

White Paper

Getting Quoted on OTCQX International | An Overview for Non-US Companies

Over the last few years, OTCQX International, a quotation platform operated by OTC Markets Group Inc., has established significant traction in the marketplace. There are now over 300 foreign issuers with securities quoted on OTCQX International, ranging from earlier stage companies to well-known large cap issuers.

OTCQX International is attractive to many foreign issuers because it provides them with a cost-effective way to expand their access to U.S. investors and increase liquidity. OTCQX International can be an upgrade for a foreign issuer that already is quoted in the United States on a “bulletin board” quotation system, or can be used by an issuer that is establishing its first U.S. trading presence.

As discussed below, a foreign issuer can obtain an OTCQX International quotation without becoming a U.S. reporting company, meaning that it is not required to file periodic reports with the U.S. Securities and Exchange Commission (“SEC”) under the Securities Exchange Act. It also is not required to comply with the Sarbanes-Oxley Act or the governance requirements otherwise applicable to companies that list on The Nasdaq Stock Market or the New York Stock Exchange. This is because OTCQX International is an “inter-dealer quotation system” rather than a “national securities exchange” for U.S. regulatory purposes, and because OTCQX International companies typically qualify for an exemption from reporting known as Rule 12g3-2(b) under the Securities Exchange Act. (This exemption is discussed in greater detail below.)

Requirements for Admission to OTCQX International

There are two OTCQX tiers for foreign issuers: OTCQX International and OTCQX International Premier. OTCQX International Premier is for larger companies and requires applicants to meet

significantly higher quantitative standards for initial quotation and on an ongoing basis. Otherwise, the initial and ongoing requirements applicable to both tiers are the same.

To be admitted to OTCQX International, an issuer must satisfy the requirements below. An issuer typically can establish an OTCQX International quotation in 12 weeks or less. The process can be significantly shorter for an issuer that already has an over-the-counter sponsored American Depositary Receipt (“ADR”) program.

Financial Requirements

At a minimum, in order to be quoted on OTCQX International, a foreign issuer must have had US\$ 2 million in total assets at the end of its most recent annual or quarterly fiscal period and also must have satisfied one of the following thresholds for its most recent fiscal year: (1) US\$ 2 million in revenues; (2) US\$ 1 million in net tangible assets; (3) US\$ 500,000 in net income; or (4) US\$ 5 million in global market capitalization.

The issuer financial requirements are greater for admission to OTCQX International Premier. As is the case for lower-tier International issuers, the issuer must have had US\$ 2 million in total assets as of the end of its most recent annual or quarterly fiscal period. In addition, it must satisfy either of two alternative sets of standards as of the end of its most recent fiscal year. It must have had revenue of US\$ 100 million, global market capitalization of US\$ 500

million, aggregate cash flow for the three preceding years of US\$ 100 million and minimum cash flow in each of the two preceding years of US\$ 25 million. Alternatively, it must have had revenue of US\$ 75 million and global market capitalization of US\$ 750 million. These requirements are consistent with the analogous NYSE listing standards.

Qualifying Foreign Stock Exchange Listing

An OTCQX International issuer must have been listed on a Qualifying Foreign Stock Exchange for at least the preceding 40 days. Almost 60 markets in more than 40 countries have been designated as Qualifying Foreign Stock Exchanges, as indicated on Annex A.

Availability of Specified Public Information

In order to obtain an OTCQX International quotation, a foreign issuer must either have a class of securities registered under Section 12(g) of the Securities Exchange Act, which requires it to file periodic reports with the SEC, or it must be a Rule 12g3-2(b) issuer. This *White Paper* describes the OTCQX International quotation process for Rule 12g3-2(b) issuers.

Rule 12g3-2(b) is an exemption from the registration and ongoing reporting requirements under the Securities Exchange Act. Instead, a Rule 12g3-2(b) issuer must publish electronically — either on its website or through an electronic information delivery system generally available to the public in its primary trading market — certain information that it makes public to shareholders under home country requirements. This information must be published in English. The Rule 12g3-2(b) exemption is discussed in greater detail below.

An issuer that will be relying on the Rule 12g3-2(b) exemption also must electronically post through the OTC Disclosure and News Service all of the information required to be made publicly available under Rule 12g3-2(b) for the preceding 24 months. These materials must be posted within 90 days after submission of an OTCQX International application.

Appointment of a “PAL”

OTCQX companies are required to have a sponsor. For an OTCQX International issuer, this is known as a Principal American Liaison (“PAL”). The PAL can be a law firm, investment bank or ADR depository bank. In order to serve as a PAL, an institution must complete the PAL application and approval process if it has not already done so. Schulte Roth & Zabel already has completed this process and is pre-qualified to act as a PAL for OTCQX International issuers.

Among other things, the PAL assists the issuer in determining whether it meets OTCQX International

eligibility requirements, in completing the application and in navigating the application process generally. In connection with initial quotation, the PAL also must provide a letter to OTC Markets Group confirming that the issuer is in compliance with the requirements of Rule 12g3-2(b) and other applicable OTCQX International requirements.

On an ongoing basis, the PAL provides advice concerning compliance with Rule 12g3-2(b) and the OTCQX rules. The PAL also is required to conduct an annual review to confirm that the issuer is in compliance with these requirements and to provide a letter to that effect to OTC Markets Group.

DTC Eligible Security

In order to be quoted on OTCQX International, securities must be eligible for deposit with the Depository Trust Company (“DTC”). DTC acts as a clearinghouse for settling securities trades. Securities that are deposited with DTC trade book-entry, rather than through physical delivery.

Ordinary shares of Canadian issuers can trade directly in the United States, since DTC maintains a link with CDS, the Canadian securities depository. The shares of most other foreign issuers indirectly trade in the United States via DTC-eligible ADRs. ADRs are issued by a depository bank. Each ADR represents one or more shares of the issuer’s stock or a fraction of a share.

Proprietary Priced Quotations

The issuer must have proprietary priced quotations of its securities published by a U.S. market maker in OTC Link, which is an electronic inter-dealer quotation system operated by OTC Markets Group that provides price quotations for securities issued by OTCQX issuers.

Inclusion in a Recognized Securities Manual

The issuer must provide disclosure on an ongoing basis in a securities manual published by Standard and Poor’s or Mergent (formerly known as Moody’s). In the United States, the resale of securities in secondary market transactions is regulated at both the federal and state level. By providing disclosure in a recognized securities manual, secondary trading is automatically permitted in up to 38 U.S. states. Exemptions in other states usually can be obtained through a fairly simple application process, although this is not required for establishing or maintaining an OTCQX International quotation.

The Application Process

In order to obtain an OTCQX International quotation, the issuer must complete an OTCQX Application for International Companies. This application requires information concerning the issuer, the securities to

be quoted and the issuer's compliance with OTCQX International eligibility requirements. The issuer also must enter into an OTCQX Agreement for International Companies. Among other things, this agreement provides for the designation of the issuer's securities as OTCQX International securities and the usage by the issuer of OTCQX issuer services, such as the OTC Disclosure and News Service.

Applicants also are required to pay an application fee of US\$ 5,000.

Satisfying the Rule 12g3-2(b) Exemption

A foreign issuer generally is required to register a class of securities with the SEC under the Securities Exchange Act when it has over US\$ 10 million in assets and the class is held by more than (1) 2,000 shareholders of record or 500 shareholders of record who are not accredited investors; and (2) 300 U.S. residents. Securities Exchange Act registration requires the issuer to file a fairly comprehensive disclosure document containing specified business and financial information about the issuer. Thereafter, the issuer also must file periodic reports under the Securities Exchange Act on an ongoing basis. In addition, it must comply with certain aspects of Sarbanes-Oxley.

An issuer that qualifies for the Rule 12g3-2(b) exemption is not required to comply with these requirements. The issuer instead can make certain home country disclosures available to U.S. investors. The exemption is self-executing; an issuer that qualifies for the exemption is entitled to rely on it automatically, without making any filing with or receiving prior approval from the SEC.

In order to satisfy the Rule 12g3-2(b) exemption, the issuer must meet four requirements:

- It must be a "foreign private issuer," which is defined as a non-governmental issuer that is organized under the laws of a country other than the United States, unless: (1) U.S. residents own more than 50 percent of its outstanding voting securities; and (2) either (a) the majority of its executive officers or directors are U.S. citizens or residents or (b) more than 50 percent of its assets are located in the United States or (c) its business is administered principally in the United States.
- The issuer is not a Securities Exchange Act registrant.
- The issuer maintains a listing of its securities on one or more non-U.S. exchanges that, either

singly or together, constitute the primary trading market for its securities.

To have a non-U.S. primary trading market, at least 55 percent of the trading in the securities on a worldwide basis must have taken place during the issuer's most recently completed fiscal year in on or through the facilities of the securities markets in not more than two foreign jurisdictions. If the issuer aggregates the trading of the securities in two foreign jurisdictions for purposes of the test, the trading for the securities in at least one of the two foreign jurisdictions must exceed the U.S. trading for the securities. There is no minimum time period for which securities need to be traded in the primary trading market to qualify for the Rule 12g3-2(b) exemption. Therefore, an IPO issuer can satisfy the exemption, although an OTCQX International issuer must have a pre-existing listing on a Qualifying Foreign Stock Exchange, as discussed above.

- The issuer must publish, in English, information that, since the first day of its most recently completed fiscal year, it has:
 - Made public or been required to make public pursuant to the laws of its country of incorporation, organization or domicile;
 - Filed or been required to file with the principal non-U.S. stock exchange on which its securities are traded and which has been made public by that exchange; and
 - Distributed or been required to distribute to its security holders.

Rule 12g3-2(b) only requires materials to be published in English to the extent material to an investment decision, such as information concerning the following:

- 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 payment of compensation to directors or officers; and

- Transactions with directors, officers or principal security holders.

Although there is no “bright-line” test for determining when information is material, information generally is considered to be material to an investment decision if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to purchase or sell a security.

In some cases, the issuer may publish summaries of its Rule 12g3-2(b) information. At a minimum, the issuer is required to publish English translations of the following to the extent material:

- Its annual report, including annual financial statements;
- Its interim reports that include financial statements;
- Its press releases; and
- All other communications and documents distributed directly to the holders of securities of the class to which the Rule 12g3-2(b) exemption relates.

Rule 12g3-2(b) materials must be published on the issuer’s website or through an electronic information delivery system generally available to the public in its primary trading market. Documents that are published pursuant to Rule 12g3-2(b) are not treated as having been “filed” for purposes of the Securities Exchange Act. Under Section 18 of the Securities Exchange Act, an issuer may have liability for false and misleading statements contained in its Securities Exchange Act filings. Because Rule 12g3-2(b) documents are not filed, they are not subject to Section 18 liability. However, as discussed below, under certain circumstances, Rule 12g3-2(b) issuers still may be held liable for fraudulent statements contained in their Rule 12g3-2(b) disclosure under Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

Maintaining an OTCQX International Quotation

Like other quotation platforms, OTCQX International requires issuers to satisfy various ongoing quantitative and qualitative maintenance requirements.

An OTCQX International issuer must continue to satisfy the financial standards, proprietary priced quotation and Qualifying Foreign Stock Exchange requirements applicable to an initial quotation. It also must comply with home country securities laws, as well as any applicable

U.S. federal and state securities laws, including Rule 12g3-2(b), and must post its Rule 12g3-2(b) information through the OTC Disclosure and News Service.

The quoted issuer also must continue to retain the services of a PAL, and, on an annual basis, it must provide a letter to the PAL confirming that it continues to satisfy the requirements of the applicable OTCQX International tier, that it is in compliance with Rule 12g3-2(b) and that it has posted its Rule 12g3-2(b) information through the OTC Disclosure and News Service. On an annual basis, the PAL also must furnish a compliance letter relating to the issuer to OTC Markets Group.

There is an annual fee of US\$ 15,000 to maintain an OTCQX International quotation.

Other Common Topics of Interest

Foreign issuers considering a quotation in the United States often also ask about the following topics:

Raising Capital in the United States

Rule 12g3-2(b) issuers often wish to raise capital in the United States, typically as a tranche in a primarily non-U.S. offering. A Rule 12g3-2(b) issuer can privately raise capital in the United States without triggering the transaction registration requirements of the Securities Act or the ongoing reporting requirements of the Securities Exchange Act. In some cases, the U.S. tranche is structured as an exempt Rule 144A offering, in which investors are limited to qualified institutional buyers, which generally are institutional investors with US\$ 100 million or more in assets under management. The Rule 144A exemption requires the issuer to make available upon request to investors and prospective purchasers specified reasonably current information about the issuer. The information published under Rule 12g3-2(b) satisfies this requirement.

Although outside of the scope of this *White Paper* and therefore not discussed herein, there are other U.S. private placement exemptions that can be used while still maintaining a Rule 12g3-2(b) exemption. In addition, a Rule 12g3-2(b) issuer always has the flexibility to conduct a public offering in the United States, although that would trigger the registration and reporting requirements of the Securities Act and the Securities Exchange Act.

Terminating an OTCQX Quotation

An OTCQX International company may withdraw its securities from OTCQX quotation at any time, upon 24 hours written notice to OTC Markets Group. An issuer can terminate an OTCQX International quotation in

connection with the listing of the class of securities on The Nasdaq Stock Market or the New York Stock Exchange. Alternatively, the issuer can downgrade to a lower-tier quotation.

Exposure to U.S. Securities Fraud Claims

Although Rule 12g3-2(b) issuers are not subject to all of the liability provisions of the federal securities laws because they are not Securities Exchange Act registrants, they are subject to Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, which prohibit the use of manipulative and deceptive practices in securities transactions. Foreign private issuers establishing a U.S. listing or quotation historically have been concerned about potential exposure to fraud claims brought under the U.S. federal securities laws by both U.S. and foreign plaintiffs, irrespective of the location of the transactions in the securities.

In an important 2010 U.S. Supreme Court case that overturned almost 40 years of judicial interpretations, the court held that Section 10(b) applied only to transactions in securities listed on a domestic stock exchange or domestic transactions in other securities. The effect of this case was to scale back the extraterritorial application of the anti-fraud provisions of the federal securities laws.

In early 2012, the Second Circuit Court of Appeals, an important U.S. court for federal securities law jurisprudence, addressed what constitutes a domestic transaction in securities not listed on a U.S. exchange. Consistent with the earlier Supreme Court case, the Court of Appeals concluded that a domestic transaction requires either that the parties become irrevocably bound to complete the transaction in the United States or that title to the securities at issue be transferred in the United States.

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For further information concerning establishing an OTCQX International quotation, a quotation or listing on another U.S. trading market or any of the topics discussed in this *White Paper*, please contact:

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SRZ's Capital Markets Practice

SRZ offers a full-service capital markets practice that provides transactional and ongoing advice through all stages for companies of all sizes. With extensive depth of experience and senior-level attention, we represent U.S. and non-U.S. issuers, investment banks and investors in connection with U.S. and global capital markets transactions, including SEC registered, Regulation D, Rule 144A and Regulation S offerings. Our expertise spans an extensive range of equity and debt products, including initial public offerings, investment grade and non-investment grade debt, SPACs, BDCs and other permanent capital vehicles, trust preferred securities, preferred stock, equity-linked securities, PIPEs, CMPOs, ATMs and registered direct offerings.

In addition to our transactional capital markets practice, we counsel public companies, their boards, board committees, special committees, executive officers and investors in connection with ongoing compliance under the U.S. securities laws, including under Dodd-Frank and Sarbanes-Oxley, and with exchange requirements, as well as on governance and executive compensation matters. We closely monitor and advise our public company clients on rule-making initiatives and evolving best practices.

SRZ's Capital Markets Practice continued

We have experience in every major industry, including apparel, automotive, aviation, biotechnology, broadcasting, business services, computer hardware, consumer services, defense, energy, entertainment, financial services, food and beverage, government services, information technology, insurance, manufacturing, media, natural resources, real estate, restaurant and hospitality, retailing, shipping and logistics, software, technology and telecommunications.

Our public company clients range from well-known large-cap companies to growing micro-cap companies. We are able to leverage our experience to efficiently advise companies of any size. In addition, we have been pre-cleared by the OTC Markets Group to act as an Attorney Designated Advisor for Disclosure/Principal American Liaison (DAD/PAL) for OTCQX companies.

We frequently publish Alerts and hold seminars on developments affecting public companies. To join our Public Companies mailing list, please visit our [subscriptions page](#).

Annex A | Qualifying Foreign Stock Exchanges

Argentina	Buenos Aires Stock Exchange
Australia	ASX – Australian Securities Exchange
Austria	Vienna Stock Exchange (Wiener Börse AG) – Official Market Vienna Stock Exchange (Wiener Börse AG) – Second Regulated Market
Belgium	Alternext Brussels Euronext Brussels
Brazil	BM&FBovespa
Canada	Toronto Stock Exchange TSX Venture Exchange
Chile	Santiago Stock Exchange
China	Hong Kong Stock Exchange – Main Board Shanghai Stock Exchange Shenzhen Stock Exchange
Colombia	Bogota Stock Exchange
Denmark	OMX Nordic Exchange Copenhagen
Egypt	Egyptian Exchange
Finland	OMX Nordic Exchange Helsinki
France	Alternext Paris Euronext Paris
Germany	Frankfurt Stock Exchange – Regulated Market – Prime Frankfurt Stock Exchange – Regulated Market – General
Greece	Athens Exchange
Hungary	Budapest Stock Exchange
Iceland	OMX Nordic Exchange Iceland
India	Mumbai/Bombay Stock Exchange
Ireland	Irish Stock Exchange
Israel	Tel Aviv Stock Exchange (TASE)
Italy	Borsa Italiana S.p.A

Annex A | Qualifying Foreign Stock Exchanges continued

Japan	Tokyo Stock Exchange JASDAQ Securities Exchange – Standard Osaka Securities Exchange – 1st Section Osaka Securities Exchange – 2nd Section
Korea	Korea Stock Exchange (KSE) – Main Board Korea Stock Exchange (KSE) – KOSDAQ
Malaysia	Malaysian Stock Exchange – Main Board
Mexico	Bolsa Mexicana de Valores (Mexican Stock Exchange)
Netherlands	Alternext Amsterdam Euronext Amsterdam
New Zealand	New Zealand Exchange
Norway	Oslo Bors (Oslo Stock Exchange)
Peru	Bolsa de Valores de Lima (Lima Stock Exchange)
Philippines	Philippine Stock Exchange
Poland	Warsaw Stock Exchange – Main Board
Portugal	Euronext Lisbon
Russia	MICEX – Moscow Interbank Currency Exchange RTS – Russian Trading System Stock Exchange
Singapore	Singapore Exchange
South Africa	Johannesburg Stock Exchange
Spain	Madrid Stock Exchange Continuous Market
Sweden	OMX Nordic Exchange Stockholm
Switzerland	SIX Swiss Exchange
Thailand	Stock Exchange of Thailand (SET)
Turkey	Istanbul Stock Exchange – National Market
United Arab Emirates	Nasdaq Dubai
United Kingdom	London Stock Exchange (LSE) – Main Board AIM Market
Venezuela	Caracas Stock Exchange

OTC Markets Group may add other non-U.S. exchanges to this list upon request by an issuer.

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