



otcQX and

Ellenoff Grossman & Schole LLP

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Ellenoff Grossman & Schole LLP is a 15 year old, New York-based law firm with over 55 professionals offering its clients legal services in a broad range of business related matters. The Firm specializes in many areas of commercial law: Corporate, Securities, Broker-Dealer Regulation, Hedge Funds, Real Estate, Litigation, Tax and Estate Planning. The philosophy of the Firm is to provide the highest quality legal advice and counsel, dedicating consistent, personalized attention to each client at a reasonable price.

The Firm has more than 20 securities professionals specializing in a range of activities, including:

- PIPEs
- Public Offerings (IPOs and Secondaries)
- Mergers and Acquisitions
- 34 Act reporting (Form 10-Ks, 10-Qs and Proxies 20-F)
- OTCQX, NASD, AMEX, NASDAQ and OTC compliance
- Broker-dealer regulation
- Rule 144 transactions
- Section 16 compliance
- Hedge Funds organization

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EG&S - Public Companies

- We represent more than 40 public companies— many of which are listed on the pink sheet and over-the-counter markets
- In 2011, EG&S has been involved in excess of \$750 million of financings and were one of the top 20 US law firms handling public offerings, SPACs, Registered Directs and PIPEs
- Year to date, we have closed 9 public offerings (6 as issuer's counsel).
- Year to date, we have been involved with several M&A assignments, with aggregate transaction values equaling \$350 million dollars

Why We Applied To Be a DAD

- With a client base consisting mostly of micro-cap issuers, we have witnessed first hand the burdens of Sarbanes-Oxley on those companies and the competitive advantage afforded foreign markets– who have been aggressively marketing against the US
- Also, through our involvement with (SPACs)-- Special Purpose Acquisition Corporations, we facilitated relationships with several UK bd/Nomads, even developed an alliance with a UK law firm.
- Through those experiences, we generally learned that the AIM market had liquidity issues and was more appropriate for emerging growth companies than for SPACs
- Our overall view however was that we were intrigued by the concept of the NOMAD and that the LSE had effectively outsourced the regulatory function to experienced professionals. Implicit in the structure is the idea of letting the practicing professionals assume a more primary role
- Given our Firm's orientation towards positive innovation and entrepreneurial public companies, we were encouraged to learn early last year of the PinkSheets response to the burdens of Sarbanes and the AIM in the form of the OTCQX
- After our investigation of how the PinkSheets was intending to establish the OTCQX, (the High End of the Low End as it were) we analyzed the risks to us as a Firm (like we did with our early involvement with both PIPEs and SPACs) and concluded that this new listing service was enlightened, responded to market needs and would be appropriate for us to associated with– and we are proud of the association

Designated Advisor for Disclosure (DAD)



- The PinkSheets requires that each issuer have a DAD to be listed on the OTCQX
- The DAD is generally modeled after the NOMAD system which I referred earlier, but tailored for U.S. practices
- Unlike AIM Nomads, DADs do not warrant issuer appropriateness, however, we require that the issuer maintain a prompt disclosure regimen
- Pink Sheets will monitor the DAD community and work with or remove those whose work is of a standard not consistent with the objectives of the Pink Sheets or simply deficient

Role of Attorney DAD

- The DAD's involvement with U.S. issuers is a pivotal component of OTCQX and is designed to bolster investor confidence in the quality of disclosure by OTCQX-listed companies
- It also ensures that small and growing companies notwithstanding their lawful right not to report under the 34 Act rules and regulations still have a professional resource for guidance and advice on securities-related matters
- Although the DAD - Issuer relationship is a cornerstone for companies that list on OTCQX, it is important to note that the issuer and its management are ultimately responsible for disclosure

DAD Letter

- **DAD Letter of Introduction and Annual Update**--The DAD letter of introduction and annual update is provided only to Pink Sheets after a review by the DAD of the issuer's disclosure to confirm an issuer's eligibility for OTCQX listing and compliance with the OTCQX disclosure guidelines. This limited purpose is described in the OTCQX Rules, and is intended to preclude shareholder claims based on the statements in the letter and annual update brought by clients of the U.S. plaintiff's bar, but not regulatory investigations. The DAD letter is a statement regarding the work performed by the DAD. The letter is not a guarantee of correctness of the issuer's disclosure

EG&S View On Disclosure

- The securities laws responsible for regulating disclosure of existing public companies, whether the Securities Act of 1933 for issuer's seeking to raise capital or reporting companies under the Exchange Act of 1934, all these rules and regulations require certain information to be disclosed in certain required formats. This is so-called Current Disclosure. Sarbanes simply required additional formalities to avoid certain obvious conflicts and imposes liabilities for failure to adhere to those requirements. Unfortunately, given the extensive nature of all of these rules and regulations the approach of many public companies and their professionals is to technically comply with the minimalist requirements- and that's it
- The suggestion of the OTCQX is to go substantively further by raising the standard to Credible Disclosure- which at our Firm we interpret to be Quality Disclosure- meaning that the objective is to assist management provide the investment community not only a technically true, correct and accurate description of the business but to do it pro-actively, for the right reasons and to do it comprehensively- this will distinguish the top tier operating companies on the OTCQX

Achieving Quality Disclosure

(Due Diligence)

- In order to achieve Quality Disclosure both management and the responsible DAD must be committed to the process– this should be assessed and stressed in the introduction
- Our belief is that it is difficult to be a DAD without getting to know the issuer seeking to be OTCQX listed
- In the back of every DAD's mind is the ultimate concern of being able to provide comfort that the disclosure is accurate
- While this may be a standard relating back to the DAD's experience as a securities professional, familiar with both the 33 and 34 Acts, we believe it will also be heavily influenced by the willingness of the issuer to be forthcoming with the DAD, the relationship between issuer and DAD and the DAD's assessment of the issuer's commitment to the process and willingness to be forthcoming

Implementing and Continuing a Quality Disclosure Process

- The DAD must be more than passingly familiar with the issuer's company, the DAD must know it, along with the Board of Directors and the employees
- As with our representation of our 34 Act reporting companies, we believe that best practices is for the DAD, the primary disclosure counsel, to attend all board and committee meetings in order to be fully apprised with all of the ongoing issues involving the company, management and employees
- Again, consistent with our regular securities practice, we encourage flat fee arrangements since we believe that this facilitates a healthier flow of information and dialogue between the company, its employees and DAD, which again should result in better quality disclosure

Implementing and Continuing a Quality Disclosure Process (Cont.)

- Central to monitoring an effective implementation of the disclosure process is for the DAD to have meaningful and extensive experience as a practicing securities lawyer or Firm
- Similar to Sarbanes type concerns with independence and conflicts, we believe that the lawyer or Firm should have a substantial and diverse practice (other than for the particular client) in order to avoid undue influence or pressure to compromise the standards sought to be achieved with the OTCQX
- With the Pink Sheets, we crafted the requirement that the DAD refrain from ownership of the issuer's securities, again to avoid any appearance related issues

DISCLAIMER

- This information may answer some questions, but is not intended as a comprehensive analysis of the topic. In addition, this information should not be relied upon as the only source of information.
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