How To Go Public: The Process

Becoming a publicly traded company is an exciting and rewarding experience. The following sets forth the method, steps, fees and estimated timetable to go public on the OTC Bulletin Board (OTCBB) 'from scratch', or through a self-filing and discusses the 1934 Exchange Act responsibilities after a company's registration statement has gone effective (after the company has become publicly traded):

Prior to filing the registration statement, a company that wishes to go public must first obtain an audit of the Company's financial statements for the past two fiscal years. For most companies, the financial audit can be completed in about a month and costs typically range between $5,000 and $25,000, depending on the complexity of the company financials.

A public company will also need shareholders. To that end, if additional shareholders are needed, the company going public will need to complete a self-underwritten Regulation D, Rule 506 offering in which the company sells shares of its stock to investors for real consideration. This is not a difficult task, so long as you have a properly prepared private placement memorandum (PPM) and you follow the relatively simple rules of Rule 506. The price per share and number of shares offered can be determined by the Company, but most registered broker-dealers that will eventually submit a Form 211 for an OTC Bulletin Board quotation prefer to have a minimum of 400,000 shares distributed among the investors.

In addition to the minimum number of shareholders requirement, a company must have free-trading shares, called the 'float', in order to go public. Upon completion of the private offering and the financial audit for the prior two fiscal years, an S-1 Registration Statement must be filed with the Securities and Exchange Commission ("SEC") to register the shares sold in the private placement, thus creating the free trading shares. The completion of the S-1 process with the SEC will make the Company a 1934 Exchange Act reporting company, which is required in order to obtain a quotation on the OTC Bulletin Board. The SEC will review the S-1 and provide comments within 30 days from the filing date. Comments from the SEC typically relate to the terms of the offering, the Company's business and its financial statements. It usually takes between 2 to 3 months for the SEC to approve a registration statement on Form S-1 and for the S-1 to become effective. However, the actual amount of time will depend on the level of review and number of comments given by the SEC and the corresponding response time by the Company in filing its amendments.

Shortly after filing the S-1 registration statement with the SEC, a market maker must be 'engaged' to file a Form 211 application with FINRA for the purposes of obtaining a quotation of its common shares on the OTC Bulletin Board. It is important to note that market makers cannot receive compensation for making a market in a stock, thus typically you must have connections to accomplish this. The timetable for approval of the Form 211 process is approximately 3 weeks to 5 weeks. However, the Form 211 will not be approved until the S-1 is approved by the SEC since the approval of the S-1 provides the "free trading" shares necessary to obtain the OTC Bulletin Board quotation.

The completion of the entire process to become a public company typically takes approximately 3 to 4 months from completion of the private offering and financial audit, however, the actual time could vary based on the factors discussed herein. If done right, with planning, hard work, the proper foresight, and a good firm guiding you through the process, going public is a truly exciting and rewarding experience.

About the Author

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