markets standards for “high quality,” and to release news and reports that are prepared factually and accurately with neither excessive puffery or conservatism; companies must not report or act in a way that could be misleading; must not inundate with non-material releases; and must not make misleading premature announcements;
- Maintain Company Updated Profile – OTCQX quoted companies are required to maintain updated, accurate information on their profile page and to verify same every six months;
- OTCQX ADVISOR Letter – Within 120 days of each fiscal year-end and after the posting of the company’s annual report, every company must submit an annual OTCQX ADVISOR letter;

- To remain eligible for trading on the OTCQX U.S. tier, the company's common stock must have a minimum bid price of \$0.10 per share as of the close of business for at least one of every thirty consecutive calendar days. In the event that the minimum bid price for the company's common stock falls below \$0.10 per share at the close of business for thirty consecutive calendar days, a grace period of 180 calendar days to regain compliance shall begin, during which the minimum bid price for the company's common stock at the close of business must be \$0.10 for ten consecutive trading days;
- To remain eligible for trading on the OTCQX U.S. tier, the company must maintain a market capitalization of at least \$5 million for at least one of every 30 consecutive calendar days;
- To remain eligible for trading on the OTCQX U.S. tier, the company must have at least 2 market makers quote the stock;
- To remain eligible for trading on the OTCQX S. Premier tier, the company's common stock must have a minimum bid price of \$1.00 per share as of the close of business for at least one of every thirty consecutive calendar days. In the event that the minimum bid price for the company's common stock falls below \$1.00 per share at the close of business for thirty consecutive calendar days, a grace period of 180 calendar days to regain compliance shall begin, during which the minimum bid price for the company's common stock at the close of business must be \$1.00 for ten consecutive trading days. In the event that the company's common stock does not regain compliance during the grace period, the company shall have a fast-track option to have its securities traded on the OTCQX U.S. tier;

- To remain eligible for trading on the OTCQX S. Premier tier, the company must meet one of the following standards: (i) Market Value Standard – have at least (a) \$15 million in public float and (b) a market capitalization of at least \$35 million, each as of the close of business on each of the 30 consecutive days immediately preceding the company’s application; or (ii) Net Income Standard – have at least (a) \$1 million in public float; and (b) a market capitalization of at least \$5 million, each as of the close of business on each of the 30 consecutive days immediately preceding the company’s application; and (c) \$500,000 in net income as of the company’s most recent fiscal year-end;
- To remain eligible for trading on the OTCQX S. Premier tier, the company must have at least \$1 million in stockholders’ equity;
- To remain eligible for trading on the OTCQX S. Premier tier, the company must have at least 4 market makers quoting the stock;
- All U.S. companies, whether U.S. standard or U.S. Premier, must maintain corporate governance standards including independent director and audit committee requirements. A company must notify OTC Markets immediately of a disqualification and must regain compliance by its next annual shareholder meeting or one year from the date of non-compliance.

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 with applicable securities laws of their country of domicile and applicable 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 their 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 their 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;
- To remain eligible for OTCQX International, the company must maintain a minimum bid price of \$0.10 as of the close of business for at least one of every 30 consecutive calendar days. In the event that the minimum bid price for the company's common stock falls below \$0.10 per share at the close of business for thirty consecutive calendar days, a grace period of 180 calendar days to regain compliance shall begin, during which the minimum bid price for the company's common stock at the close of business must be \$0.10 for ten consecutive trading days;
- To remain eligible for OTCQX International, the company must maintain a market capitalization of at least \$5 million for at least one of every 30 consecutive calendar days;

- To remain eligible for OTCQX International, the company must maintain at least 2 market makers;
- 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 (a) continues to satisfy the OTCQX quotation requirements; and (b) 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; and
- To remain eligible for the OTCQX International Premier, the company must have (i) a global market capitalization of at least \$500 million for at least one of every 30 consecutive calendar days; (ii) of one following over the prior 6 months (a) an average weekly trading volume of at least 100,000 shares or (b) an average weekly trading dollar volume of at least \$500,000; and (iii) at least 4 market makers.

## **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, at 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 \$20,000. The annual fee is based on the calendar year and is due by December 1st each year.

OTCQX Advisor (formerly known as Designated Advisors for Disclosure ("DAD")) and Principal American Liaison ("PAL") Requirements

As part of the rule changes, OTC Markets has renamed its U.S. Designated Advisor for Disclosure (DAD) to an OTCQX Advisor. All U.S. companies that are quoted on the OTCQX must have either an attorney or an Investment Bank OTCQX Advisor. A company may appoint a new OTCQX Advisor at any time, provided that the company retains an approved OTCQX Advisor at all times.

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, that 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.

All OTCQX Advisors and PALs must be approved by OTCQX after submitting an application. Eligibility to act as an OTCQX Advisor or PAL is limited to experienced and qualified securities attorneys or qualified FINRA member investment banking firms. I am an approved OTCQX Advisor and PAL.

The primary roles of an OTCQX Advisor and PAL include (i) to provide advice and guidance to a company in meeting its OTCQX obligations; (ii) to provide professional guidance to the issuer on creating investor demand as they build long-term relationships with management; (iii) to assist companies in discerning the information that is material to the market and should be disclosed to investors; and (iv) to provide a professional review of the company's disclosure. The OTCQX puts a great deal of onus on the OTCQX Advisor/PAL to be responsible for the company which it sponsors, emphasizing the negative impact on the OTCQX Advisor's reputation for sponsoring companies that are not of acceptable quality. In addition to providing advice and counsel to a company, an OTCQX Advisor/PAL is required to conduct investigations to confirm disclosures. An OTCQX Advisor/PAL must submit a Letter of Introduction and subsequent annual letters confirming their duties and the attesting to the disclosures made by the company.



## 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 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 2016