

New Disclosure Requirements for OTCQB Quoted Issuers

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by James Guttman

Issuers quoted on the OTCQB are now required to 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. In addition, OTCQB issuers are now required to promptly post copies on the OTC Disclosure & News Service or, if an SEC reporting company, on the SEC's EDGAR reporting system, 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. These new listing requirements will apply to OTCQB issuers even if applicable Canadian and U.S. laws do not otherwise require such disclosure.

We have been informed by the OTC that redacting personal information is permitted and if there are multiple investors that have signed identical agreements, only the "form of" the relevant agreement needs to be filed. Investors' names are required to be disclosed unless there are multiple identical definitive agreements and the issuer elects to file only the "form of." Issuers should ensure that any confidentiality clauses in the relevant agreements are drafted taking into account these new disclosure requirements.

In addition, issuers are now required as part of their initial and annual OTCQB Certification to list out promissory notes, convertible notes, convertible debentures, or any other debt instruments that may be converted into a class of the issuer's equity securities that were issued or outstanding at any time during the last completed fiscal year and any interim period between the last fiscal year end and the date of the OTCQB Certification. The updated form of OTCQB Certification can be found at the following link: otcmarkets.com/files/OTCQBCertificationTemplate.docx.

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