

January 3, 2020 (Update)

On November 11, 2019, OTC Markets Group published proposed amendments to the OTCQX Rules for U.S. Companies, OTCQX Rules for U.S. Banks, and OTCQX Rules for International Companies which became effective December 12, 2019.

The OTCQX Rules for U.S. Companies and OTCQX Rules for U.S. Banks have been further updated to further clarify the timing that U.S. Companies and Banks will be subjected to the updated Independent Director definition. The updated footnote now indicates:

*Prior to January 1, 2021, U.S. Companies traded on OTCQX as of December 12, 2019 will not be subject to the Independent Director definition adopted on December 12, 2019 until January 1, 2021. Prior to January 1, 2021, these companies remain subject to the previous Independent Director definition, which stated "Independent Director" shall mean a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.*

November 11, 2019

## **OTCQX RULES RELEASE NO. 17 (PROPOSED AMENDMENT)**

OTC Markets Group has published for comment proposed amendments to the OTCQX Rules for U.S. Companies, OTCQX Rules for International Companies, and OTCQX Rules for U.S. Banks. These proposed Rules are scheduled to become effective December 12, 2019.

### ***Proposed Amendments***

The proposed amendments allow certain qualifying companies applying to OTCQX to provide a Letter of Introduction from their outside securities counsel in place of a letter from an OTCQX Sponsor. The proposed amendment also establishes procedures for companies effecting a Change in Control and enhances Corporate Governance eligibility criteria that have been expanded to provide further clarity around Independent Director status. Under the proposed amendments, U.S. companies will be required to disclose all convertible debt arrangements. Companies applying to OTCQX U.S. and OTCQX U.S. Banks will be subject to the new Independent Director standard immediately upon effectiveness of these proposed rules. Companies traded on OTCQX U.S. and OTCQX U.S. Banks as of the effective date of these proposed amendments (December 12, 2019) will be required to comply with the Independent Director standard on or before January 1, 2021. Lastly, the proposed amendments will require Canadian Companies to retain a transfer agent that participates in the Transfer Agent Verified Shares Program by April 1, 2020.

### ***Summary of Amendments:***

#### **OTCQX Rules for U.S. Companies:**

- An SEC Reporting Company with a class of securities that has been publicly traded for at least one year may be exempt from the requirement to select an OTCQX Sponsor. A Company

granted this exemption must submit a Letter of Introduction from their outside securities counsel as referenced in Section 4.4.

- The Company will promptly disclose all convertible debt arrangements, including 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 irrevocable transfer agent instructions.
- The Company shall notify OTC Markets Group upon the completion of any transaction resulting in a Change in Control. Subsequent to each Change in Control, the Company must submit to OTC Markets Group an OTCQX Change in Control notification as well as a new OTCQX Application and associated Application Fee within 20 calendar days.
- “Independent Director” shall mean a Person other than an executive officer or employee of the Company or any other Person having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following Persons shall not be considered independent: (A) a director who is, or at any time during the past three years was, employed by the Company; (B) a director who accepted or has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any fiscal year within the three years preceding the determination of independence, other than compensation for board or board committee service; compensation paid to a Family Member who is an employee (other than an executive officer) of the Company; or benefits under a tax-qualified retirement plan, or non-discretionary compensation; or (C) A director who is the Family Member of a Person who is, or at any time during the past three years was, employed by the Company as an executive officer.

#### **OTCQX Rules for International Companies:**

- A Company with a class of securities that trades on a Qualified Foreign Exchange, or that has been an SEC Reporting Company and publicly traded for at least one year, may be exempt from the requirement to select an OTCQX Sponsor. A Company granted this exemption must submit a Letter of Introduction from their outside securities counsel as referenced in Section 4.5.
- The Company shall notify OTC Markets Group upon the completion of any transaction resulting in a Change in Control. Subsequent to each Change in Control, the Company must submit to OTC Markets Group an OTCQX Change in Control notification as well as a new OTCQX Application and associated Application Fee within 20 calendar days.
- An SEC Reporting Company or Regulation A Reporting Company that is not on a Qualified Foreign Stock Exchange must have a board of directors that includes at least two Independent Directors and must have an Audit Committee, a majority of the members of which are Independent Directors.
- Canadian Companies must retain a transfer agent that participates in the Transfer Agent Verified Shares Program.

#### **OTCQX Rules for U.S. Banks:**

- The Company shall notify OTC Markets Group upon the completion of any transaction resulting in a Change in Control. Subsequent to each Change in Control, the Company must submit to OTC Markets Group an OTCQX Change in Control notification as well as a new OTCQX Application and associated Application Fee within 20 calendar days.
- “Independent Director” shall mean a Person other than an executive officer or employee of the Company or any other Person having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following Persons shall not be considered independent: (A) a director who is, or at any time during the past three years was, employed by the Company; (B) a

director who accepted or has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any fiscal year within the three years preceding the determination of independence, other than compensation for board or board committee service; compensation paid to a Family Member who is an employee (other than an executive officer) of the Company; or benefits under a tax-qualified retirement plan, or non-discretionary compensation; or (C) A director who is the Family Member of a Person who is, or at any time during the past three years was, employed by the Company as an executive officer.

**Comment Period of 30 days:**

OTC Markets Group welcomes your feedback about the proposed changes. Send comments and questions to Mike Vasilios, SVP of Issuer Compliance at [mike@otcmarkets.com](mailto:mike@otcmarkets.com) by December 11, 2019.

**Effective Date of Proposed Amendments:**

The proposed rules are scheduled to become effective for all OTCQX U.S. companies, OTCQX International Companies, and OTCQX Banks on December 12, 2019.