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## FINRA Issues New Notice Requirements for OTC Companies

*By Victoria Bantz, Esq.*

Effective September 27, 2010, there is a new rule in the U.S. OTC marketplace regarding notification and processing of name changes and other corporate actions. FINRA Rule 6490 (Processing of Company-Related Actions) requires all OTC companies to notify FINRA (the Financial Industry Regulatory Authority) of corporate actions (including dividends, stock splits, name changes, mergers, and bankruptcy filings) at least 10 days before the record date or effective date. This rule also imposes a filing fee of \$200 for processing timely filed corporate actions and a filing fee of \$500 for trading symbol change requests. Late notifications may result in penalty fees up to \$5,000.

FINRA Rule 6490 codifies the requirements in Rule 10b-17 of the Securities Exchange Act of 1934 for issuers of a class of publicly trading securities to provide timely notice to FINRA of certain corporate actions. These actions include:

- A dividend or other distribution in cash or in kind, except an ordinary interest payment on a debt security, but including a dividend or distribution of any security of the same or another issuer;
- A stock split or reverse split;
- A rights or other subscription offering (collectively, referred to as “SEA Rule 10b-17 Actions”). For example, an issuer of non-exchange-listed publicly traded securities that is planning a stock split on shares of its common stock to holders of record on

February 25 would be required under SEA Rule 10b-17 and FINRA Rule 6490 to provide written notice to FINRA no later than 10 days prior to the record date for the transaction, or by February 15;

- Change to a trading symbol or company name;
- Merger, acquisition, dissolution or other company control transaction; or
- Bankruptcy or liquidation

Information generally required in the notice (see the attached notification form):

- Title of the security;
- Date of declaration;
- Record date;
- Payment or distribution date;
- For cash distributions, the amount to be paid per share;
- For distribution of securities, generally the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of the dividend or distribution;
- Details of any conditions that must be satisfied to enable the payment or distribution; and
- Additional details relating to stock or reverse splits.

### **What OTCQX-Listed Companies Should Do**

The company and its transfer agent must:

1. Complete, sign and submit the Company-Related Action Notification Form to FINRA Operations at least ten (10) days prior to the record date or effective date (as applicable) involved for the Company-Related Action. The form is available on FINRA's website at [www.finra.org/upc/forms](http://www.finra.org/upc/forms) and is attached to this memo.
2. Ensure that the issuer's duly authorized transfer agent signs and submits a completed Transfer Agent Verification Form to FINRA Operations simultaneously, also attached.
3. Attach supporting documentation (e.g., copy of board resolutions authorizing the Company-Related Action, amendment to the charter of incorporation) as required by the Company-Related Action Notification Form.

4. Pay all applicable fees, including late fees, in the manner prescribed on the Company-Related Action Notification Form.
5. Submit the above package either electronically or via overnight mail to FINRA Operations at the addresses specified on the applicable Form.
  - a. To make notifications of cash and stock dividends, submit forms to: [otcdividends@finra.org](mailto:otcdividends@finra.org).
  - b. For all other corporate actions, submit forms to [otccorpactions@finra.org](mailto:otccorpactions@finra.org).

FINRA Operations will assign a unique, identifying number to each request to process documentation for a Company-Related Action. Issuers must include the number on all future submissions, notices and correspondence from them to FINRA Operations relating to the action.

If you have any questions or about the content of this white paper please contact Victoria Bantz at (303)-592-8337 or via email: [vbantz@bw-legal.com](mailto:vbantz@bw-legal.com).

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#### **About the Author**

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**Victoria B. Bantz** practices business, tax, and securities law. She is a member of the Firm's Tax Department and Corporate Department. She has developed an expertise in assisting international companies with listings on the premier tier of the Pink Sheets, known as the OTCQX and provides guidance on corporate disclosure to the U.S. investor audience.

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