



The Guide to a Dual Listing on the OTC Markets

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The United States capital markets offer a tremendous opportunity for growth and expansion to startup companies as well as long established companies and especially for international companies that hope to gain access to the American investor capital. The traditional method of gaining access for an international company is via a customary Securities and Exchange Commission ("SEC") listing or exemption, but this process can be costly and duplicative because of the nature of U.S. securities laws and regulations. There is one exciting alternative, however, that allows an international company gain access to the U.S. capital market by listing on while expending a fraction of the cost of traditional method, that is a dual listing on the OTC which is a fully electronic interdealer quotation system affording investors and broker-dealers access through online and full-service brokerage firms in the U.S.

What is the Dual Listing?

Dual listing (also known as crosslisting or interlisting) is the listing of any security on two or more different exchanges. This can be accomplished a number of different ways via various securities regulations and exemptions. This guide will focus on the Securities Exchange Act of 1934, as amended ("the Exchange Act") exemption of 12g3-2(b) for dual listing on the OTCQB and the OTCQX International and Premier Marketplaces of the [OTC MARKETS](#).

What is Rule 12g3-2(b)?

In August 2008, the U.S. Securities and Exchange Commission adopted rule amendments that will automatically exempt thousands of non-U.S. companies from SEC registration. Under the Exchange Act, Rule 12g3-2(b) exempts a foreign private issuer from having to register a class of equity. Without this exemption, a foreign private issuer with 300 or more U.S. shareholders might have to register with the SEC which would include the fees and duplicative disclosures as mentioned above. In order to claim this exemption, the foreign private issuer does not have to submit an application or even notify the SEC, but they will be automatically exempt if they satisfy all of the following:

i) No Existing Reporting Obligation: The foreign company cannot have a reporting obligation under Sections 13(a) or 15(d) of the Exchange Act (i.e. the company has not listed or publicly offered in the U.S.);

ii) Foreign Listing: The foreign company must maintain a listing in one or more non-U.S. exchanges as the primary trading market for the security listed.

iii) Electronic Publications: The foreign private issuer must publish electronically in English specified disclosure documents that date back to the first day of the company's most recently completed fiscal year. This is typically done via the company's website and only requires the translation of the previous disclosure documents into English.

In order to be eligible for dual listing, the foreign company must meet one of the following conditions:

- Be eligible to rely on the exemption from registration provided by Exchange Act Rule 12g3-2(b) and be current and fully compliant in its obligations under the rule; or
- Have a class of securities registered under Section 12(g) of the Exchange Act and be current and fully compliant in the SEC reporting obligations.

If the foreign company is not eligible to rely on the exemption from registration under the Exchange Act Rule 12g3-2(b) because the company does not (i) meet the definition of a "foreign private issuer" as the term is used in the Exchange Act Rule 12g3-2(b); or (ii) does not maintain a primary trading market in a foreign jurisdiction as set forth in the Exchange Act Rule 12g3-2(b)(ii); and is not otherwise required to register under Section 12(g), then the company must be current and fully compliant with the obligations of a company relying on the exemption from registration provided by Exchange Act.

What Information Must be Published in English?

In order to be eligible for the 12g3-2(b) exemption, an issuer must publish certain information in English for access by potential U.S. investors. However, some of this information can be published in summary form if the translation is not specifically required by Rule 12g3-2(b) and a registered issuer could have provided a summary under Form 6-K. Form 6-K allows a summary of translation of any document that is not a press release or is not required to be, and has not been, distributed to the issuer's security holders or pursuant to Exchange Act Rule 12b-12(d)(3), which permits summaries of any documents that are not charter documents, instruments defining the rights of the security holders, voting agreements, contracts to which certain entities or individuals related to the issuer are not parties, contracts upon



which the issuer's business is substantially dependent, audited annual and interim consolidated financial information, or any document that is or will be subject to a confidential treatment request. In general, the information that must be published in English in non-summary form includes:

- Information the issuer has made public or been required to make public pursuant to the laws of the country of its incorporation, organization, or domicile;
- Information that the issuer has filed or required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; or information that the issuer has distributed or been required to distribute to its security holders;
- Its annual report, including or accompanied by annual financial statements;
- Interim reports that include financial statements;
- Press releases; and
- All other communications and documents distributed directly to security holders.

In order to comply with the eligibility requirements of Rule 12g2-3(b), an issuer must publish on its website and in English any information material to an investment decision regarding the issuer's securities. There is not currently any formal defining what constitutes material information. There are informal indications by the SEC that non-material information may be omitted from otherwise required documents. Material information includes:

- Results of operations or financial condition;
- Changes in business;
- Acquisitions or dispositions of assets;
- The issuance, redemption or acquisition of securities;
- Changes in management or control;
- The granting of options or the payment of other remuneration to directors or officers; and
- Transactions with directors, officers or principal security holders.

What is the OTC Marketplace?

The OTC marketplace is home to world renowned companies that have their securities traded on one of the best informed and most efficient trading platforms available. These companies must adhere to disclosure requirements, be sponsored by a professional Principal American Liaison, and meet specific bid price requirements or strict financial standards, depending on the type of market listing.



OTCQB. The OTCQB dual listing is for small and micro cap companies that wish to gain access to the U.S. investing market via a dual listing on the OTC. This form of quotation allows startup companies and companies with small capitalization the ability to expand their business by translating their qualified home country disclosures to English, appointing a professional third-party to help guide them through the process, and meet a minimum bid requirement. The OTCQB allows an international company the ability to get an early start on the U.S. market without spending the valuable resources to create a traditional listing via U.S. securities regulations.

OTCQX International. The OTCQX International is reserved for qualifying international companies to dual list on the OTCQX marketplace and offers the best informed and most efficient trading for U.S. and global companies. To qualify for the OTCQX marketplace, companies must meet high financial standards, be current in their disclosure, and be sponsored by a professional third-party advisor. OTCQX ensures that investors have the information necessary to intelligently analyze, value, and trade securities.

Trades on both the OTCQB and the OTCQX International exchanges are settled and cleared in U.S. time zones using U.S. dollars like any U.S.-based exchange-listed security and trade reports are disseminated through most financial data providers including Bloomberg, Reuters, Yahoo, and MSN while trading occurs through many popular online brokerage firms.

The Application Process

The OTCQB is for international companies that seek to gain access to the U.S. market without having to conduct a traditional offering. The international dual listing on the OTCQX International is reserved for global companies and permits those that qualify to trade their American depositary receipts ("ADRs") or foreign ordinary securities in the U.S.-based exchange. By allowing qualified ADRs and foreign securities listed on a certain non-U.S. stock exchange to trade on the OTC marketplace, U.S. investors have the opportunity to diversify their portfolio and gain access to globally recognized companies while the companies have the ability to expand their investor base potentially exponentially by gaining access to the U.S. investing public. The criteria for being listed on the OTC does require a significant amount of compliance with U.S. securities regulations but it is far less daunting than if the company was to seek a traditional listing on a U.S. exchange. For example, companies seeking a dual listing on the OTC have to use their English translated home country disclosures in lieu of SEC reporting disclosures. This specific requirement helps ensure that only the most shareholder-focused companies already approved by a qualified international stock exchange's listing process are



eligible for the OTCQB or OTCQX International and provides an expeditious and cost effective method of gaining access to U.S. investors without filing with the SEC.

The OTC dual listing requirements are based on an open, transparent model in order to better facilitate the company's transition from foreign exchange to U.S. exchange while providing the investing public with the necessary comprehensive disclosures. The fairly straightforward admission process is made possible because of the qualified foreign exchange disclosure requirements.

The following is a complete and accurate list at the time of publication of the requirements necessary to be qualified for admission on the OTCQB or OTCQX International and International Premier.

Creating a Sponsored American Depositary Receipt

An American Depositary Receipt (ADR) is a negotiable instrument issued by a depository bank that evidences ownership of shares in a corporation organized outside the U.S. There are two general classifications of ADRs, sponsored or unsponsored, and four basic types of facilities:

Sponsored ADRs. A sponsored ADR is issued by one depository bank appointed by the issuer company under a service contract called a deposit agreement. Sponsored ADRs give the issuer input and control over the facility, and may allow the issuer the flexibility to list on a U.S. stock exchange, and to raise capital.

Unsponsored ADRs. An unsponsored ADR is issued by one or more depository banks in response to market demand for a particular security without a formal agreement with a non-U.S. company.

Sponsored Level I ADRs. A sponsored Level I ADR Program is the simplest way for non-U.S. companies to access U.S. capital markets. Level I ADRs are traded in the U.S. through OTC Markets including OTCQB and OTCQX, with prices reported to the U.S. Financial Industry Regulatory Authority ("FINRA"), which makes such information available to the investing public through sources such as OTC Markets, Bloomberg, and Reuters. Additionally, Level I ADRs trade on some markets outside the U.S. Establishing a Level I program does not require full registration with the U.S. Securities and Exchange Commission ("SEC"), U.S. financial or corporate disclosure beyond that required by the home market or compliance with the U.S. Sarbanes-Oxley Act ("SOX"). A sponsored Level I ADR program may allow non-U.S. companies to enjoy the benefits of a U.S. publicly traded security without full reporting under the U.S. Securities Exchange Act of 1934 ("Exchange Act"). Level I ADRs facilities are easy to establish because the majority of sponsored ADR



programs are Level I facilities. A foreign company may start with a Level I program, then advance to a Level II or Level III program.

Sponsored Level II and Level III ADRs. Foreign companies that wish to list their ADRs on a U.S. stock exchange like the NYSE or the NASDAQ, to raise capital or to make a U.S. acquisition using ADRs, establish sponsored Level II or Level III ADR programs. These types of facilities require the ADR programs to register with the SEC and follow SEC disclosure and reporting requirements. The foreign company must also meet the listing requirements of the applicable stock exchanges like the NYSE or NASDAQ. Level II and Level III ADRs are similar and both types are used for listing on national U.S. stock exchanges, however, the Level III ADR is the term used for a company raising capital by issuing DRs (depository receipts).

Private Placement and Offshore under Rule 144A and/or Regulation D. In addition to the three levels of sponsored ADR programs discussed above that trade publicly in the U.S., a foreign company can also access the U.S. and other capital markets through SEC Rule 144A and/or SEC Regulation S ADR facilities without SEC registration. Under Rule 144A, allows companies to raise capital through the private placement of ADRs with qualified institutional buyers (commonly referred to as "QIBs") in the U.S. Regulation S allows companies to raise capital through the placement of ADRs offshore to foreign investors in accordance with the provisions of Regulation S. These programs may be listed on international stock exchanges. A Level I program can be established in addition to a Rule 144A program, and a Regulation S program may be merged into a Level I program after the restricted period has expired.

STEP ONE: MEET THE FOLLOWING REQUIREMENTS TO BE ELIGIBLE FOR ADMISSION ON THE OTCQB OR OTCQX INTERNATIONAL OR INTERNATIONAL PREMIER

The Admission Requirements for an International Dual Listing on the OTCQB:

The initial requirements for a dual listing on the OTCQB are less financially orientated than that of the OTCQX International and International Premier (see below). Instead, the OTCQB focuses on the similar disclosures while requiring the dual listing company maintain a modest requirement of the bid price of the security. The following is the list of requirements necessary to become dual listed on the OTCQB:

- Meet an initial minimum bid price test of \$0.01 as of the close of business for each of the previous thirty (30) calendar days;
- Be compliant with SEC Rule 12g3-2(b);



- Be listed on a one of sixty-one (61) [Qualified Foreign Exchange](#) for a minimum of 40 days.

Once a company has become dual listed on the OTCQB, there are ongoing and annual certification requirements to maintain the listing status. The ongoing requirements are:

- Meet the ongoing bid price test of \$0.01 as of the close of business for at least one of every thirty (30) calendar days; and
- Post on the OTC Markets website:
 - Disclosure requirements under 12g3-2(b) in English (except press releases).
 - OTCQB Annual Certification.

What are the OTCQB Annual Certification requirements?

Each OTCQB company, whether they are dual listed or not, must post initial and annual certification on the OTC Markets website that is signed by the CEO and/or CFO and must contain the following:

- The company's reporting standards (e.g. SEC Reporting, International Reporting, Bank Reporting, etc.) and a brief description of the registration status of the company;
- Confirmation that the company is current in its reporting obligations to its home country regulator and such information has been posted either on EDGAR or the OTC Markets website;
- Report the name of the law firm and/or attorney involved in aiding the company in the preparation of its Annual Report or 10-K;
- Confirmation that the company profile on the OTC Markets website is current and complete;
- Confirmation that the total shares outstanding and in the public float as of the most recent fiscal year end; and
- Disclose the names and shareholdings of all officers and directors, as well as beneficial shareholders who hold more than 5% of outstanding shares.

The Admission Requirements for a Dual Listing on the OTCQX International:

For companies wishing to dual list on the OTCQX International, the requirements are more stringent and require a financial threshold to be met before a foreign company can meet the obligations to become listed. The company must meet the following requirements:

- A listing on one of sixty-one (61) [Qualified Foreign Exchanges](#) for a minimum of 40 days;



- Maintain current status regarding 12g3-2b obligations and posting in English of financial information on the OTC Disclosure & News Service;
- Publication of proprietary priced quotations through a broker-dealer on OTC Link ATS (the OTC SEC registered alternative trading system);
 - Non-SEC Reporting Companies must be published in the S&P or Mergent Manual for Blue Sky compliance, allowing broker-dealers to recommend the security in up to thirty-eight (38) states;
- Meet one of the following exemptions, consistent with the definition of a "Penny Stock" under Rule 3a51-1 under the Securities Exchange Act of 1934:
 1. Have an inside bid quotation of five (5) U.S. dollars or more on the home country exchange; or
 2. Have net tangible assets of \$2 million if the issuer has been in continuous operation for at least three (3) years, or \$5 million, if the issuer has been in continuous operation for less than three (3) years; or
 3. Have average revenue of at least \$6 million for the last three (3) years.

Each OTCQX company, whether they are dual listed or not, must post meet the follow initial & continued qualification standards to maintain a listing on the OTCQX:

- Total Assets: \$2 million; and, must also satisfy one of the following:
 - Net Tangible Assets: \$1 million;
 - Net Income: \$500,000;
 - Revenue: \$2 million; or
 - Global Market Capitalization: \$5 million.

The Admission Requirements for a Dual Listing on the OTCQX International Premier:

The OTCQX International Premier is reserved for global blue-chip companies that would like to further distinguish themselves as amongst the largest and most liquid companies in the world. The trading requirements include all of those discussed above under the OTCQX International Requirements as well as the following financial requirements:

- OTCQX International Premier Initial & Continued Qualification Standards
Total Assets: \$2 million; and must also satisfy either category of the following:
 - Column A
 - Revenue: \$100 million;
 - Global Market Capitalization: \$500 million;
 - Aggregate Cash Flow for last three (3) years: \$100 million; and
 - Minimum Cash Flow in each of the two (2) preceding years.
 - or
 - Column B
 - Revenue: \$75 million; and



- Global Market Capitalization: \$750 million.

STEP TWO: APPOINT A PRINCIPAL AMERICAN LIAISON TO ACT AS YOUR GUIDE THROUGH THE APPLICATION PROCESS AND PROVIDE RESOURCES FOR NAVIGATING THE U.S. MARKET.

What is a Principal American Liaison?

One of the most important aspects of the dual listing process is the required appointment of a Principal American Liaison or "PAL" by the foreign company. A PAL is a qualified third-party investment bank, ADR bank, or attorney that sponsors the foreign company wishing to dual list on the OTCQB or OTCQX International/International Premier. The PAL provides guidance with the admission process, aids in adhering to disclosure protocols, and act as a trusted resource for all the company's investor information required so the company can enter and maintain its listing on the U.S. market. The importance of a PAL cannot be overstated, for without the proper guidance, the company could lose their exemption under the Exchange Act and/or potentially lose their ability to be listed on the OTC Market.

How To Appoint a PAL:

- Execute an "[Agreement to Serve as Attorney DAD or PAL](#)" with Feinstein Law, P.A.
- Execute an "[Issuer Appointment of Attorney Principal American Liaison](#)" together with Feinstein Law, P.A. and OTC Markets Group.

STEP THREE: APPLY TO THE OTCQB OR OTCQX INTERNATIONAL/PREMIER

In order to apply for admission the company must submit the following materials to the OTC Markets Group:

1. The [OTCQB](#) or [OTCQX](#) Application for International Companies;
2. Pay the one-time, non-refundable application fee:
 - OTCQB: \$2,500 (waived for International Reporting companies that apply by September 30, 2014) and annual fees \$10,000 per year
 - OTCQX International/ Premier: \$5,000 and annual fees of \$15,000
3. Submit the OTCQB or OTCQX Agreement for International Companies, including exhibits and cover sheets;
4. Completed application to serve as a PAL and the PAL application fee;
5. Issuer Appointment of an Attorney Principal American Liaison form;
6. Depositary Principal American Liaison form.



7. A copy of your logo in Encapsulated PostScript format emailed to OTCQBApplications@otcmarkets.com or OTCQXApplications@otcmarkets.com with the subject line "Company Logo."

STEP FOUR: MAKE INITIAL DISCLOSURE AVAILABLE TO OTC MARKETS

Once OTC Markets has received the application materials and fees, the company must post the initial disclosure materials through the OTC Disclosure and News Service (or on EDGAR, in the case of Exchange Act registered companies) within 90 days following the date of submission of the application materials. The following initial disclosure materials must be made available to the public prior to admission:

- In the case of Exchange Act registered companies, the applicant must be current and fully compliant in its SEC reporting obligations; or
- In the case of non-Exchange Act registered companies, the applicant must post, in English, through the OTC Disclosure and News Service, all information required to be made publicly available pursuant to Exchange Act Rule 12g3-2(b) for the preceding 24 months.

As a PAL, Feinstein Law will notify OTC Markets when initial disclosures have been posted.

Additionally, as an OTCQX International and International Premier dual listing requirement, the company must:

- Obtain priced broker-dealer quotations on OTC Link™ ATS. OTC Link® ATS is an SEC registered Alternative Trading System for broker-dealer subscribers to provide investors with an electronic trading experience nearly identical to that of trading a security on NYSE or NASDAQ. OTC Link® ATS directly links a diverse network of leading U.S. broker-dealers that provide liquidity and execution services for a wide spectrum of U.S. and global securities. Its real-time price transparency and connectivity offers broker-dealers control of trades and choice of counterparties so that they can efficiently provide best execution, attract order flow, and comply with FINRA and SEC regulations. OTC Link® ATS is operated by OTC Link LLC, a FINRA member broker-dealer and wholly owned subsidiary of OTC Markets Group Inc.
- List your company in a Recognized Securities Manual, such as Standard and Poor's or the Mergent Manual, so brokers may verify compliance with state Blue Sky laws and recommend your company's security to investors.



STEP FIVE: THE PAL SUBMITS AN INITIAL LETTER CONFIRMING COMPLIANCE WITH ALL OTCQX MARKETPLACE RULES.

After the initial disclosure materials have been made available, the company is required to submit the Attorney PAL Letter of Introduction. The OTC Markets Group requires that our Letter of Introduction make the following additional statements:

- a) *Attorney PAL Qualifications.* The Attorney PAL is a U.S. attorney, or a law firm, in good standing and not subject to any disciplinary actions within the last five years in each jurisdiction in which such person, or in the case of a law firm, each person that performs services as an Attorney PAL, is licensed to practice law. The Attorney PAL is not currently subject to any sanctions resulting from any disciplinary actions from any federal or state securities regulator, or from any self-regulatory organization that would prohibit or restrict his or her ability to serve as an Attorney PAL. The Attorney PAL has been approved by OTC Markets Group to serve as an Attorney PAL, continues to satisfy the standards for serving as an Attorney PAL, as provided in its "Application to Serve as an Attorney DAD or PAL or Investment Bank DAD or PAL," and is competent and able to serve and to exercise independent judgment as the Company's Attorney PAL without reservation.
- b) *Attorney PAL's Appointment to Provide Advice.* The Attorney PAL has been appointed by the Company to provide advice with respect to: (i) the Company's eligibility to meet the tier requirements of OTCQB or OTCQX, and (ii) the Company's responsibilities under Exchange Act Rule 12g3-2 and these OTCQB or OTCQX Rules for International Companies.
- c) *Company's Formal Compliance.* Based on available information, the Attorney PAL has a reasonable belief that the Company is in compliance with Exchange Act Rule 12g3-2 and these OTCQB or OTCQX Rules for International Companies and that the Company continues to satisfy the eligibility requirements of the applicable OTCQB or OTCQX International tier.
- d) *No Disqualifying Events.* The Attorney PAL has made specific inquiry of the Company with respect to:
 - Whether the Company has been delisted, removed or suspended from a Qualifying Foreign Stock Exchange;
 - If the Company is exempt from registration pursuant to Exchange Act Rule 12g3-2(b), whether the Company has failed to make publicly available the materials required under Exchange Act Rule 12g3-2(b); and



- If the Company has a class of securities registered under Section 12(g) of the Exchange Act, whether the Company has deregistered its securities or is not current in its filing responsibilities thereunder; And, based on such inquiries, confirms that no such events have occurred with respect to the Company

STEP SIX: OTC MARKETS REVIEW

Submission of all application materials does not necessarily end the application process. Upon receipt of the application, OTC Markets Group is entitled to:

- Require the applicant, with the assistance of its PAL, to confirm, clarify or modify any information contained in its application materials;
- Require the applicant to provide a further undertaking, or fulfill a further condition, prior to admission;
- Delay admission pending the completion of further due diligence. Refuse the application if, in its opinion, the admission of the applicant for trading on OTCQX would be likely to impair the reputation or integrity of OTC Markets or be detrimental to the interests of investors.

This securities law white paper about dual listing is provided as a general informational service to clients and friends of Feinstein Law, PA and should not be construed as, and does not constitute, legal and compliance advice on any specific matter, nor does this message create an attorney-client relationship.

For more information concerning the rules and regulations affecting the going public direct transactions, direct public offerings, or dual listing, please contact Feinstein Law, PA at (619) 990-7491 or by email at Todd@Feinsteinlawfirm.com or JDunsmoor@Feinsteinlawfirm.com. Please note that the prior results discussed herein do not guarantee similar outcomes. Todd Feinstein is admitted in Florida and Jonathan Dunsmoor is admitted in New York.

