

The Lights Could Go Out on Over-the-Counter Companies on September 28, 2021

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On September 28, 2021, companies trading in the United States over-the-counter securities markets (“**OTC Markets**”) that do not comply with amended Rule 15c-211 will no longer be eligible for quotation on the OTC Markets, effectively eliminating their public quotation in the United States. Amended Rule 15c-211 requires that broker-dealers obtain and review basic information about an issuer and its security before initiating or resuming quotation of a security in the OTC Markets. The amendments should have no effect on companies that are traded on a national securities exchange (i.e., NASDAQ, New York Stock Exchange, NYSE American, etc.), the OTCQX or OTCQB.

Companies trading on the OTC Pink or OTC Grey Market will need to have current and public disclosure available to broker-dealers and investors and verified before a broker-dealer can initiate or resume quotation of a security in the OTC Markets. OTC Markets Group has created a program for Rule 15c-211 verification for companies that trade on the OTC Pink through the OTC Disclosure & News Service that can be relied upon by broker-dealers. Immediate action is required for these companies if they intend to remain eligible for quotation in the United States OTC Markets.

If not already done, Canadian issuers trading on the OTCQX or OTCQB will need to verify compliance with Rule 12g3-2(b) on their OTCIQ profile immediately so that OTC Markets compliance team can confirm Rule 15c-211 compliance. Companies that satisfy the Rule 15c-211 public information eligibility requirements include (i) issuers that are subject to reporting under the Securities Exchange Act of 1934, as amended, Regulation A or Regulation Crowdfunding; (ii) foreign private issuers that are exempt from registration under the Exchange Act pursuant to Rule 12g3-2(b); and (iii) issuers that provide disclosure specified in Rule 15c-211. Other exemptions are for unsolicited quotations and seasoned issuers that satisfy trading and capitalization requirements.

Companies that are quoted for trading on over-the-counter securities markets should consult with their legal advisor at Dorsey & Whitney LLP on the application of Rule 15c-211 on eligibility for quotation in the United States.

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