OTCQX International Rule Changes Will Push Certain Canadian Companies to the OTCQB Tier

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The OTC Markets has published proposed rule changes that would, effective September 23, 2021, require that in order to be quoted on the OTCQX International, a company must either be an SEC reporting company, file reports with the SEC under the Regulation A+ reporting system, or be exempt from SEC reporting requirements by virtue of Rule 12g3-2(b). Companies relying on the Rule 12g3-2(b) exemption must annually certify to the OTC Markets that they continue to comply with that exemption. Another alternative, which had allowed companies to be quoted on the OTCQX International if they are exempt from SEC reporting requirements for other reasons, is being eliminated. Companies previously relying on that exemption may transfer to the OTCQB tier of the OTC Markets if they satisfy the OTCQB requirements.

While many publicly traded Canadian companies comply with Rule 12g3-2(b), and therefore will be able to continue to be quoted on the OTCQX International, the proposed rule changes may adversely affect three groups of companies:

1. Companies whose trading volumes in the United States are sufficiently high that during the course of their most recently completed fiscal year, less than 55% of worldwide trading occurred in the one or two countries constituting the primary non-U.S. trading market;
2. Newly public companies who are seeking an OTC quotation during the same fiscal year in which they have first begun trading in Canada or another foreign country; and
3. Companies that fail the SEC's "foreign private issuer" test under Rule 3b-4, because a majority of their voting securities are beneficially held by U.S. residents and they have an additional strong nexus to the United States.

These companies would not satisfy the requirement of Rule 12g3-2(b) to be a "foreign private issuer" with a "primary trading market" outside the United States, and therefore would not be eligible to apply to the OTCQX International or in the case of a company already quoted on the OTCQX International, to continue such quotation, unless they were SEC or Regulation A+ reporting companies. They could, however, apply for quotation on the OTCQB and later upgrade to the OTCQX International if they gained or

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regained compliance with Rule 12g3-2(b).