

GUIDE TO JOINING THE OTCQX OR THE OTCQB MARKETS FOR CANADIAN AND OTHER FOREIGN ISSUERS

Accessing United States Capital Markets

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Guide to Joining the OTCQX or the OTCQB Markets for Canadian and Other Foreign Issuers

Accessing United States Capital Markets

Dorsey & Whitney LLP is an international law firm with offices throughout the United States, Canada, Europe, and Asia, and is a pre-approved Sponsor for issuers on the OTCQX or the OTCQB markets. Dorsey provides U.S. legal advice in Canada. This *Guide to Joining the OTCQX or the OTCQB Markets for Canadian Issuers* was prepared by the following attorneys at Dorsey & Whitney LLP with the assistance of OTC Markets Group Inc.

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For more U.S. legal topics of specific interest to Canadian companies, investors, lawyers and accountants, see or subscribe to the Cross-Border Counselor blog, co-edited by Chris Doerksen, James Guttman and Randal Jones, at crossbordercounselor.com.

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This Guide is intended to provide general information for Canadian and foreign issuers with respect to planning to trade on the OTCQX or OTCQB markets and is not intended to provide definitive legal or tax advice. No legal, tax or business decisions should be based solely on its content. None of Dorsey & Whitney LLP, OTC Markets Group Inc. or any of their affiliates guarantees the completeness of the information contained in this Guide and we are not responsible for any errors or omissions in, or your use of, or reliance on, the information contained in this Guide.

INTRODUCTION

The United States capital markets are among the world's largest and most stable markets to access capital and liquidity for securityholders. In the past, many Canadian companies have elected not to access the United States capital markets due to high regulatory, accounting and compliance costs related to U.S. securities laws, including the Sarbanes-Oxley Act of 2002¹ ("**Sarbanes-Oxley**").

The OTCQX and the OTCQB markets offer Canadian and other foreign companies an alternative to traditional stock exchange listings in the United States. Foreign issuers that (i) are not required to register a class of securities under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), (ii) have their securities listed on a qualified foreign stock exchange, and (iii) meet certain additional requirements, can have their securities traded on the OTCQX or the OTCQB markets, without need for registration or reporting with the Securities and Exchange Commission ("**SEC**") or compliance with Sarbanes-Oxley. Foreign issuers with a class of securities registered under Section 12(g) of the Exchange Act or that file reports with the SEC pursuant to Regulation A may also trade on the OTCQX or the OTCQB markets.

More and more Canadian companies are considering joining OTCQX or the OTCQB to provide investors in the United States with access to investment opportunities in their equity securities. OTCQX or OTCQB can provide an effective alternative to listing on the New York Stock Exchange ("**NYSE**"), NYSE American or NASDAQ and provide liquidity for investors in both Canadian and U.S. marketplaces.

As a Canadian company, you may be asking...

Q. What are the OTCQX, OTCQB and Pink Markets, and what is the difference between them?

A. The OTC Markets Group Inc. (the "**OTC Markets Group**")² operates three over-the-counter markets on which shares may be traded in the United States. It identifies them as follows:

The OTCQX® Best Market is for established, investor-focused U.S. and international companies. To qualify for the OTCQX market, companies must meet high financial standards, follow best practice corporate governance, demonstrate compliance with U.S. securities laws, be current in their disclosure, and have a professional third-party sponsor introduction. Penny stocks and companies in bankruptcy cannot qualify for OTCQX. The companies found on OTCQX are distinguished by the integrity of their operations and diligence with which they convey their qualifications.

The OTCQB® Venture Market is for early-stage and developing U.S. and international companies. To be eligible, companies must be current in their reporting and undergo an annual verification and management certification process. Companies must meet a minimum US\$0.01 bid test and may not be in bankruptcy.

The Pink Open Market provides brokers a platform for transparent trading and best execution in any security. There are no financial standards or disclosure requirements. A wide spectrum of companies are traded on this market, including foreign companies that limit their disclosure in the U.S., penny stocks and shells, as well as distressed, delinquent, and dark companies not willing or able to provide information to investors.

¹ The Sarbanes-Oxley Act of 2002 ([Pub.L. 107-204](#), 116 [Stat.](#) 745, enacted July 30, 2002), also known as the Public Company Accounting Reform and Investor Protection Act of 2002.

² OTC Markets Group operates the OTCQX® Best Market, the OTCQB® Venture Market, and the Pink® Open Market for 11,000 U.S. and global securities. Through OTC Link® ATS, the OTC Markets Group connects a diverse network of broker-dealers that provide liquidity and execution services. The OTC Markets Group enables investors to easily trade through the broker of their choice and empower companies to improve the quality of information available for investors. OTC Link ATS is operated by OTC Link LLC, member FINRA / SIPC and SEC regulated ATS.

The OTCQX and the OTCQB markets are available only to issuers that apply for inclusion and that meet certain standards specified by OTC Markets Group. In our experience, most issuers that seek to join an OTC market will join OTCQX if they qualify for inclusion on the OTCQX, with issuers that do not qualify for OTCQX seeking inclusion on OTCQB. Issuers that make no effort to join the OTCQX or OTCQB market, and that are not listed on a U.S. national securities exchange, may find their shares quoted on the Pink market, because broker-dealers are permitted to transact in this market without the involvement of the issuer.

Q. What more can you say about the OTCQX Market?

- A. The OTCQX is the top-tier of the markets operated by OTC Markets Group. The OTCQX market is not a stock exchange, or regulated market. Instead, OTCQX is a market with its own rules and standards. There are two tiers and standards available to international companies on OTCQX: OTCQX International Premier and OTCQX International. Each is designed to meet the needs of international public companies by providing a trading platform in the United States that offers many of the benefits of traditional U.S. stock exchanges with lower regulatory and reporting costs. The two OTCQX tiers have different requirements, which are explained below. The main difference is that criteria for the OTCQX International Premier tier contains all of the criteria for OTCQX International tier, as well as additional requirements.

Q. What are the general requirements for joining the OTCQX International Market?

- A. Generally, an issuer may qualify for OTCQX International by satisfying OTCQX financial and disclosure standards and applicable U.S. securities law requirements. For Canadian or international issuers qualifying under the OTCQX International standards, these requirements include:

- **Penny Stock Exemption** – A company’s security must meet one of the following exemptions consistent from the definition of a “Penny Stock” under Rule 3a51-1 of the Exchange Act: (1) the company has net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of US\$2,000,000, if the company has been in continuous operation for at least three years, or US\$5,000,000, if the company has been in continuous operation for less than three years, as demonstrated by audited financial statements dated less than fifteen months prior to the company’s Application Day³; (2) the company has average revenue of at least US\$6,000,000 for the last three years, as demonstrated by audited financial statements dated less than fifteen months prior to the company’s Application Day; or (3) the security has an inside bid quotation of US\$5.00 or more on the close of business on each of the 30 consecutive calendar days immediately preceding the company’s Application Day, and as of the most recent fiscal year end have at least one of the following (A) net income of US\$500,000; (B) net tangible assets of US\$1,000,000; (C) revenues of US\$2,000,000; or (D) total assets of US\$5,000,000.

In the event that there has not been a prior public market for the company’s securities in the U.S., and FINRA⁴ has approved a Form 211 with a bid price greater than US\$5.00 per share or OTC Markets Group conducts an initial review under Rule 15c2-11, then the company may apply in writing for an exemption from the requirement to maintain a bid price over US\$5.00 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 Group in its sole and absolute discretion. In such a case, the company may demonstrate compliance with 3(A) - (D) above using its most recent annual, quarterly or current event report filed through EDGAR or the OTC Disclosure & News Service or a pro-

³ The OTCQX Rules define “**Application Day**” as the calendar day on which a company submits all required elements of the OTCQX Application Materials.

⁴ The Financial Industry Regulatory Authority, Inc., which regulates U.S. broker-dealers.

forma financial statement (signed and certified by the CEO or CFO) posted through EDGAR or the OTC Disclosure & News Service.

- **SEC Registered, Regulation A Reporting or Listed on a Qualified Non-U.S. Stock Exchange and Rule 12g3-2(b) Exempt** – A company must satisfy one of the following three conditions: (1) the company must have a class of its securities registered under Section 12(g) of the Exchange Act, and be current and fully compliant with its obligations under Section 12(g) (an “**SEC Reporting Company**”); or (2) the company must be a Regulation A Reporting Company⁵ and be current and fully compliant with its SEC reporting obligations; or (3) the company must have its securities listed on a qualifying foreign stock exchange (“**Qualified Foreign Stock Exchange**”) and be eligible to rely on the exemption from Exchange Act registration provided by Rule 12g3-2(b) under the Exchange Act (“**Rule 12g3-2(b)**”), and be current and fully compliant with its obligations under that exemption. Qualified Foreign Stock Exchanges in Canada include the Toronto Stock Exchange (“**TSX**”), the TSX Venture Exchange (“**TSXV**”), the Aequitas Neo Exchange (“**NEO**”), and the Canadian Securities Exchange (“**CSE**”).⁶ Other Qualified Foreign Stock Exchanges include stock exchanges in Australia, China, Israel, Japan and the United Kingdom among other countries. Most Canadian companies that join the OTCQX satisfy the third condition, being listed on a Qualified Foreign Stock Exchange and exempt from SEC reporting under Rule 12g3-2(b). For further information regarding Rule 12g3-2(b), see “*Overview of Rule 12g3-2(b) Exemption*” below. Certain additional corporate governance requirements apply to an SEC Reporting Company or a Regulation A Reporting Company.
- **Priced Quotation** – A company must have proprietary priced quotations published by at least one Market Maker⁷ in OTC Link[®] ATS⁸. A company applying to OTCQX in conjunction with an initial review for quotation eligibility in accordance with Exchange Act Rule 15c2-11 has three business days to meet this requirement. For companies that do not have existing Market Maker quotes, it may be necessary to identify a Market Maker to file a Form 211 with FINRA to authorize the commencement of quotations or for the OTC Markets Group to conduct an initial review under Rule 15c2-11.
- **Bankruptcy** – A company must not be subject to any Bankruptcy⁹ or reorganization proceedings.
- **Share Price** – A company must have a minimum bid price of US\$0.25 per share as of the close of business on each of the 30 consecutive calendar days immediately preceding a company’s Application Day. In the event that: (i) there has been no prior public market for a company’s securities in the U.S., a company may be considered for OTCQX so long as

⁵ The OTCQX Rules define “**Regulation A Reporting Company**” as a company incorporated in the U.S. or Canada, subject to the reporting obligations under Tier 2 of Regulation A under the Securities Act.

⁶ The additional corporate governance requirements for an SEC Reporting Company or a Regulation A Reporting Company that is not listed on a Qualified Foreign Stock Exchange are (i) having a board of directors that includes at least two independent directors, (ii) having an audit committee, a majority of the members of which are independent directors, and (iii) for a company with common stock, voting preferred stock or their equivalent, conducting annual shareholders’ meetings and making annual financial reports available to shareholders at least 15 calendar days prior to such meetings. Trusts, funds and similar companies may be exempted from these corporate governance requirements.

⁷ The OTCQX Rules define “**Market Maker**” as a firm that stands ready to buy and sell a particular security on a regular and continuous basis at a publicly quoted price.

⁸ The OTCQX Rules define “**OTC Link ATS**” means the SEC registered alternative trading system operated by OTC Link LLC a wholly owned subsidiary of OTC Markets Group.

⁹ The OTCQX Rules define “**Bankruptcy**” to mean, with respect to a company, (i) an adjudication that it is bankrupt or insolvent, (ii) an admission of its inability to pay its debts as they mature, (iii) it’s making a general assignment for the benefit of creditors, (iv) its filing of a petition in bankruptcy or a petition for relief under any section of the United States Bankruptcy Code or any other bankruptcy or insolvency statute, or (v) the involuntary filing against it of any such petition that is not discharged within 60 days thereafter.

FINRA has approved a Form 211 relating to a company's securities with a bid price equal to or greater than US\$0.25 or the company's securities are traded on a Qualified Foreign Stock Exchange at a price equal to or greater than US\$0.25; (ii) the company is applying for admission to OTCQX in conjunction with an initial review for quotation eligibility or (iii) a company is applying for admission to the OTCQX immediately subsequent to delisting from a national securities exchange, a company may be considered for OTCQX so long as it has a minimum bid price of at least US\$0.10. Companies that are granted an exemption from having an initial bid price of US\$0.25 per share for 30 days prior to applying to the OTCQX, either because they recently cleared a Form 211 through FINRA or because they are delisting from a national securities exchange, need to maintain the applicable initial bid price for their first 30 days on OTCQX.

- **Market Capitalization** – A company must have a Global Market Capitalization¹⁰ of at least US\$10,000,000 on each of the 30 consecutive calendar days immediately preceding the company's Application Day.
- **Ongoing Operations** – A company must have ongoing operations and not be a Shell Company¹¹ or Blank-Check Company¹²; provided, however, that OTC Markets Group will consider quoting a special purpose acquisition company ("**SPAC**") on the OTCQX on a case-by-case basis.
- **Shareholders** – A company must have at least 50 beneficial shareholders, each owning at least 100 shares.
- **Select a Sponsor ("Sponsor")** – A company must select a Sponsor to submit a Letter of Introduction to the OTC Markets Group.¹³ The Sponsor: (i) provides advice to the company regarding its compliance with Exchange Act Rule 12g3-2, if applicable, and the OTCQX Rules; (ii) conducts a review of a company's Information¹⁴ to confirm that the company has posted on the OTC Disclosure & News Service all Information required to be made publicly available pursuant to Exchange Act Rule 12g3-2(b), if applicable, and that the company is otherwise in compliance with the OTCQX Rules; (iii) provides assistance to a company in connection with the company's response to requests and inquiries from OTC Markets Group; (iv) provides OTC Markets Group with a Letter of Introduction, and; (v) notifies OTC Markets Group when the company's Initial Disclosure (discussed in section I.C below) is posted through the OTC Disclosure & News Service or EDGAR. Dorsey & Whitney LLP is a pre-approved Sponsor.

¹⁰ The OTCQX Rules define "**Global Market Capitalization**" as the total value of a company's outstanding shares.

¹¹ The OTCQX Rules define "**Shell Company**" as an entity (i) with no or nominal operations, (ii) with limited operations, if OTC Markets Group in its sole and absolute discretion determines such entity to be a Shell Company, (iii) with no or nominal assets, or (iii) defined as a "Shell Company" under Section 405 of the Securities Act (as hereinafter defined). For purposes of this definition, the term "nominal operations" includes, but is not limited to, operations with the primary purpose of avoiding classification of such entity as a Shell Company.

¹² The OTCQX Rules define "**Blank-Check Company**" as an entity that (i) has no specific business plan or purpose and (ii) is issuing "penny stock," as defined in Rule 3a51-1 under the Exchange Act.

¹³ Certain categories of companies may request that the OTC Markets Group grant them an exemption from this requirement, including (i) a company that applies to join OTCQX immediately subsequent to delisting from a national securities exchange including the NYSE, NYSE American or NASDAQ, and is in good standing with the exchange at the time of delisting, (ii) a company with a class of securities listed on a national securities exchange including the NYSE, NYSE American or NASDAQ, that applies to have a separate class of securities traded on OTCQX, and (iii) a company that applies to upgrade to the OTCQX from the OTCQB within the first year of beginning quotation on the OTCQB. The OTC Markets Group will decide, in its sole discretion, whether to grant the exemption.

¹⁴ The OTCQX Rules define "**Information**" as information provided by a company through the OTC Disclosure & News Service or on EDGAR; *provided, however*, that in the event the company voluntarily delisted from a national securities exchange including the NYSE, NYSE American or NASDAQ, the term shall not include any such information provided on EDGAR prior to such delisting.

- **Transfer Agent** – A Canadian company must retain a transfer agent that participates in the Transfer Agent Verified Shares Program.¹⁵ Additionally, a Canadian company must authorize its transfer agent to provide to OTC Markets Group upon its request, certain information relating to the Company’s securities. A list of participating transfer agents in the Transfer Agent Verified Shares Program may be found at [this link](#).¹⁶
- **Fees** – A company must pay a non-refundable application fee of US\$5,000 at the time the company submits its OTCQX application to OTC Markets Group and an annual fee of US\$23,400 (pro-rated for the first year). Fees are subject to adjustments.
- **Verified Company Profile** – A company must login to www.otciq.com and verify or update information needed to ensure the company’s profile is current, and complete in order to maintain the “Verified Company Profile” designation publicly displayed on www.otcmarkets.com.
- **Public Float** – A company must have a freely traded Public Float¹⁷ of at least 10% of the total shares issued and outstanding of the class of security to be traded on OTCQX (not required for companies with securities listed on a Qualified Foreign Stock Exchange).

Companies should consider legal, tax and business considerations and consult professional advisors before joining.

Q. What are the general requirements for OTCQX International Premier?

- A. For a Canadian or international issuer to qualify for the OTCQX International Premier tier, the company must satisfy all of the requirements for the OTCQX International tier, as explained above. In addition, the company must have (i) a Global Market Capitalization of at least US\$1 billion on each of the 30 consecutive calendar days immediately preceding the company’s Application Day, (ii) a five year operating history, (iii) one of the following over the previous six months (calculated using the trading of the security or underlying security, as applicable, on the company’s Qualified Foreign Stock Exchange): (a) an average weekly trading volume of at least 200,000 shares; or (b) an average weekly trading dollar volume of at least US\$1,000,000, and (iv) with respect to the Penny Stock exemption, cannot be relying solely on the exemption relating to a security price of US\$5.00 or more.

Q. When would an issuer join the OTCQB market instead of the OTCQX?

- A. The OTCQB market is the second tier of the markets operated by OTC Markets Group, below OTCQX and above Pink. Unlike the OTCQX market, there are no minimum financial standards on

¹⁵ The OTCQX Rules define “**Transfer Agent Verified Shares Program**” as OTC Markets Group’s program that enables eligible stock transfer agents to report their clients’ share data, including authorized and outstanding shares, to OTC Markets Group on a regular basis via a secure, electronic file transfer.

¹⁶ A transfer agent eligible to participate in the Transfer Agent Verified Shares Program must be both: (i) approved by OTC Markets Group, and (ii) registered with its appropriate regulatory authority (such as, SEC, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or the Comptroller of the Currency or, for transfer agents outside of the United States, an appropriate regulatory authority in their home country).

¹⁷ The OTCQB Standards and OTCQX Rules define “**Public Float**” as the total number of unrestricted shares not held directly or indirectly by an officer, director, any person who is the beneficial owner of more than 10 percent of the total shares outstanding (a “**10% Control Person**”), or any Affiliates thereof, or any immediate Family Members of officers, directors and 10% Control Persons. An “**Affiliate**” is defined by OTCQB Standards and the OTCQX Rules as a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, an officer, a director, or a shareholder beneficially-owning 10 percent or more of the company’s outstanding shares. A “**Family Member**” is defined by the OTCQB Standards and OTCQX Rules as a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home.

the OTCQB market other than a US\$0.01 minimum bid price and the requirement that companies may not be in bankruptcy. Issuers that do not qualify for the OTCQX may qualify for the OTCQB.

Q. What are the general OTCQB Standards?

A. Canadian and international issuers may qualify for the OTCQB market by satisfying the following requirements:¹⁸

- **SEC Registration, Qualified Foreign Stock Exchange with Exemption, or Regulation A** – A Canadian or other international company must generally satisfy one of the following three conditions: (i) the company must be an SEC Reporting Company and must be current in its obligations; (ii) the company must be an International Company listed on a Qualified Foreign Stock Exchange (such as the TSX, TSXV, NEO or CSE) and be in good standing with the exchange it is listed on and be current and fully compliant with the disclosure requirements of Exchange Act Rule 12g3-2(b) except as permitted in the definition of International Company¹⁹; or (iii) be a Regulation A Reporting Company²⁰ current in its SEC reporting obligations.²¹

Audited Financial Statements – A company must have audited annual financial statements prepared in accordance with U.S. GAAP or, for International Reporting Companies²², IFRS or an IFRS equivalent, as applicable, containing an audit opinion that is not adverse, disclaimed, or qualified. Audits must be conducted by an auditor registered with the Public Company Accounting Oversight Board (“PCAOB”). International Reporting Companies and Regulation A Reporting Companies are exempt from the PCAOB requirement. For Regulation A Reporting Companies, the exemption from PCAOB requirements covers initial eligibility only. Subsequent annual financial statements are required to have a PCAOB audit.

- **Priced Quotation** – Generally, a company must have a primary class of securities with proprietary priced quotations published by a Market Maker on OTC Link ATS with a closing bid price of at least US\$0.01 (a) on each of the 30 days immediately preceding the

¹⁸ This Guide does not address the OTCQB qualification requirements for certain U.S. companies, U.S. financial institutions and non-U.S. companies that are owned and controlled primarily by U.S. persons.

¹⁹ The OTCQB Standards define an “**International Company**” as company that is incorporated outside the U.S. and meets one of the following conditions:

- (i) The company eligible to rely on the exemption from registration provided by Exchange Act Rule 12g3-2(b) and is current and fully compliant in its obligations thereunder, or
- (ii) 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 a “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), and the company is not otherwise required to register under Exchange Act Section 12(g), and is 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).

²⁰ The OTCQB Standards define a “**Regulation A Reporting Company**” as company subject to the reporting obligations under Tier 2 of Regulation A under the Securities Act.

²¹ In extremely rare situations, a Canadian or other international company may instead qualify for the OTCQB as an “**Alternative Reporting Company**”. An Alternative Reporting Company is a company that does not satisfy any of the three main conditions, is incorporated outside the United States and meets all of the following criteria: (i) is not listed on a non-U.S. exchange; (ii) no more than 45 percent of its securities trading takes place outside of the U.S. markets; (iii) a majority of its outstanding voting securities are held directly or indirectly by U.S. residents; (iv) a majority of its executive officers or directors are U.S. citizens or residents; (v) a majority of its assets are located in the U.S.; and (vi) its business is administered principally in the U.S. Alternative Reporting Companies are subject to additional requirements that are not described in this Guide.

²² The OTCQB Standards define an “**International Reporting Company**” as an International Company that is current and fully compliant with the disclosure requirements of Exchange Act Rule 12g3-2(b) and is listed on a Qualified Foreign Stock Exchange.

company's application for admission to the OTCQB and (b) as of the date OTC Markets Group approves its application to join the OTCQB. For companies that do not have existing Market Maker quotes, it may be necessary to identify a Market Maker to file a Form 211 with FINRA to authorize the commencement of quotations. The OTC Markets Group has discretion in granting exemption from the minimum bid price requirement after FINRA approval of a company's Form 211 or OTC Markets Group's current information designation. See, "*What is the process for complying with Rule 15c2-11?*," below.

- **Bankruptcy** – A company must not be subject to any Bankruptcy or reorganization proceedings.
- **Good Standing** – A company must be duly organized, validly existing and in good standing under the laws of each jurisdiction in which the company is organized or does business.
- **Transfer Agent** – A company incorporated in Canada or the U.S. must retain a transfer agent that participates in the Transfer Agent Verified Shares Program and authorize such agent to provide to OTC Markets Group, upon request, certain information related to the company's securities. A list of participating transfer agents in the Transfer Agent Verified Shares Program may be found at [this link](#).
- **Fees** – A company must pay a non-refundable application fee of US\$5,000 at the time the company submits its OTCQB application to OTC Markets Group and an annual fee of US\$14,220 for each twelve month period (or a semi-annually of US\$7,620). Fees are subject to adjustments.
- **Letter of Introduction (if applicable)** – International Reporting Companies who are not trading on OTCQB immediately prior to applying for trading on the OTCQX, must provide a Letter of Introduction from a pre-approved Sponsor to OTC Markets Group. Dorsey & Whitney LLP is a pre-approved Sponsor.
- **Shareholders** – A company must have at least 50 beneficial shareholders, each owning at least 100 shares.
- **Public Float** – A company must have a freely traded Public Float of at least 10% of the total shares issued and outstanding of the class of security to be traded on OTCQB. A company applying to the OTCQB with a freely traded Public Float above 5% but below 10% of the total shares issued and outstanding, and a market value of Public Float of at least US\$2 million, or that has a separate class of securities traded on a national exchange, may apply in writing to OTC Markets Group for an exemption, which exemption may be granted by OTC Markets Group in its sole and absolute discretion.
- **Verified Company Profile** – A company must login to www.otciq.com and verify or update information needed to ensure the company's profile is current, and complete in order to maintain the "Verified Company Profile" designation publicly displayed on www.otcm Markets.com.

As with OTCQX, companies seeking admission to the OTCQB should consider legal, tax and business considerations before joining and consult professional advisors.

Q. What is the process for complying with Rule 15c2-11?

- A. Rule 15c2-11 establishes the requirements for companies to have a public market by governing a broker's ability to submit or publish quotations (i.e. bids and offers) in OTC securities in trading systems such as the OTC Link ATS. Rule 15c2-11 requires that current information about an issuer

be publicly available in order for a security to become quoted initially, and remain quoted on an ongoing basis. The OTC Link ATS functions as a “qualified interdealer quotation system” and brokers are able to rely on OTC Markets Group’s current information designations in lieu of submitting a Form 211 with FINRA. Rule 15c2-11 does not apply to the underlying transactions or the ability of an investor to buy or sell a security, but rather the ability to publish a quotation, or an “indication of interest,” to the greater investing public.

Q. Do I need a Market Maker to submit a Form 211 to FINRA?

A. No. Under amended Rule 15c2-11 brokers are able to rely upon on a “qualified interdealer quotation system” (such as OTC Link ATS) current information designations in lieu of submitting a Form 211 with FINRA. Consequently, the OTC Markets Group may determine that an issuer satisfies the current information requirements of Rule 15c2-11 by meeting OTCQX or OTCQB informational standards for Canadian or international issuers (i.e., SEC Reporting Company, International Company listed on a Qualified Foreign Stock Exchange or a Regulation A Reporting Company, in each case current in its disclosure obligations). An issuer will need a Market Maker to submit quotations.

Q. Should I join OTCQX or OTCQB?

A. Most Canadian and other international companies that are eligible to do so, join the OTCQX market. Joining OTCQB may be appropriate for companies that do not qualify for OTCQX for a variety of reasons.

Q. Will joining OTCQX or OTCQB prevent me from raising capital in the United States or Canada?

A. No. As long as 55% of worldwide trading in your securities continue to occur in Canada, joining OTCQX or OTCQB will not affect a company’s ability to raise capital in Canada. Further, companies included on the OTCQX and OTCQB markets can still raise capital in the United States through either private placements exempt from the registration requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and applicable state securities laws or in public registered offerings under the Securities Act and state securities laws.

Our experience is that Canadian companies listed on the TSX or TSXV usually maintain more than 55% of their worldwide trading in Canada after obtaining a quotation on the OTCQX or OTCQB. Companies listed on other Canadian exchanges with smaller trading volumes may be at a higher risk of Canadian trading being reduced to below 55% of worldwide trading. If less than 55% of worldwide trading occurs in Canada and more than 20% of worldwide trading occurs in the U.S. during any fiscal year, a company will become subject to certain additional U.S. legal requirements relating to offers and sales of securities outside the United States.

Q. Will my company automatically be subject to reporting requirements in the United States and compliance with Sarbanes-Oxley if my company joins OTCQX or OTCQB?

A. No. The OTCQX and OTCQB markets do not require companies to be registered or reporting under the Exchange Act. There are exemptions, such as Rule 12g3-2(b), available from the registration and reporting requirements of the Exchange Act and the requirements of Sarbanes-Oxley as long as certain requirements are met. Consequently, your company may qualify for an exemption and join OTCQX or OTCQB without registration or reporting under the Exchange Act. If U.S. trading volumes become so significant that trading in Canada plus any second non-US. country the company chooses is reduced to less than an aggregate of 55% of worldwide trading in the security during the company’s fiscal year, the Rule 12g3-2(b) exemption would cease to be available and the company would need to determine if another exemption from SEC registration requirements is available. In our experience, this rarely occurs if the security is listed on the TSX or TSXV.

- Q. Will investors in the United States be able to freely purchase and sell our securities on OTCQX or OTCQB?**
- A. Yes, in most cases, unrestricted securities may be purchased and sold on OTCQX or OTCQB in the same way that similar securities are sold on NYSE, NYSE American or NASDAQ. United States registered broker-dealers can effect purchase and sale transactions in securities that are quoted on OTCQX or OTCQB in compliance with applicable U.S. securities law²³. Restricted securities²⁴ may only be resold pursuant to exemptions under the Securities Act.
- Q. Does my company need to be incorporated in the United States or have United States operations?**
- A. No. A number of companies incorporated in Canada, Europe, Asia, Australia and many tax favorable jurisdictions have joined OTCQX or OTCQB. A company is not required to have United States operations, management or directors to join OTCQX or OTCQB.
- Q. Will my company incur United States corporate taxes for joining OTCQX or OTCQB?**
- A. No. There are no United States tax consequences to a company for simply joining OTCQX or OTCQB. Similar to investments in other securities, U.S. investors may have tax consequences as a result of making investments in foreign companies and they should consult their tax professionals before making any investment. If your company conducts business in the United States, your company may be subject to United States tax consequences and you should consult your U.S. tax advisor.
- Q. Do we need to hire an independent consultant to join OTCQX or OTCQB?**
- A. No. Companies are not required to hire an independent consultant to assist with an OTCQX or OTCQB application. However, as discussed above, qualified foreign issuers seeking to qualify under OTCQX International Premier and the OTCQX International standards are required to have a letter of introduction from a pre-approved Sponsor, subject to certain exceptions. A Sponsor is required to satisfy certain minimum criteria and be approved by the OTC Markets Group. A Sponsor may be an attorney, investment bank or, if the company is quoting, or plans to quote, its securities in ADR form on OTCQX or OTCQB, an ADR depository. Your Sponsor can assist you with your application. Dorsey & Whitney LLP is a pre-approved Sponsor.
- Q. How long does it take for my company to join OTCQX or OTCQB?**
- A. Applications for foreign companies that satisfy the standards of OTCQX or OTCQB and qualify for the exemption under Rule 12g3-2(b) can generally be completed in approximately eight weeks. Clearance of the Form 211 by a Market Maker with the FINRA OTC Compliance Unit or completion of due diligence by OTC Markets Group to determine that an issuer satisfies the current information requirements of Rule 15c2-11 may delay the process. Overall, joining OTCQX or OTCQB takes significantly less time than the process of registering with the SEC and listing on a traditional stock exchange.
- Q. How complicated is the process for joining OTCQX or OTCQB?**

²³ All purchases and sales through a broker-dealer must be made in compliance with applicable state securities laws and state broker-dealer registration requirements. According to the OTC Markets Group, as of July 2020, issuers quoted on the OTCQX are exempt in 37 states and issuers quoted on the OTCQB are exempt in 33 states for blue sky purposes. Canadian issuers listed in the Mergent manual may be exempt in certain additional states pursuant to the manual exemption for blue sky purposes. Other exemptions (or registration) may be available in states that do not recognize a securities manual exemption.

²⁴ Rule 144(a)(3) under the Securities Act sets forth the definition of “restricted securities.” Generally, securities that are issued without registration in private transactions (such as private placements under Section 4(a)(2) of the Securities Act or pursuant to Rule 506 of Regulation D) and securities issued in off-shore transactions by U.S. Domestic Issuers under Rule 903 of Regulation S are deemed to be restricted securities.

A. For qualified foreign issuers, applying to join OTCQX or OTCQB is less burdensome than listing on a traditional stock exchange in the United States since no SEC registration is generally required. The staff of OTC Markets Group, together with your Sponsor, will assist you with the process.

Q. What fees can we expect for joining OTCQX or OTCQB?

A. The fees and costs for joining OTCQX include an initial application fee of US\$5,000 and an annual fee of US\$23,400 (pro rated for the first year). For OTCQB, the initial application fee is US\$5,000 and the annual fee is US\$14,220 (or US\$7,620 semi-annually). A company must also pay its professionals' fees, including fees paid to its Sponsor. You should consult with your professional advisors as fees for professionals will vary depending on your company's individual circumstances. Additional optional items can include for OTCQB companies that desire to use the OTC's Blue Sky Monitoring Service, the related annual fee of US\$3,000 (this service is provided free to OTCQX companies).

Q. Does my company need to qualify as a Foreign Private Issuer to join OTCQX or OTCQB?

A. No. However, OTCQX and OTCQB have different standards for U.S. Domestic Issuers (as defined under "*United States Securities Law Compliance – Determination of Foreign Private Issuer Status*" below), who don't otherwise comply with the eligibility rules for the OTCQX International Premier and OTCQX International or who seek admission on the OTCQB. This Guide does not cover the requirements for such issuers.

Q. Does joining OTCQX or OTCQB increase our exposure to liability in the United States?

A. The question of liability under securities laws is complex. Companies that do not register with the SEC generally have less exposure to regulatory action by the SEC. However, every company that makes use of interstate commerce in the United States is subject to compliance with and liability under U.S. securities laws. Some of the key considerations are outlined under "U.S. Securities Law Liability", below.

This Guide summarizes the following topics of interest to Canadian companies considering joining the OTCQX or OTCQB markets:

- OTCQX Initial Qualification Standards for International Companies;
- OTCQX Continuing Standards;
- OTCQB Initial Qualification Standards for International Companies;
- OTCQB Continuing Standards;
- U.S. Securities Law Compliance;
- Capital Raising in the United States;
- U.S. Securities Law Liability; and
- An Overview of the Process of Joining OTCQX/OTCQB.

This Guide is intended to provide general information for Canadian and foreign issuers related to joining the OTCQX or OTCQB markets and is not intended to provide definitive legal or tax advice. No legal, tax or business decisions should be based solely on its content. This Guide does not cover the standards for admission for U.S. Domestic Issuers (as defined under "*United States Securities Law Compliance – Determination of Foreign Private Issuer Status*" below), who don't otherwise comply with the eligibility rules for the OTCQX International Premier and OTCQX International, or who seek admission on the OTCQB.

I. OTCQX INITIAL QUALIFICATION STANDARDS FOR INTERNATIONAL COMPANIES

There are two tiers or standards for qualification on OTCQX for international companies: OTCQX International Premier and OTCQX International. An issuer must meet specified OTCQX qualification criteria and provide ongoing public disclosure to qualify for OTCQX. The OTCQX Rules for International Companies (the “**OTCQX Rules**”) prescribe the following OTCQX admission requirements for non-U.S. companies.²⁵

A. OTCQX International Premier

Designed for large-market capitalization, international-exchange-listed issuers, admission to this tier has the following requirements:

- A Global Market Capitalization of at least US\$1 billion on each of the 30 consecutive calendar days immediately preceding the company’s Application Day;
- A five year operating history;
- One of the following over the previous six months (calculated using the trading of the security or underlying security, as applicable, on the company’s Qualified Foreign Stock Exchange): (a) An average weekly trading volume of at least 200,000 shares; or (b) an average weekly trading dollar volume of at least US\$1,000,000;
- The company must meet all of the requirements of the OTCQX International tier mentioned below; and
- With respect to the Penny Stock exemption, cannot be relying solely on the exemption relating to a security price of US\$5.00 or more.

B. OTCQX International

OTCQX International is designed for companies listed on a Qualified Foreign Stock Exchange that are smaller than the companies that qualify for the OTCQX International Premier tier. Entry onto OTCQX International requires the following:

- **Penny Stock Exemption** – A company’s security must meet one of the following exemptions consistent with the definition of a “Penny Stock” under Rule 3a51-1 of the Exchange Act: (1) the company has net tangible assets (*i.e.*, total assets less intangible assets and liabilities) of US\$2,000,000 or more, if the company has been in continuous operation for at least three years, or US\$5,000,000, if the company has been in continuous operation for less than three years, as demonstrated by audited financial statements dated less than fifteen months prior to the company’s Application Day; (2) the company has average revenue of at least US\$6,000,000 for the last three years, as demonstrated by financial statements dated less than fifteen months prior to the company’s Application Day; or (3) the company’s shares have a bid price of US\$5.00 or more on the close of business on each of the 30 consecutive calendar days immediately preceding the company’s Application Day, and as of the most recent fiscal year end have at least one of the following (A) net income of US\$500,000; (B) net tangible assets of US\$1,000,000; (C) revenues of US\$2,000,000; or (D) total assets of US\$5,000,000.

²⁵ A company that does not meet the requirements for OTCQX International Premier or OTCQX will be required to qualify for OTCQX under the rules applicable to U.S. companies, which differ from the standards for foreign issuers.

In the event that there has not been a prior public market for the company's securities in the U.S., and FINRA has approved a Form 211 with a bid price greater than US\$5.00 per share, or the OTC Markets Group conducts an initial review under Rule 15c2-11, then the company may apply in writing for an exemption from the requirement to maintain a bid price over US\$5.00 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 Group in its sole and absolute discretion. In such a case, the company may, demonstrate compliance with 3(A) - (D) above using its most recent annual, quarterly or current event report filed through EDGAR or the OTC Disclosure & News Service or a pro-forma financial statement (signed and certified by the CEO or CFO) posted through EDGAR or the OTC Disclosure & News Service.

- **Listing on a Qualified Non-U.S. Stock Exchange** – A company must either (i) be listed on a Qualified Foreign Stock Exchange, such as the TSX, TSXV, NEO or CSE, or (ii) be an SEC Reporting Company or a Regulation A Reporting Company that complies with certain corporate governance requirements of the OTCQX.²⁶ Most Canadian companies qualify for OTCQX via a listing on a Qualified Foreign Stock Exchange. Other Qualified Foreign Stock Exchanges include stock exchanges in Australia, China, Israel, Japan and the United Kingdom among other countries.
- **SEC Registration, Exemption or Regulation A** – A company must satisfy one of the following three requirements. The company must either: (1) have a class of its securities registered under Section 12(g) of the Exchange Act and be current and fully compliant in its SEC reporting obligations; (2) be a Regulation A Reporting Company and be current and fully compliant with its SEC reporting obligations; or (3) have its securities listed on a Qualifying Foreign Stock Exchange and be eligible to rely on the exemption from SEC registration provided by Rule 12g3-2(b) and be current and fully compliant in its obligations thereunder;

If a company is relying on criteria (3) above, the company must satisfy both of the following two requirements: (i) the company must continue to publish in English, on a website such as the issuer's website, SEDAR or the OTC Markets Group's website, information that it (a) has made public or has been required to make public pursuant to Canadian law; (b) has filed or has been required to file with the TSX, TSXV, NEO, or CSE, as applicable, and which the TSX, TSXV, NEO, or CSE, as applicable, has made public; or (c) has distributed or has been required to be distributed to its security holders. Such documents include, but are not limited to, annual reports and interim reports (including financial statements), press releases and all other communications and documents distributed directly to security holders; and (ii) the company must not be required to register under Section 12(g) of the Exchange Act (see "*United States Securities Law Compliance*" below).

- **Price Quotation** – A company must have proprietary priced quotations published by at least one Market Maker in OTC Link[®] ATS. Many issuers listed in Canada already have Market Maker quotes on Pink, which can be confirmed on www.otcmarkets.com or by contacting OTC Markets Group. For companies that do not have existing Market Maker quotes, applicable securities rules require that, before a broker or dealer publishes proprietary quotes on a quotation medium, it must gather, review and retain certain information about the issuer. The Market Maker must subsequently file a Form 211 with the FINRA OTC Compliance Unit, along with two copies of the required issuer information.

²⁶ The additional corporate governance requirements for an SEC Reporting Company or a Regulation A Reporting Company that is not listed on a Qualified Foreign Stock Exchange are (i) having a board of directors that includes at least two independent directors, (ii) having an audit committee, a majority of the members of which are independent directors, and (iii) for a company with common stock, voting preferred stock or their equivalent, conducting annual shareholders' meetings and making annual financial reports available to shareholders at least 15 calendar days prior to such meetings. Trusts, funds, and other similar companies may be exempted from these corporate governance requirements.

After a successful review, the FINRA Compliance Unit will notify the Market Maker that it may enter a quotation on the OTC Link system. The timeframe for locating a Market Maker, preparing and submitting the Form 211 and receiving FINRA approval of the Form 211 varies greatly, and can take from two to eight weeks, depending on the Market Maker and the review by FINRA. Alternatively, the completion of due diligence by OTC Markets Group to determine that an issuer satisfies the current information requirements of Rule 15c2-11 may take up to 8 weeks. A company applying to the OTCQX in conjunction with an initial review for quotation eligibility in accordance with Exchange Act Rule 15c2-11, shall have 3 days to meet this requirement. Third party consultants may be able to assist issuers with locating an appropriate Market Maker.

- **Bankruptcy** – A company must not be subject to any Bankruptcy or reorganization proceedings.
- **Share Price** – A company must have a minimum bid price of US\$0.25 per share as of the close of business on each of the 30 consecutive calendar days immediately preceding a company's Application Day. In the event that: (i) there has been no prior public market for a company's securities in the U.S., FINRA has approved a Form 211 relating to a company's securities with a bid price equal to or greater than US\$0.25 or the company's securities are traded on a Qualified Foreign Stock Exchange at a price equal to or greater than US\$0.25; (ii) the company is applying for admission to OTCQX in conjunction with an initial review for quotation eligibility; or (iii) a company is applying for admission to OTCQX immediately subsequent to delisting from a national securities exchange and has a minimum bid price of at least US\$0.10. Companies that are granted an exemption from having an initial bid price of US\$0.25 per share for 30 days prior to applying to OTCQX, either because they recently cleared a Form 211 through FINRA or because they are delisting from a national securities exchange, need to maintain the applicable initial bid price for their first 30 days on OTCQX.
- **Market Capitalization** – A company must have a Global Market Capitalization of at least US\$10,000,000 on each of the 30 consecutive calendar days immediately preceding the company's Application Day.
- **Ongoing Operations** – A company must have ongoing operations and not be a Shell Company or Blank-Check Company; provided, however, that the OTC Markets Group will consider quoting a SPAC on the OTCQX on a case-by-case basis.
- **Shareholders** – A company must have at least 50 beneficial shareholders, each owning at least 100 shares.
- **Verified Company Profile** – A company must login to www.otciq.com and verify or update information needed to ensure the company's profile is current, and complete in order to maintain the "Verified Company Profile" designation publicly displayed on www.otcm Markets.com.
- **Public Float** – A company must have a freely traded Public Float of at least 10% of the total shares issued and outstanding of the class of security to be traded on OTCQX (not required for companies with securities listed on a Qualified Foreign Stock Exchange).

C. OTCQX Special Purpose Acquisition Company Eligibility Criteria

A SPAC with substantial cash or investments and no prior operating history may be considered for admission to the OTCQX on a case-by-case basis. To be considered for admission on the OTCQX, a SPAC must satisfy all of the eligibility requirements of the OTCQX International tier, except with respect to the

requirement that a company not be subject to any bankruptcy or reorganization proceedings, and must additionally satisfy the following two requirements: (i) have at least US\$20,000,000 in Public Float and (ii) have a minimum bid price of US\$5.00 per share as of the close of each of the 30 consecutive calendar days immediately preceding the company's application day.

D. Additional Requirements for OTCQX International Premier and OTCQX International

- **Initial Disclosure** – Unless a company is an SEC Reporting Company or a Regulation A Company, the company must, following the date of the company's submission of its OTCQX application, and prior to admission to the OTCQX, post in English, through the OTC Disclosure & News Service, annual reports for the prior three years (or such shorter time as the company has been existence) as well as any interim reports and other material disclosure subsequent to the most recent annual report required to be made publicly available pursuant to Rule 12g3-2(b). The OTCQX Rules require that a company's Sponsor notify OTC Markets Group when such initial disclosure has been posted. SEC Reporting Companies are only required to be current and fully compliant with their SEC reporting obligations. Regulation A Companies are required to be current and fully compliant with their SEC reporting obligations and their most recent financial statements that are required to be audited under Regulation A must be audited by an auditor registered with the Public Company Accounting Oversight Board.
- **Selection of a Sponsor (if applicable)** – A company must²⁷ select a Sponsor for the purpose of having the Sponsor submit a Letter of Introduction to the OTC Markets Group. The Sponsor may be an attorney, investment bank or, if the company's securities are in ADR form, an ADR depository. A company may appoint an attorney or investment bank Sponsor only if: (1) the Sponsor submits an application to the OTC Markets Group to serve as a Sponsor, and such application is approved; or (2) such Sponsor is already included on OTC Markets Group's pre-approved list. A company may appoint an ADR depository Sponsor only if: (1) the ADR depository is the ADR depository for the company's sponsored ADR program; and (2) the ADR depository is included on OTC Markets Group's pre-approved list. A company's Sponsor must meet the requirements and obligations outlined in Section 4 of the OTCQX Rules. Dorsey & Whitney LLP is a pre-approved Sponsor.
- **Letter of Introduction (if applicable)** - After a company's initial disclosure has been posted, the company Sponsor is required to submit to OTC Markets Group a Letter of Introduction containing certain information as set forth in the OTCQX Rules.
- **Fees** – A company must pay a non-refundable application fee of US\$5,000 at the time the company submits its OTCQX application to OTC Markets Group.
- **Transfer Agent** – A Canadian company must retain a transfer agent that participates in the Transfer Agent Verified Shares Program and authorize such agent to provide to OTC Markets Group, upon request, certain information related to the company's securities. A list of participating transfer agents in the Transfer Agent Verified Shares Program may be found at [this link](#).

²⁷ A company that applies to join OTCQX immediately subsequent to delisting from a national securities exchange including the NYSE, NYSE American or NASDAQ, and is in good standing with the exchange at the time of delisting, is exempt from the requirement to select an OTCQX Sponsor. A company with a class of securities listed on a national securities exchange including the NYSE, NYSE American or NASDAQ, that applies to have a separate class of securities traded on OTCQX is exempt from the requirement to select an OTCQX Sponsor.

- **Personal Information Forms and Background Check Authorization Forms** - Personal Information Forms and Background Check Authorization Forms for each Executive Officer, Director, and beneficial owner of 5% or more of a class of a company's securities may be required to be submitted as part of the OTCQX application materials. The OTC Markets Group may exempt a company from the requirement to submit Personal Information Forms if a class of the company's securities trades on a Qualified Foreign Stock Exchange or if the company is applying for admission to OTCQX immediately subsequent to delisting from a national securities exchange including the NYSE, NYSE American or NASDAQ.

II. OTCQX CONTINUING STANDARDS

The OTCQX Rules prescribe the following criteria which must be met in order to have a company continue having its securities standards:

A. Eligibility Criteria

OTCQX International

For companies on the OTCQX International tier, a company must, as of its most recent fiscal year end comply with all of the initial qualification requirements except that a company must have: (a) a minimum bid price of US\$0.10 per share as of the close of business for at least one of every 30 consecutive calendar days; (b) a Global Market Capitalization of at least US\$5,000,000 for at least one of every 30 consecutive calendar days; and (c) at least 2 Market Makers publish priced quotations on OTC Link ATS within 90 days of a company joining OTCQX.

In the event that a company's bid price, or Global Market Capitalization falls below the minimum criteria, a cure period of 180 calendar days to regain compliance will begin, during which the minimum criteria must be met for 10 consecutive trading days.

OTCQX International Premier

For companies on the OTCQX International Premier tier, a company must, as of its most recent fiscal year end comply with all of the initial qualification requirements except that a company must have: (i) a Global Market Capitalization of at least US\$500,000,000 for at least one of every 30 consecutive calendar days; (ii) one of the following over the previous six months (calculated using the trading of the security or underlying security, as applicable, on a company's Qualified Foreign Stock Exchange): (A) an average weekly trading volume of at least 100,000 shares; or (B) an average weekly trading dollar volume of at least US\$500,000; and (iii) at least 4 Market Makers publish priced quotations on OTC Link ATS within 90 days of a company joining OTCQX.

B. Compliance with Rules

Officers and directors of a company are responsible for compliance with the OTCQX Rules and are solely responsible for the content of information provided by the company through the OTC Disclosure & News Service.

C. Compliance with Laws

A company must comply with applicable securities laws of its country of domicile and applicable U.S. federal securities laws and U.S. state securities laws. A company must, at all times that its securities are on OTCQX, respond to requests from any securities regulator or self-regulatory organization in its country of domicile, any U.S. federal or state securities regulator and any U.S. self-regulatory organization.

D. Annual Fees

A company must pay an annual fee of US\$23,400, pro-rated for the first year, to be paid in advance, by the first day of the December (that is, December 1) preceding each calendar year thereafter.

E. Responding to OTC Markets Group's Requests

A company must respond to inquiries and requests from OTC Markets Group from time to time.

F. Ongoing Disclosure Obligations for SEC Reporting Companies

If a company is subject to the reporting obligations of Section 13 of the Exchange Act, the company must continue to file, on an ongoing basis, all annual, quarterly and other interim reports required to be filed under the Exchange Act. In addition, if the company files annual reports with the SEC on Form 20-F or 40-F, and is not listed on a Qualified Foreign Stock Exchange, the company must also file with the SEC a Form 6-K containing at minimum an interim balance sheet and an income statement as of the end of its second fiscal quarter, within six months after the second fiscal quarter end.

G. Ongoing Disclosure Obligations for Non-Reporting Companies

A company, so long as it is not subject to the reporting obligations of Section 13 of the Exchange Act, must ensure that the information required to be made publicly available pursuant to Rule 12g3-2(b) shall, on an ongoing basis, be posted in English through the OTC Disclosure & News Service. The company must also remain current and fully compliant in its obligations under Exchange Act Rule 12g3-2(b). Additionally, the company must provide confirmation of Rule 12g3-2(b) compliance through the Add Financial Report link in www.otciq.com using the Report Type titled “12g3-2(b) Confirmation” on an annual basis.

H. Ongoing Disclosure Obligations for Regulation A Reporting Companies

A company that is a Regulation A Reporting Company, must file on an ongoing basis: (i) All annual, semi-annual and other interim reports required to be filed on EDGAR under Regulation A, and within 45 days of the end of the first and third fiscal quarters where the company is not already required to file an annual or semiannual report must publish on EDGAR through Form 1-U quarterly disclosure including all information required in the company’s semi-annual report; and (ii) on 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.

I. Transfer Agent

The company shall authorize its transfer agent to provide share information upon OTC Markets Group’s request.

J. Changes in Auditor

A company must promptly notify OTC Markets Group if the company changes its independent public accountants regularly auditing the books, accounts and reports of the company.

K. Maintain a Verified Company Profile

At least once every six months, a company must submit a Company Update Form via www.otciq.com with the information needed to ensure that the Company Profile is current and complete, or verify that the Company Profile publicly displayed on www.otcmarkets.com is current to maintain the “Company Updated Profile” designation on the Company Profile page on www.otcmarkets.com.

L. OTCQX Sponsor

A company may voluntarily retain an OTCQX Sponsor to provide ongoing advice and services. Such advisor will have no formal role under the OTCQX Rules.

M. Stock Promotion

If the OTC Markets Group determines, in its discretion, that a company’s OTCQX securities have become the subject of promotional activities (irrespective of whether the company was involved directly or indirectly with the promotional activity) that have the effect of encouraging trading, OTC Markets Group may require

the company to provide additional public information regarding shareholdings of officers, directors and control persons, confirmation of shares outstanding, and any issuance of shares in the previous two years. The company must file such information through the OTC Disclosure & News Service. OTC Markets Group may also require submission of a Personal Information Form for any executive officer, director, or beneficial owner of 5% or more of a class of the company's securities. In addition, the OTC Markets Group may display a flag, shaped like a megaphone, on the promoted company's quote page on otcmarkets.com, with such flag to remain on a company's profile for a 15-day period following the last promotional activity. This easily identifiable designation is meant to alert investors, regulators, and market participants to the presence of promotional activity. OTC Markets Group encourages all its listed companies to educate themselves on the manipulative practices stock promoters use and has published a policy on stock promotion, issued best practices guidelines for issuers and launched a compliance statistics page on its website. A company may even be removed from OTCQX if it is the subject of a misleading and manipulative stock promotion that has, in OTC Markets Group's sole determination, a potentially negative impact on the integrity of the market.

N. Requirements Applicable to SEC Reporting and Regulation A Reporting Companies.

A company that is an SEC Reporting Company or Regulation A Reporting Company must also comply with the following requirements:

- *Sales of Company Securities by Affiliates.* Prior to transacting in a company's securities through a broker-dealer, each officer, director or other "affiliate" of the company (within the meaning of Rule 144(a)(1) under the Securities Act) must make its status as an affiliate of the company known to the broker-dealer.
- *Redemption Requirements.* A company must not select any of its securities traded on OTCQX for redemption otherwise than by lot or pro rata, and will not set a redemption date earlier than 15 days after the date a corporate action is taken to authorize the redemption.
- *Changes in Form or Nature of Securities.* A company must not make any change in the form or nature of any of its securities traded on OTCQX, nor in the rights or privileges of the holders thereof, without having given 20 days' prior notice to OTC Markets Group of the proposed change.
- *Accounting Methods.* A company must not make any substantial change, nor may a company permit any subsidiary directly or indirectly controlled by a company to make any substantial change, in accounting methods, in policies as to depreciation and depletion or in bases of valuations of inventories or other assets, without notifying OTC Markets Group and disclosing the effect of any such change in a company's next succeeding quarterly and annual financial reports.

O. Change in Control

If a company undergoes a Change in Control²⁸, the company must notify OTC Markets Group, submit a Change in Control notification as well as a new OTCQX Application for International Companies and pay

²⁸ The OTCQX Rules defined "Change in Control" as any events resulting in:

- (i) Any person becoming the beneficial owner, director or indirectly, of securities of the company representing fifty percent or more of the total voting power represented by the company's then outstanding voting securities;
- (ii) The consummation of the sale or disposition by the company of all or substantially all of the company's assets;
- (iii) A change in the composition of the company's board of directors occurring within a two year period, as a result of which fewer than a majority of the directors are directors immediately prior to such change; or
- (iv) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately

an application fee within 20 calendar days. OTC Markets Group may from time to time independently determine that a company has undergone a Change in Control, and in such case will notify the company of its determination. A company that fails to submit the required documentation and fees subsequent to a Change in Control may be suspended or removed from OTCQX in OTC Markets Group's sole and absolute discretion.

prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

III. OTCQB INITIAL QUALIFICATION STANDARDS FOR INTERNATIONAL COMPANIES

To be eligible for the OTCQB market, a company must meet certain qualification criteria as specified in the OTCQB standards. There are no minimum financial standards for OTCQB other than a US\$0.01 minimum bid price. International issuers may qualify for OTCQB by satisfying the following requirements:²⁹

A. OTCQB

OTCQB is designed for early-stage and developing international companies. Entry onto OTCQB requires the following:

- **SEC Registration, Qualified Foreign Stock Exchange with Exemption, or Regulation A** – A company must satisfy one of the following three conditions: (i) the company must be an SEC Reporting Company and must be current in its obligations; (ii) the company must be an International Company listed on a Qualified Foreign Stock Exchange, such as the TSX, TSXV, NEO or CSE, be in good standing with the exchange it is listed on, and either (a) eligible for the Exchange Act Rule 12g3-2(b) exemption and current and fully compliant with the disclosure requirements of Exchange Act Rule 12g3-2(b), or (b) if the company is not eligible for Rule 12g3-2(b) because it either does not meet the definition of foreign private issuer or does not maintain its primary trading market in a foreign jurisdiction, the company must be both (x) 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 (y) not otherwise required to register under Section 12(g) of the Exchange Act; or (iii) be a Regulation A Reporting Company current in its SEC reporting obligations.³⁰
- **Audited Financial Statements** – A company must have audited annual financial statements prepared in accordance with U.S. GAAP or, for International Reporting Companies, IFRS or an IFRS equivalent, as applicable, containing an audit opinion that is not adverse, disclaimed, or qualified. Audits must be conducted by an auditor registered with the PCAOB. International Reporting Companies and Regulation A Reporting Companies are exempt from the PCAOB requirement. For Regulation A Reporting Companies, the exemption from PCAOB requirements covers initial eligibility only. Subsequent annual financial statements are required to have a PCAOB audit.
- **Price Quotation** – Generally, a company must have proprietary priced quotations published by a Market Maker OTC Link with a closing bid price of at least US\$0.01 for each of the 30 calendar days immediately preceding the company's application for admission to OTCQB. For companies that do not have existing Market Maker quotes, it may be necessary to identify a Market Maker to file a Form 211 with FINRA to authorize the commencement of quotations. Alternatively, the OTC Markets Group may undertake due diligence to determine that an issuer satisfies the current information requirements of Rule

²⁹ This Guide does not address the OTCQB listing requirements for certain U.S. companies, U.S. financial institutions and non-U.S. companies that are owned and controlled primarily by U.S. persons.

³⁰ In extremely rare situations, a Canadian or other international company may instead qualify for the OTCQB as an "Alternative Reporting Company". An Alternative Reporting Company is a company that does not satisfy any of the three main conditions, is incorporated outside the United States and meets all of the following criteria: (i) is not listed on a non-U.S. exchange; (ii) no more than 45 percent of its securities trading takes place outside of the U.S. markets; (iii) a majority of its outstanding voting securities are held directly or indirectly by U.S. residents; (iv) a majority of its executive officers or directors are U.S. citizens or residents; (v) a majority of its assets are located in the U.S.; and (vi) its business is administered principally in the U.S. Alternative Reporting Companies are subject to additional requirements that are not described in this Guide.

15c2-11. OTC Markets Group has discretion in granting exemption from the minimum bid price requirement after FINRA approval of a company's Form 211.

- **Bankruptcy** – A company must not be subject to any Bankruptcy or reorganization proceedings.
- **Good Standing** – A company must be duly organized, validly existing and in good standing under the laws of each jurisdiction in which the company is organized or does business.
- **Transfer Agent** – A company incorporated in Canada or the U.S. must retain a transfer agent that participates in the Transfer Agent Verified Shares Program and authorize such agent to provide to OTC Markets Group, upon request, certain information related to the company's securities. A list of participating transfer agents in the Transfer Agent Verified Shares Program may be found at [this link](#).
- **Fees** – A company must pay a non-refundable application fee of US\$5,000 at the time the company submits its OTCQB application to OTC Markets Group and an annual fee of US\$14,220 (or US\$7,620 semi-annually).
- **Letter of Introduction (if applicable)** – International Reporting Companies who are not trading on OTCQX immediately prior to applying for trading on the OTCQB, must provide a Letter of Introduction from a pre-approved Sponsor to OTC Markets Group. Dorsey & Whitney LLP is a pre-approved Sponsor.
- **Shareholders** – A company must have at least 50 beneficial shareholders, each owning at least 100 shares.
- **Public Float** – A company must have a freely traded Public Float of at least 10% of the total shares issued and outstanding of the class of security to be traded on OTCQB. A company applying to OTCQB with a freely traded Public Float above 5% but below 10% of the total shares issued and outstanding, and a market value of Public Float of at least US\$2 million, or that has a separate class of securities traded on a national exchange, may apply in writing to OTC Markets Group for an exemption, which exemption may be granted by OTC Markets Group in its sole and absolute discretion.
- **Personal Information Forms and Background Check Authorization Forms** - Personal Information Forms and Background Check Authorization Forms for each Executive Officer, Director, and beneficial owner of 5% or more of a class of a company's securities may be required to be submitted as part of the OTCQB application materials. The OTC Markets Group may exempt a company from the requirement to submit Personal Information Forms if the company is applying for admission to OTCQB immediately subsequent to delisting from a national securities exchange including the NYSE, NYSE American or NASDAQ.

B. Initial Disclosure Requirements for OTCQB

After a company's OTCQB application materials and application fees have been received by OTC Markets Group, the company will be granted access to the OTC Disclosure & News Service so it may post its initial disclosure in compliance with OTCQB requirements. Below are initial disclosure obligations that companies seeking to qualify for OTCQB must comply with:

- **Initial Financial Reporting** – International Reporting Companies must have posted, in English, through the OTC Disclosure & News Service, all information, with the exception of news releases, required to be made publicly available pursuant to Exchange Act

Rule 12g3-2(b) for the preceding 24 months, or as long as it has been in existence (if less than 24 months). Audited annual financial statements must be prepared in accordance with U.S GAAP³¹ or IFRS³² and contain an audit opinion that is not adverse, disclaimed, or qualified. International companies that are SEC Reporting Companies must have filed all reports required to be filed on EDGAR³³. A company that is a Regulation A Reporting Company must have filed all reports required to be filed on EDGAR and audited annual financial statements must be prepared in accordance with Regulation A.

- **Verified Company Profile** – A company must login to www.otciq.com and verify or update information needed to ensure the company’s profile is current, and complete in order to maintain the “Verified Company Profile” designation publicly displayed on www.otcmarkets.com.
- **OTCQB Certification** – A company must file through the OTC Disclosure & News Service an OTCQB Certification signed by either the company’s Chief Executive Officer (CEO) or the company’s Chief Financial Officer (CFO), stating the following:
 - (a) The provision under which the company is registered with the SEC or the applicable exemption from SEC registration;
 - (b) That the company is current in its reporting obligations as of the most recent fiscal year end and any subsequent quarters and that such information has been filed either on EDGAR or the OTC Disclosure & News Service, as applicable;
 - (c) That the company Profile displayed on www.otcmarkets.com is current and complete as of the latest practicable date, and includes the total shares outstanding, authorized, and in the Public Float as of that date;
 - (d) The number of shares in the Public Float and the number of Beneficial Shareholders holding at least 100 shares as of the latest practicable date;
 - (e) That the company is duly organized, validly existing and in good standing under the laws of each state or jurisdiction in which the company is organized or does business.
 - (f) The law firm and attorney(s) that acted as the company’s primary legal counsel in preparing its most recent annual report, including the firm and attorney name if outside counsel, or name and title of internal counsel. If no attorney assisted in putting together the disclosure, the company must identify the person or persons who prepared the disclosure and their relationship to the company;
 - (g) Names and addresses of any third parties engaged by the company, its officers, directors or controlling shareholders, during the period from the company’s prior fiscal year end to the date of that OTCQB Certification, to provide investor relations services, public relations services, or other related services to the company including promotion of the company or its securities;
 - (h) List of all officers, directors and control persons (control persons are beneficial owners of more than five percent (5%) of any class of the company’s equity securities), including name, address and percent of shares owned. If any of the beneficial shareholders are corporate entities, provide the name and address of

³¹ “US GAAP” means generally accepted accounting principles in the United States, consistently applied.

³² “IFRS” means International Financial Reporting Standards, as issued by the International Accounting Standards Board.

³³ The SEC’s Electronic Data Gathering, Analysis and Retrieval System.

the person(s) owning or controlling such corporate entities and the resident agents of the corporate entities; and

- (i) List and describe and outstanding promissory notes, convertible notes, convertible debentures, or any other debt instruments that may be converted into a class of the company's equity securities, including the names of noteholders and any additional details described by the OTCQB Certification.

IV. OTCQB CONTINUING STANDARDS

A. Minimum Bid Price

A company must have proprietary priced quotations published by a Market Maker in OTC Link with a minimum closing bid price of US\$0.01 per share on at least one of the prior 30 consecutive calendar days. Companies are granted a cure period of 90 calendar days for failure to maintain the minimum bid price. In the event that the minimum closing bid price for the company's common stock falls below US\$0.01 per share for 30 consecutive days, a grace period of 90 calendar days to regain compliance shall begin, during which the minimum closing bid price for the company's common stock must be US\$0.01 or greater for ten consecutive trading days. In the event that the company's closing bid price falls below US\$0.001 at any time for five consecutive trading days, the company will be immediately removed from OTCQB.

B. Transfer Agent

A company incorporated in Canada or the U.S. must retain a transfer agent that participates in the Transfer Agent Verified Shares Program and authorize such agent to provide to OTC Markets Group, upon request, certain information related to the company's securities. A list of participating transfer agents in the Transfer Agent Verified Shares Program may be found at [this link](#).

C. Compliance with Standards

The company is responsible for compliance with the OTCQB standards and is solely responsible for the content of the information provided by the company.

D. Compliance with Laws

A company must comply with applicable U.S. federal securities laws, and the securities laws of its country of domicile, and shall cooperate with any U.S. federal or state securities regulator, any U.S. self-regulatory organization, and securities regulators or self-regulatory organizations in its country of domicile.

E. Payment of Fees

A company must pay a non-refundable annual fee of US\$14,220 for each year (or US\$7,620 semi-annually) in which its securities continue to be traded on OTCQB. The Annual Fee is due 30 days prior to the beginning of each new annual/semi-annual service period.

F. Responding to OTC Markets Group's Requests

A company must respond to inquiries and requests from OTC Markets Group from time to time, including any requests by OTC Markets Group for the company to provide a further undertaking or fulfill a further condition.

G. Ongoing Disclosure Obligations

All companies quoted on the OTCQB must promptly disclose the issuance of any promissory notes, convertible notes, convertible debentures, or any other debt instruments that may be converted into a class of the issuer's equity securities. Such disclosure should include copies of the securities purchase agreement(s) or similar agreement(s) setting forth the terms of such arrangement, any related promissory notes or similar evidence of indebtedness, and any irrevocable transfer agent instructions. Companies should make such disclosure either through the SEC's EDGAR system or the OTC Disclosure & News Service, as applicable.

An international company that is an SEC Reporting Company or a Regulation A Reporting Company must file all reports required to be filed on EDGAR. International Reporting Companies must file, in English,

through the OTC Disclosure & News Service, all information, required to be made publicly available pursuant to Exchange Act Rule 12g3-2(b).

International reporting companies relying on the exemption found in Exchange Act Rule 12g3-2(b) must provide the OTC Markets Group with a confirmation of compliance on an annual basis.

Audited annual financial statements must be prepared in accordance with U.S. GAAP or, for International Reporting Companies, IFRS or an IFRS equivalent, as applicable, containing an audit opinion that is not adverse, disclaimed, or qualified. Audits must be conducted by an auditor registered with the PCAOB. International Reporting Companies are exempt from the PCAOB requirement.

SEC Reporting Companies and Regulation A Reporting Companies must file annual, semi-annual, quarterly and current reports, as applicable, on EDGAR in accordance with applicable SEC rules and regulations. International Reporting Companies that are required to post their disclosure through the OTC Disclosure & News Service must file annual and quarterly financial reports contemporaneously with submission to their Primary Regulator.

If a company that is not an SEC Reporting Company or a Regulation A Reporting Company fails to file, on a timely basis, any annual, semi annual, quarterly or interim report within the required timeframe, such company must file through the OTC Disclosure & News Service, no later than one business day after the due date for such report, a notice containing the following requirements:

- i. The notice must be entitled “Notification of Late Filing”; and
- ii. The notice must state the name of the company, the type of report (annual, quarterly or interim) that is or will be late, the reason why the report is or will be late, and the date that the company expects to file the report.

Companies delinquent in their filings are granted a cure period of 45 calendar days from the original due date.

A company is also required to comply with the following policies regarding the timely disclosure of material news and the handling of rumors.

Certain types of companies, such as insurance companies, are subject to additional requirements.

H. Timely Disclosure of Material News Releases/Developments

A company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities.

I. Rumors

A company should act promptly to dispel unfounded rumors which result in unusual market activity or price variations.

J. Maintain a Verified Company Profile

At least once every six months, and immediately subsequent to a Change in Control, a company must login to www.otciq.com and verify its Company Profile or update its Company Profile with the information needed to ensure the Company profile is current and complete in order to maintain the “Verified Company Profile” designation on www.otcmartets.com.

K. Annual OTCQB Certification

A company must file an annual OTCB Certification signed by either the CEO or CFO containing the same statements required in the initial “**OTCQB Certification**”. The annual OTCQB Certification must be filed through the OTC Disclosure & News Service no later than 45 calendar days after the company’s Annual Report due date.

L. Reverse Merger or Change of Control

If a company undergoes a reverse merger transaction or other change of control, the company must file, through the OTC Disclosure & News Service, an interim OTCQB Certification signed by the CEO or CFO as of the effective date of the transaction, which includes the statements required in the initial “**OTCQB Certification**” (see Page 21). OTC Markets Group may require submission of a Personal Information Form for any executive officer, director, or beneficial owner of 5% or more of a class of the company’s securities. OTC Markets Group may also determine, in its sole and absolute discretion, that a complete review must be completed, which requires the company to submit a new OTCQB Application and Agreement and a new OTCQB Application Fee.

In addition, if a company undergoes a Change in Control, the company must notify OTC Markets Group, submit a Change in Control notification as well as a new OTCQB Application and pay an application fee within 20 calendar days. OTC Markets Group may from time to time independently determine that a company has undergone a Change in Control, and in such case will notify the company of its determination. A company that fails to submit the required documentation and fees subsequent to a Change in Control may be suspended or removed from OTCQB in OTC Markets Group’s sole and absolute discretion.

M. Stock Promotion

If the OTC Markets Group determines, in its discretion, that a company’s OTCQB securities have become the subject of promotional activities (irrespective of whether the company was involved directly or indirectly with the promotional activity) that have the effect of encouraging trading, OTC Markets Group may require the company to provide additional public information regarding shareholdings of officers, directors and control persons, confirmation of shares outstanding, and any issuance of shares in the previous two years. The company must file such information through the OTC Disclosure & News Service. OTC Markets Group may also require submission of a Personal Information Form for any executive officer, director, or beneficial owner of 5% or more of a class of the company’s securities. In addition, the OTC Markets Group may display a flag, shaped like a megaphone, on the promoted company’s quote page on otcmarkets.com, with such flag to remain on a company’s profile for a 15-day period following the last promotional activity. This easily identifiable designation is meant to alert investors, regulators, and market participants to the presence of promotional activity. OTC Markets Group encourages all its listed companies to educate themselves on the manipulative practices stock promoters use and has published a policy on stock promotion, issued best practices guidelines for issuers and launched a compliance statistics page on its website. A company may even be removed from OTCQB if it is the subject of a misleading and manipulative stock promotion that has, in OTC Markets Group’s sole determination, a potentially negative impact on the integrity of the market.

N. Incorporation Status

A company must continue to be duly organized, validly existing and in good standing under the laws of each jurisdiction in which the company is organized or does business.

O. Shareholders

A company must continue to have at least 50 beneficial shareholders, each owning at least 100 shares.

P. Public Float

A company must continue to have a freely traded Public Float of at least 10% of the total shares issued and outstanding of the class of security to be traded on OTCQB. Alternatively, a company with a freely traded Public Float above 5% but below 10% of the total shares issued and outstanding, and a market value of Public Float of at least US\$2 million, or that has a separate class of securities traded on a national exchange, may apply in writing to OTC Markets Group for an exemption, which exemption may be granted by OTC Markets Group in its sole and absolute discretion.

Q. Bankruptcy

A company must not be subject to any Bankruptcy or reorganization proceedings.

V. UNITED STATES SECURITIES LAW COMPLIANCE

The U.S. securities markets and their participants are regulated by a complicated securities law regime, and administered and enforced by governmental agencies, such as the SEC, U.S. Department of Justice and state securities law commissions; self-regulatory organizations, such as the Financial Industry Regulatory Authority, Inc.; and the stock exchanges. Generally, all offers and sales of securities in the United States must be registered under the Securities Act and applicable state securities laws or exempt from such registration requirements, and all companies that are public in the United States are generally required to be registered and file periodic reports with the SEC unless they qualify for an exemption from such registration and reporting requirements.

Registration under the Exchange Act is required for:

- any class of securities where a company has a nexus to the United States, has at least US\$10 million in assets and has had within 120 days after its fiscal year end either (i) 2,000 holders of record (worldwide) or (ii) 500 holders of record³⁴ (world-wide) that are not “accredited investors”, as defined in Rule 501(a) of the Securities Act;³⁵
- any class of securities which is listed on a U.S. stock exchange;³⁶

Most foreign issuers that join OTCQX or OTCQB without SEC registration qualify as Foreign Private Issuers and for the exemption available under Rule 12g3-2(b).

A. Determination of Foreign Private Issuer Status

The U.S. securities laws provide certain accommodations and relief for foreign companies that qualify as a Foreign Private Issuer. One of these is the Rule 12g3-2(b) exemption, which can provide an exemption from the obligation to register and file reports with the SEC under the Exchange Act. An issuer cannot be eligible for Rule 12g3-2(b) unless it is a Foreign Private Issuer. For a company to qualify as a **Foreign Private Issuer**, it must be incorporated outside the United States and either:

- as of its most recently completed second fiscal quarter, less than a majority of its voting securities was beneficially held by persons resident outside the United States; or

³⁴ While the person listed on the issuer’s registered shareholder list will normally be considered the “holder of record” of the securities, commercial depositories such as CDS and Cede & Co. are not considered to be the holders of record of securities they hold for the account of third parties. Instead, each broker or other person shown on the CDS or Cede & Co. participant list, for whose account they hold securities, is considered a separate holder of record.

³⁵ **Accredited Investor** - Defined in Rule 501(a) of Regulation D and includes: (a) banks, savings and loan associations, registered brokers and dealers, insurance companies, registered investment companies, certain registered or exempt investment advisers, rural business investment companies, state employee benefit plans with assets that total over US\$5,000,000, other employee benefit plans that satisfy certain conditions; (b) private business development companies as defined in the Investment Advisors Act of 1940; (c) corporations, partnerships, limited liability companies, tax-exempt organizations as described in section 501(c)(3) of the Internal Revenue Code, and other entities, with total assets in excess of US\$5,000,000, provided they are not formed for the specific purpose of acquiring the securities offered; (d) officers, executive directors, and general partners of the issuer; (e) wealthy individuals whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent, at the time of his purchase exceeds US\$1,000,000 (excluding the individual’s primary residence and indebtedness that is secured by the person’s primary residence, provided that indebtedness in excess of the estimated fair market value of the primary residence shall be included as a liability); (f) individuals with individual income in excess of US\$200,000 in each of the two most recent years or joint income with such person’s spouse or spousal equivalent, in excess of US\$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; (g) any entity in which all of the equity owners are accredited investors; (h) persons holding Series 7, 82 or 65 licenses; and (i) certain qualifying “family offices” and certain qualifying “family clients”..

³⁶ Specifically, NYSE, NYSE American, or NASDAQ.

- none of the following exist (each, a “**Significant U.S. Business Nexus**”):
 - the business is principally administered in the United States,
 - a majority of the issuer’s assets are in the United States, or
 - a majority of the directors or a majority of the executive officers are United States citizens or residents.

Consequently, even foreign incorporated companies may not qualify as a Foreign Private Issuer if a majority of its voting stock is beneficially held in the U.S. and the company has a Significant U.S. Business Nexus, as determined above. Companies that do not qualify as Foreign Private Issuers are treated as “**U.S. Domestic Issuers**” by the SEC and are required to comply with all rules and regulations applicable to U.S. companies.

The U.S. securities laws and rules of the SEC provide several accommodations to Foreign Private Issuers, including:

- Ability to issue unrestricted “free trading” securities in offshore transactions outside the United States without SEC registration under Regulation S under the Securities Act (“**Regulation S**”), if no substantial U.S. market interest exists in the company’s securities³⁷;
- Exemption from reporting obligations under the Exchange Act in accordance with Rule 12g3-2(b) and requirements of Sarbanes-Oxley;
- Simplified resale of “restricted securities” by U.S. investors through the facilities of the TSX, TSXV, NEO and CSE under Regulation S;
- Availability of special forms for SEC registration and reporting;
- Qualified Canadian corporations may use the Multi-Jurisdictional Disclosure System (MJDS), which simplifies public offerings of securities into the United States; and
- Foreign Private Issuers reporting with the SEC can report on a simplified basis and are exempt from the United States 14A proxy rules, certain tender offer rules and Section 16 insider trading and reporting requirements.

A Foreign Private Issuer that has a Significant U.S. Business Nexus should monitor its U.S. securities ownership percentage on a regular basis to ensure it becomes aware of any risk of loss of its status as a Foreign Private Issuer.

B. Overview of Rule 12g3-2(b) Exemption

Rule 12g3-2(b) provides an exemption from the registration requirements of Section 12(g) of the Exchange Act. A Foreign Private Issuer may claim the Rule 12g3-2(b) exemption without having to submit a written application to the SEC, as long as the issuer:

³⁷ For a class of equity securities, if the Primary Trading Market for the securities is outside the United States, no substantial U.S. market interest will exist unless 20% or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer’s prior fiscal year or the period since the issuer’s incorporation. Certain additional restrictions apply under Regulation S to offers and sales of securities that are part of a class for which there is a substantial U.S. market interest.

- currently maintains a listing of the subject class of securities on one or more exchanges in its Primary Trading Market, which is defined to mean 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; and
 - if a Foreign Private Issuer aggregates the trading of its subject class of securities in two foreign jurisdictions, the trading for the issuer's securities in at least one of the two foreign jurisdictions is greater than trading in the United States for the same class of the issuer's securities;
- is not required to file reports under Section 13(a) or 15(d) of the Exchange Act; and
- has published English-language versions of certain Non-U.S. Disclosure Information (defined below) from the first day of its most recently completed fiscal year, on its website or through an electronic information delivery system generally available to the public in its primary trading market (unless claiming the exemption upon or following Exchange Act deregistration). "**Non-U.S. Disclosure Information**" is information that the issuer:
 - made public or was required to make public pursuant to the laws of the country of its incorporation, organization or domicile;
 - filed or was required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; or
 - distributed or was required to distribute to its security holders.

Because the definition of Primary Trading Market is based on worldwide trading during the issuer's most recently completed fiscal year, an issuer may not be eligible for Rule 12g3-2(b) until the end of the fiscal year in which its securities first commenced public trading in a non-U.S. jurisdiction. This may mean that certain newly-public issuers are ineligible for OTCQX (unless an SEC Reporting Company or Regulation A Reporting Company), and must instead apply for OTCQB, if applying prior to the end of the fiscal year in which they commenced trading.

C. Maintaining the Rule 12g3-2(b) Exemption

To maintain the Rule 12g3-2(b) exemption, an issuer must continue to publish electronically, on its website or through an electronic delivery system in its primary trading market, English-language versions of the Non-U.S. Disclosure Information. An issuer need only publish Non-U.S. Disclosure Information that is material to an investment decision such as:

- results of operations or financial condition;
- changes in business;
- acquisitions or dispositions of assets;
- the issuance, redemption or acquisition of securities;
- changes in management or control;

- the granting of options or the payment of other remuneration to directors or officers; and
- transactions with directors, officers or principal security holders.

An issuer must also continue to satisfy the other Rule 12g3-2(b) requirements, including that its securities be listed on a non-U.S. stock exchange and that its Primary Trading Market be outside the United States. In our experience, most Canadian companies whose shares are listed on a stock exchange in Canada and quoted on the OTCQX or OTCQB in the United States continue to satisfy the requirement that the Primary Trading Market be outside the United States; however, issuers that are listed on the OTCQX or OTCQB should monitor their trading volume in each country on an ongoing basis to identify any risk of loss of the Rule 12g3-2(b) exemption.

OTCQB and OTCQX issuers must annually provide OTC Markets Group with a certificate of compliance with Rule 12g3-2(b).

D. Deregistration and Availability of Rule 12g3-2(b) Exemption

For issuers that already have a class of equity securities registered under Section 12(g) of the Exchange Act, it is possible, if the issuer meets certain criteria, to suspend and eventually terminate the issuers reporting obligations under the Exchange Act and deregister such securities under the Exchange Act by filing a Form 15 or Form 15F. If upon the effectiveness of deregistration a Foreign Private Issuer meets the requirements for a Rule 12g3-2(b) exemption, the issuer may then join OTCQX or OTCQB. In this way, an issuer that wishes to continue to access U.S. markets, but does not wish to continue the burden of SEC reporting, may cease such reporting obligations, deregister its class of securities and still join OTCQX or OTCQB.

E. Compliance with Exchange Act Rule 10b-17 and FINRA Rule 6490

Pursuant to Exchange Act Rule 10b-17, it shall constitute a “manipulative or deceptive device or contrivance” for any issuer of a class of securities publicly traded otherwise than on a U.S. national securities exchange (such as NYSE, NYSE American or NASDAQ) to fail to give notice to FINRA (the Financial Industry Regulatory Authority, Inc.) of any dividend or distribution (subject to certain exceptions), any stock split or reverse split, or any rights or other subscription offering, at least 10 days prior to the record date involved or, in the case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date and the effective date of any registration statement to which the offering relates. Such notice must include the title of the security, the date of declaration, the date of record, the date of payment, distribution or delivery, as applicable, and certain other information in the case of a dividend or distribution.

Rule 6490 went into effect September 27, 2010. FINRA Rule 6490 requires all OTC companies to notify FINRA of corporate actions (including notices under Exchange Act Rule 10b-17 for dividends, stock splits, rights and subscription offerings and other corporate actions such as name changes, symbol changes, mergers, and bankruptcy filings) at least 10 days before the record date. FINRA Rule 6490 also enacts fees of US\$200 for processing timely filed corporate actions. Late notification can result in penalty fees ranging from US\$1,000 to US\$5,000. This rule also allows for voluntary symbol request changes, previously unavailable to OTC issuers.

We have been advised that FINRA does not require issuers whose principal stock exchange listing is the Toronto Stock Exchange or the TSX Venture Exchange to comply with FINRA Rule 6490; however, an issuer must still comply with Exchange Act Rule 10b-17, if applicable.

FINRA has enacted an electronic notification system. Instructions to use the system can be found at the following link: <http://www.finra.org/industry/upc/issuer-company-related-action-notification-form-and-adr-company-related-action>

VI. CAPITAL RAISING IN THE UNITED STATES

The Securities Act requires that all offers and sales of securities be registered with the SEC or exempt from such registration requirements. A company can generally raise capital without filing a registration statement with the SEC by complying with exemptions from the registration requirements under the Securities Act. Although a public offering in the United States requires a filing of a registration statement with the SEC, most offers and sales of securities in the United States are made pursuant to exemptions or safe harbors from the registration requirements of the Securities Act.

A. Exempt Offers and Sales

The primary exemptions from registration under the Securities Act available to a Foreign Private Issuer in connection with the offer and sale of securities are as follows:

- **Regulation S:** A Foreign Private Issuer can rely upon exemptions from the registration requirements of the Securities Act and issue securities in offshore transactions outside the U.S. in reliance upon Regulation S. If there is no Substantial U.S. Market Interest³⁸ in the class of securities, the securities issued in accordance with Regulation S are unrestricted “free trading” securities and bear no restrictive U.S. legend.
- **Rule 144A Offerings:** Securities that are not listed on a U.S. stock exchange may be offered and sold in the United States to qualified institutional buyers³⁹ are exempt under Rule 144A of the Securities Act. The securities issued pursuant to Rule 144A are deemed “restricted securities.”
- **Rule 506 Regulation D Offerings:** Offers and sales of securities in the United States in compliance with Rule 506 of Regulation D are exempt from the registration requirements under the Securities Act. Most offers and sales of securities are made exclusively to “accredited investors.”⁴⁰ Up to 35 non-accredited investors may participate in an offering

³⁸ **Substantial U.S. Market Interest** – As defined in Rule 902(j) of Regulation S. With respect to a class of an issuer’s equity securities, it means: (i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer’s prior fiscal year or the period since the issuer’s incorporation; or (ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer’s prior fiscal year or the period since the issuer’s incorporation. With respect to a class of an issuer’s debt securities, it means: (i) Its debt securities, in the aggregate, are held of record by 300 or more U.S. persons; (ii) \$1 billion or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in Rule 902(a)(1) of Regulation S, and the principal amount or principal balance of its securities described in Rule 902(a)(2) of Regulation S in the aggregate, is held of record by U.S. persons; and (iii) 20 percent or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in Rule 902(a)(1) of Regulation S, and the principal amount or principal balance of its securities described in Rule 902(a)(2), in the aggregate, is held of record by U.S. persons. Because additional restrictions apply under Regulation S to offers and sales of a security with a Substantial U.S. Market interest, a company with securities quoted on the OTCQX or OTCQB should monitor its trading volume in each country on an ongoing basis.

³⁹ **Qualified Institutional Buyers (QIB)** – Generally, institutions holding at least US\$100 million in securities and registered broker-dealers holding at least US\$10 million in securities.

⁴⁰ **Accredited Investor** - Defined in Rule 501(a) of Regulation D and includes: (a) banks, savings and loan associations, registered brokers and dealers, insurance companies, registered investment companies, certain registered or exempt investment advisers, rural business investment companies, state employee benefit plans with assets that total over US\$5,000,000, other employee benefit plans that satisfy certain conditions; (b) private business development companies as defined in the Investment Advisors Act of 1940; (c) corporations, partnerships, limited liability companies, tax-exempt organizations as described in section 501(c)(3) of the Internal Revenue Code, and certain other entities, with total assets in excess of US\$5,000,000, provided they are not formed for the specific purpose of acquiring the securities offered; (d) officers, executive directors, and general partners of the issuer; (e) wealthy individuals whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent, at the time of his purchase exceeds US\$1,000,000 (excluding the individual’s primary residence and indebtedness that is secured by the person’s primary residence, provided that indebtedness in excess of the estimated fair market value of the primary residence shall be included as a

under Rule 506(b), subject to investor sophistication and informational requirements. It is generally not recommended to include non-accredited investors in these offerings. The securities issued pursuant to Rule 506 are deemed “restricted securities”, and a notice filing must be submitted to the SEC within 15 days after the first sale.

- **Limited Offering Under Rule 504:** Rule 504 of Regulation D permits sales to an unlimited number of investors of up to US\$10,000,000 in any 12-month period. Although no particular form of disclosure is required, Rule 504 does not pre-empt state regulation and, therefore, a company must comply with the often more burdensome state securities laws, which frequently make the exemption less useful than it appears on its face. This exemption is sometimes, but not often, useful in small offerings to a few institutional or other investors. Whether the securities are deemed “restricted securities” will depend on the applicable state laws. A notice filing must be submitted to the SEC within 15 days after the first sale.
- **Section 4(a)(2):** Section 4(a)(2) of the Securities Act exempts transactions by an issuer “not involving a public offering.” This is the so-called “private placement” exemption from Securities Act registration. Companies seeking to rely on the Section 4(a)(2) at minimum should consider the following requirements:
 - *No General Solicitation* - The offer must be private and there must be no general solicitation of the public through advertisements, seminars, publicity or the like that could be interpreted as inviting participation by the general public.
 - *Number of Offerees* - While there is no fixed limit on the number of persons that may be offered securities, an opportunity offered to a large number of persons (for example, more than 40) is unlikely to qualify for the exemption, even if the number of investors is much lower.
 - *Sophisticated Investors* - In SEC v. Ralston Purina Co., 346 U.S. 119, 124-125 (1953), the Court held that offers and sales under Section 4(a)(2) must be made solely to persons who are “able to fend for themselves.” Issuers typically document each offeree’s investment qualifications, experience and sophistication to satisfy this requirement.
 - *Information* - All offerees must have or be afforded access to the sort of information that registration of the securities would disclose. In most cases where offers are made to persons other than “insiders” of the issuer or others with either intimate knowledge of the issuer’s affairs or who are in a position to demand and receive all material information that they might request regarding the issuer and its affairs, issuers typically prepare a private placement memorandum that contains full and fair disclosure that would be required were the offering to have been made pursuant to a registration statement filed with the SEC.
 - *Resale Restrictions* – The securities are “restricted securities” and reasonable steps must be taken to prevent the resale of the shares to the general public.

liability); (f) individuals with individual income in excess of US\$200,000 in each of the two most recent years or joint income with such person’s spouse or spousal equivalent, in excess of US\$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; (g) any entity in which all of the equity owners are accredited investors; (h) persons holding Series 7, 82 or 65 licenses; and (i) certain qualifying “family offices” and certain qualifying “family clients”.

- *State Securities Laws* – Section 4(a)(2) does not pre-empt securities regulation, so any offering must comply with an available exemption from registration under applicable state securities laws.

B. Registered Offers and Sales

A Foreign Private Issuer may file a registration statement under the Securities Act on Form F-1 or Form S-1 to register the offer and sale of securities to the public⁴¹ with the SEC or, in some cases, if a Canadian prospectus is also being filed, on a short form using the MJDS system. The registered securities may be offered and sold in the U.S. and outside the U.S. and will be unrestricted securities. Once a registration statement is declared effective, the company will be subject to ongoing reporting requirements of the Exchange Act pursuant to Section 15(d) of the Exchange Act.⁴² A Foreign Private Issuer may file annual reports on Form 20-F (or Form 40-F, if eligible) and current reports on Form 6-K. Certain shareholders are required to file beneficial ownership reports on Schedule 13D/G if the company elects to register the class of securities under Section 12 of the Exchange Act and becomes a reporting issuer.

All SEC reporting issuers are subject to the requirements of Sarbanes-Oxley, including Section 404, requiring auditor attestation of internal control over financial reporting.

C. Resales of Securities

All resales of securities are required to be registered under the Securities Act or exempt from such registration requirements. Securities are normally sold through public trading markets (e.g., the TSX, TSXV, NEO, CSE, NYSE, NYSE American, NASDAQ, OTCQX, OTCQB, or the Pink) under exemptions from Securities Act registration requirements. These exemptions include the following:

- **Section 4(a)(1):** Section 4(a)(1) of the Securities Act exempts transactions by any person other than an issuer, underwriter or dealer. This is the exemption that permits the average shareholder to sell in the open market. Note, however, that the term “underwriter” is defined to include any person who purchases from an issuer or an affiliate of an issuer with a view to, or sells for an issuer or its affiliate in connection with, the distribution of a security, or who participates in underwriting such an undertaking. Thus, a statutory “underwriter” does not have to be an investment banking firm; it can be anyone who resells securities purchased from an issuer or an affiliate.
- **Rule 144:** SEC Rule 144 establishes a “safe harbor” to permit affiliates⁴³ of an issuer, and persons who purchase securities from the issuer or an affiliate in an unregistered private transaction, to resell securities in the public market without registration and without being deemed an “underwriter.” Rule 144 applies to two categories of securities: (1) “restricted securities” and (2) any securities held by an affiliate of the issuer, whether restricted or not. It sets forth requirements for the public sale of such securities without registration under the Securities Act. Generally, restricted securities of an issuer that is not a reporting issuer under the Exchange Act may be resold after one year. Affiliates selling securities under Rule 144 must also comply with volume and manner of sale restrictions and an SEC filing

⁴¹ A Foreign Private Issuer may register a public offering of securities with the SEC by filing a long form registration statement. The registration statement must comply with the requirements of Form F-1 or Form S-1, including requirements relating to financial statements and auditors. The registration statement is subject to review by the SEC.

⁴² If eligible, a Foreign Private Issuer may terminate filing SEC reports after filing its first annual report by filing a termination statement in accordance with Form 15F.

⁴³ An “affiliate” of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such issuer. Directors, officers and persons who own or have the right to acquire more than 10% of the voting securities of an issuer are generally deemed to be affiliates of the issuer.

requirement. Rule 144 is not available if the issuer is or has ever been a “shell company”⁴⁴ unless either:

- (i) the issuer becomes subject to and is current with the reporting requirements of the Exchange Act and at least one year has elapsed from the time that the issuer filed a Form 8-K containing current Form 10 type information with the SEC reflecting its status as an entity that is not a shell company; or
 - (ii) the issuer satisfies the following conditions: (a) the issuer is organized under the laws of Canada, (b) the issuer was, at the time it became a public company, a “capital pool company” or “CPC” (which is a Shell Company that is regulated by the TSX Venture Exchange), or a “special purpose acquisition corporation” or “SPAC” (which is a Shell Company that is regulated by the Toronto Stock Exchange), provided that issuers that existed under the predecessor programs to the current CPC program, including those that were administered by the Canadian Venture Exchange, the Vancouver Stock Exchange or the Alberta Stock Exchange, are also included; (c) the issuer has ceased to be a Shell Company and, since the date that it initially ceased being a Shell Company by virtue of completing a “qualifying transaction” under the CPC or SPAC programs, has never again been a Shell Company; (d) the issuer is a “reporting issuer” under the laws of at least one Canadian province, is required to file reports on SEDAR, and has filed on SEDAR all reports and other materials required to be filed by it during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials); the issuer has filed an Annual Information Form, prepared in accordance with Canadian securities laws, on SEDAR during the preceding 16 months; and (e) the issuer has filed on SEDAR at least one year prior to the action to be taken under Rule 144 certain other information,⁴⁵ all of which shall reflect the issuer’s status as an entity that is no longer a Shell Company.
- **Regulation S:** Regulation S provides an exemption for resales of securities in offshore transactions⁴⁶ provided that there are no directed selling efforts in the United States. Under Rule 904 of Regulation S, holders of restricted securities of a Foreign Private Issuer can generally resell these securities through the facilities of the TSX, TSXV, NEO or CSE by delivering a declaration for removal of legend to the company’s transfer agent to remove the restrictive legend prior to effecting a trade. If the resale is being made by an officer or

⁴⁴ A “shell company” is any company, other than an asset-backed issuer, that has:

- (a) no or nominal operations; and
- (b) either:

- (i) no or nominal assets;
- (ii) assets consisting solely of cash and cash equivalents; or
- (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

⁴⁵ Such information includes: (1) an Annual Information Form prepared in accordance with Canadian securities laws; (2) audited annual financial statements, prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, as currently required to be prepared by the issuer under Canadian securities laws; provided that, if permitted by Canadian securities laws, such audited annual financial statements may be prepared in accordance with (i) Canadian generally accepted accounting principles in effect from time to time (provided that such financial statements are accompanied by a reconciliation to United States generally accepted accounting principles), or (ii) United States generally accepted accounting principles; (3) Management’s Discussion and Analysis relating to its audited annual financial statements required to be prepared by the issuer under Canadian securities laws; and (4) a Management Information Circular/Proxy Statement prepared by the issuer in connection with an annual or special meeting of shareholders of the issuer.

⁴⁶ “Offshore transactions” are transactions in which:

1. the offer is not made to a person in the United States; and
2. either: (i) at the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believes that the buyer is outside the United States; or (ii) the transaction is executed in, on or through the facilities of one of a number of markets designated by the SEC (which include the TSX, TSXV, NEO and CSE) and neither the seller nor any person acting on its behalf (e.g., the seller’s broker) knows that the transaction has been prearranged with a buyer in the United States.

director of the issuer, no commission or fee may be paid in connection with the sale, except for the usual and customary broker's commission that would be received by a person executing the transaction as agent. Additional restrictions apply if the resale is being made by a distributor participating in a distribution, or by a person that is an affiliate of the issuer other than solely by virtue of being one of its officers or directors.

VII. U.S. SECURITIES LAW LIABILITY

A Foreign Private Issuer that has joined the OTCQX or OTCQB markets, that does not conduct registered public offerings in the United States and that relies on the exemption from Exchange Act registration provided by Rule 12g3-2(b) will be exempt from many of the sources of potential U.S. securities law liability. Generally, joining OTCQX or OTCQB alone does not increase liability risks in the United States. However, some sources of potential U.S. securities law liability, such as the anti-fraud and insider trading rules, are applicable to all companies, including those exempt from SEC reporting. These provisions can cause companies and their directors, officers and controlling shareholders to be liable for damages or disgorgement of proceeds in civil actions by shareholders as well as by the SEC. Liability may arise under the provisions of the Exchange Act or Securities Act.

A. Exchange Act

The Exchange Act generally regulates secondary trading of securities and issuers registered under the Exchange Act and their affiliates. Companies that rely on Rule 12g3-2(b) in connection with joining OTCQX or OTCQB generally are not subject to the same liabilities as companies registered under the Exchange Act. However, liability under certain sections of the Exchange Act may arise for anti-fraud and insider trading regardless of whether an issuer is registered under the Exchange Act or traded on OTCQX or OTCQB.

- **Section 10(b) and Rule 10b-5** provide for general anti-fraud liability in connection with purchases and sales of securities. These anti-fraud provisions are applicable to securities transactions generally, whether conducted face-to-face, over-the-counter, or on exchanges.
- **Section 20(a)** provides that every person who directly or indirectly controls a person liable under any provision of the Exchange Act is jointly and severally liable for a violation by that person, unless the controlling person acted in good faith and did not directly or indirectly induce the acts constituting the violation. In certain circumstances, directors and officers may be held liable as controlling persons of companies or their employees or agents upon showing of actual participation in the corporation's operation or influence in connection with the violation.
- **Section 21A** provides for severe civil monetary penalties in a civil action brought by the SEC for trading while in possession of nonpublic information and for control persons, who are on notice that such trading may occur by those under their control, and do not take appropriate steps to prevent it. The provisions of this section are applicable to issuers registered under the Exchange Act and to those with exemptions from registration pursuant to Rule 12g3-2(b).

B. Securities Act

The Securities Act generally applies to any transaction involving an offer and sale of securities. Liability under the Securities Act is generally limited to specific offers and sales in an issuer's securities.

- **Section 12** provides that any person who offers and sells a security in violation of the registration provisions of the Securities Act or by means of communication that contains a misstatement or omission of a material fact is liable to the buyer for rescission or damages. Section 12 actions based on registration violations impose absolute liability. Section 12 actions for misstatements and omissions permit the seller to avoid liability if he can prove that he did not know, and in the exercise of reasonable care could not have known, of the misstatement or omission. Issuers as well as the directors or officers with involvement in the offering may be deemed to be "sellers" for purposes of Section 12.

- **Section 15** provides that any person who controls a person liable under Section 12 shall be jointly and severally liable to the same extent, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by virtue of which the liability of the controlled person is alleged to exist.
- **Section 17(a)** provides for general anti-fraud liability in connection with offers and sales of securities. Section 17(a) is very similar to Section 10(b) under the Exchange Act, except that it applies only to sales and not to purchases.

VIII. AN OVERVIEW OF THE PROCESS OF JOINING OTCQX / OTCQB

Below is an overview of the action items required for a Canadian company to join OTCQX or OTCQB under the OTCQX Premier International, OTCQX International, and OTCQB International Reporting standards.

Action Item	Timing
Review requirements	While considering application
Review Foreign Private Issuer Status	While considering application
Contact OTC Markets Group for submission information	Upon determination to apply
Interview and select Sponsor	Upon determination to apply
<p>Work with Sponsor to determine eligibility</p> <ul style="list-style-type: none"> • Confirm proprietary market maker quotations on OTC Link or plan to arrange for Form 211 application or OTC Markets Group application • Verify listing on qualified stock exchange if required. The TSX, TSXV, NEO and CSE are qualified stock exchanges • Verify compliance with Rule 12g3-2(b) exemption, SEC Reporting requirements, or Regulation A requirements or other applicable standard • Verify that the company's transfer agent is part of the Transfer Agent Verified Shares Program • Verify company is not subject to Bankruptcy or reorganization proceedings • Verify financial statement requirements • Verify company has at least 50 beneficial shareholders, each owning at least 100 shares • For OTCQX, verify that the company is not a Shell Company or Blank-Check Company, unless it is an eligible SPAC • Verify satisfaction on numerical standards <ul style="list-style-type: none"> ○ <u>OTCQB</u>: <ul style="list-style-type: none"> ○ Minimum bid price of US\$0.01 ○ Public Float of at least 10% of the total shares issued and outstanding of the class, subject to certain exceptions ○ <u>OTCQX International Premier</u>: <ul style="list-style-type: none"> ○ Global Market Capitalization of at least US\$1 billion on each of the 30 consecutive calendar days immediately preceding the company's Application Day ○ Five year operating history ○ One of the following over the previous six months (calculated using the trading of the security or underlying security, as applicable, on the company's Qualified Foreign Stock Exchange: (a) An average weekly trading volume of at least 200,000 shares; or (b) an average weekly trading dollar volume of at least US\$1,000,000 ○ Complies with all of the OTCQX International numerical standards, and with respect to the Penny Stock exemption, not relying solely on the exemption relating to a security price of US\$5.00 or more 	Upon determination to apply

Action Item	Timing
<ul style="list-style-type: none"> ○ <u>OTCQX International</u> <ul style="list-style-type: none"> ○ One of the following exemptions consistent with the definition of a “Penny Stock” under Rule 3a51-1 of the Exchange Act: (1) the company has net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of US\$2,000,000, if the company has been in continuous operation for at least three years, or US\$5,000,000, if the company has been in continuous operation for less than three years, as demonstrated by audited financial statements dated less than fifteen months prior to the Application Day; (2) the company has average revenue of at least US\$6,000,000 for the last three years, as demonstrated by audited financial statements dated less than fifteen months prior to the Application Day; or (3) the security has an inside bid quotation of US\$5.00 or more on the close of business on each of the 30 consecutive calendar days immediately preceding the Application Day, and as of the most recent fiscal year end have at least one of the following: (A) net income of US\$500,000; (B) net tangible assets of US\$1,000,000; (C) revenues of US\$2,000,000; or (D) total assets of US\$5,000,000 ○ A minimum bid price of US\$0.25 per share as of the close of business on each of the 30 consecutive calendar days immediately preceding the company’s Application Day, subject to certain exceptions ○ A Global Market Capitalization of at least US\$10,000,000 on each of the 30 consecutive calendar days immediately preceding the Application Day 	
Work with Sponsor to complete OTCQX or OTCQB application	30 – 40 days prior to submitting application
As applicable, comply with Rule 12g3-2(b); publish all required company and investor documents on company website or SEDAR	30 – 40 days prior to submitting application
As applicable, arrange for FINRA member submission of Form 211 for OTC Link	30 – 40 days prior to submitting application (FINRA or OTC Markets Group due diligence clearance can take 4-12 weeks)
Submit application and application fee	Date of application submission
Receive confirmation of receipt of application from OTC Markets Group. Receive access codes and instructions to allow posting of disclosure on OTC Disclosure & News Service	Within 10 days of date of application
Resolve any issues with OTC Markets Group	10 – 24 days following date of application
Receive preliminary approval of admission	10 – 24 days following date of application

Action Item	Timing
Submit any amendments or revisions to application	Within 7 days of receipt of preliminary approval
Make initial disclosure as required on OTC Disclosure & News Service (other than press releases). This is not required for SEC Reporting Companies or a Regulation A Reporting Companies	Within 90 days of submission approval and before first day of quotation
For OTCQB, file onto the OTCIQ, the OTCQB Certification Form	Within 90 days of submission approval and before first day of quotation
Submission of Letter of Introduction (if applicable) Sponsor certification that all of the eligibility requirements and filings have been made for admission, including: <ul style="list-style-type: none"> Sponsor Qualifications Issuer formal compliance 	Once all admission requirements have been met
Commence quotation	First day of quotation
Satisfy all ongoing requirements	Ongoing
Determine if optional Blue Sky exemption filings are required	Post admission

The foregoing is an estimated timeline for the OTCQX and OTCQB admission process. The actual timing may vary depending on the circumstances of an individual company.

This Guide provides a very general overview of the initial admission requirements and procedures related to maintenance of a quotation on the OTCQX or OTCQB by Canadian companies under the OTCQX Premier International, OTCQX International, and OTCQB International Reporting standards. It is not intended as a definitive statement on the subject.

If you have any questions related to this Guide or the OTCQX or OTCQB markets, please feel free to contact your local office of Dorsey & Whitney LLP.



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