

New Rule Affecting Certain Over-The-Counter (OTC) Issuers

September 24, 2021

On September 28, 2021, a new amendment to Rule 15c2-11 of the Securities and Exchange Act of 1934 (the “New Rule”) will go into effect.

The New Rule requires broker-dealers to obtain and review basic information about an issuer and its securities as part of their due diligence about the issuer before initiating or resuming quotation of a security.

Companies traded on the OTC Pink, Grey Market or the OTC Bulletin Board (“OTCBB”), a quotation system maintained by the Financial Industry Regulatory Authority (“FINRA”), must have current and public disclosure publicly posted or otherwise made publicly available (potentially through a qualified interdealer quotation system) before a broker-dealer can initiate or resume quotation of their securities.

The New Rule does not affect any issuers traded on NASDAQ, New York Stock Exchange, NYSE American, OTCQX or OTCQB.

What should you do?

If your company already trades on a national exchange, or on the OTCQX or OTCQB, you are already subject to reporting and disclosure requirements under the Securities Exchange Act, SEC Rule 12g3-2(b) or OTC alternative reporting rules, and the New Rule, therefore, does not affect you.

However, if a company’s securities are traded in the over-the-counter markets (i.e., Pink, Grey Market or the OTCBB), and the company is not in compliance with the new reporting requirements, the securities will become illiquid. Broker-dealers will no longer be able to provide public quotations for these non-reporting securities.

Non-U.S. companies

Non-U.S. companies, for example Canadian issuers, meet their OTC disclosure obligations if they provide disclosure through their home country stock exchange, such as the Toronto Stock Exchange or TSX-V, provided the disclosures are publicly available to American investors via SEDAR (because, in effect, they comply with SEC Rule 12g3-2(b)).

Alternative Reporting

U.S. OTC Pink (but not OTCBB) companies will also have their own alternative reporting standards that can be accessed through OTC Link ATS. Companies will be able to file periodic disclosures with OTC Markets to satisfy their disclosures instead of filing periodic and annual reports on EDGAR with the SEC.

The securities of other non-reporting issuers quoted via the OTCBB or who do not meet the requirements through OTC Link ATS will suffer the consequences of non-compliance with the New Rule.

There is an open question whether non-equity securities should be excepted from the New Rule. Market participants have raised concerns about the potentially significant negative effects of the New Rule on the fixed-income markets. Currently, the SEC is giving bond markets at least three more months during which time the New Rule will not apply to the bond markets.

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