



OTC Markets Guide

Michael Best's Securities & Capital Markets Practice Group

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Over-the-counter (OTC) markets facilitate private party-to-party exchanges through decentralized dealer networks. The largest of these networks is the OTC Markets Group, Inc., which provides price and liquidity information for nearly 10,000 OTC securities. Many of those companies are too small or otherwise unable to qualify to be listed on one of the stock exchanges like the New York Stock Exchange or Nasdaq. OTC markets have significantly fewer regulations than the stock exchanges and are less expensive for the companies that are quoted on them.

The OTC Markets Group is organized into three main marketplaces: OTCQX, OTCQB, and OTC Pink, each with different requirements. OTCQX has the most stringent standards, and OTC Pink has almost none. If a company meets the eligibility and disclosure requirements, it can move between the OTC marketplaces. This guide gives an overview of the main OTC markets and their eligibility standards.

Overview of the OTC markets

OTCQX

The OTCQX is the highest and most regulated tier in the OTC Market Group. It includes multinational corporations seeking access to U.S. investors, blue chip stocks, and domestic growth companies. Trades are private and decentralized, but the companies undergo strict scrutiny. OTCQX companies must prove their integrity to investors by receiving a qualitative review by OTC Markets Group, following strict disclosure requirements and complying with U.S. securities laws.¹

OTCQX companies are not required to register with or report to the SEC (though many choose to do so),² but must disclose financial information to the OTC Markets Group. U.S. companies in this group may not be shell companies or in bankruptcy, and foreign issuers must meet qualified foreign exchange requirements. Every OTCQX issuer must have an OTCQX Sponsor, which is an approved third-party financial advisor (such as an investment bank or law firm). Because its verification requirements are most like those of a stock exchange, OTCQX is considered the least risky of the OTC marketplaces.

¹ https://www.otcmartets.com/files/OTCQX_Rules_for_US_Companies.pdf

² Companies with less than \$10 million in assets and fewer than 2,000 shareholders generally do not have to file reports with the SEC, though some may choose to voluntarily. Companies registered with the SEC must file quarterly, annual, and other reports. <https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html>

OTCQB

The OTCQB is the middle-tier of the OTC markets, and is also called the “The Venture Market.” It provides quotations for early-stage and developing companies in the U.S. and international markets that may not qualify for the OTCQX. To be eligible, companies must be current in their reporting to a U.S. regulator (such as the SEC or FDIC), and undergo annual verification and certification.³ Each company verifies via an annual OTCQB Certification, signed by the CEO or CFO, that the company information is current, including the company’s ownership structure, reporting status, professional advisors and service providers.⁴

Although there are no minimum financial standards (The OTCQB includes shell companies, penny stocks, and small foreign issuers), OTCQB companies may not be in bankruptcy and must meet a \$0.01 bid test (to eliminate companies most likely to be associated with stock promoters or dilutive stock fraud schemes).⁵ Despite some protections similar to the stock exchanges, OTCQB stocks are generally considered to be more speculative “penny stocks” (typically referring to a security issued by a very small company that trades at less than \$5 per share).⁶

OTC Pink (aka Pink Open Market)

OTC Pink, named for its early use of pink-colored paper (also called the “Pink Sheets”), is the most speculative change in OTC Market Group, and has no financial standards or reporting requirements.⁷ Its companies include a variety of domestic and foreign companies including penny stocks, distressed companies, shell companies, and dark (de-registered) companies that do not provide information to investors.

OTC Pink companies (being self-regulatory and highly variable) are further classified based on the quality, quantity and timeliness of information they provide to investors: current, limited, or no public disclosure.

- Current Information companies follow the International Reporting Standard or Alternative Reporting Standard, and make filings publicly available through the OTC disclosure and news service. They must post quarterly and annual reports. This category may include shell companies, development stage companies with no operations, and companies without audited financial statements.

³ <https://www.otcm Markets.com/corporate-services/get-started/otcqb>

⁴ Certification is required for any newly qualified security to be publicly quoted by a broker-dealer under SEC Rule 15c2-11, or when a Pink traded company becomes a current SEC reporting company. International Reporting companies are also allowed to upgrade from Pink to OTCQB if they verify their company profile and publish their 17 CFR § 240.12g3-2(b) compliant disclosure online.

⁵ <https://www.otcm Markets.com/corporate-services/get-started/otcqb>

⁶ <https://www.sec.gov/fast-answers/answerspennyhtm.html>

⁷ <https://www.otcm Markets.com/corporate-services/information-for-pink-companies>

- Limited Information companies do not meet the OTC Pink Basic Disclosure Guidelines. They do not provide adequate current information with quarterly and annual reports, but do submit information at least every six months (to the OTC markets data or the SEC's EDGAR system). This category may include companies with accounting issues, or those in financial distress, or bankruptcy.
- No Information companies are publicly traded companies that provide no public disclosure. Companies in this category do not make current information available via OTC Markets disclosure and news service, or if they have disclosed information, it is older than six months. These companies are considered very high risk.

Costs of the OTC Markets

The cost to be quoted on an OTC Market Group exchange is much lower than the listing fees for the stock exchanges. See the chart below for a snapshot of the current fees for the main OTC markets (these are subject to change).

	OTCQX	OTCQB	PINK
Application and Annual Costs	<ul style="list-style-type: none"> • Annual Fee: \$20,000 • Application Fee: \$5,000 • Effective January 1, 2021: <ul style="list-style-type: none"> ○ Annual Fee: \$23,000 ○ Application Fee: \$5,000⁸ 	<ul style="list-style-type: none"> • Annual Fee: \$12,000 • Application Fee: \$2,500 • Effective January 1, 2021: <ul style="list-style-type: none"> ○ Annual Fee: \$14,000 (or \$7,500 semi-annually) ○ Application Fee: \$5,000 	<ul style="list-style-type: none"> • Annual fee: \$5,000 • Application fee: \$1,000

⁸ <https://www.otcm Markets.com/corporate-services/get-started/otcq x-us>

Moving Between OTC markets

To move from one OTC market to another, such as moving from the OTC Pink to the OTCQB or OTCQX (which are more highly regulated), a company must know and meet the financial, disclosure, and governance requirements. It can be a particularly burdensome jump to move from the OTC Pink (that has almost no financial and disclosure requirements) to one of the other OTC tiers because many companies are not accustomed to and cannot maintain the financial and disclosure standards.

The chart below outlines the eligibility, disclosure, and corporate governance requirements for each OTC Market Group tier.

	OTCQX	OTCQB	Pink
Eligibility Criteria ⁹	<ul style="list-style-type: none"> • NOT a shell company or blank-check company • NOT subject to bankruptcy or reorganization proceedings • NOT a penny stock • Have priced quotes by a market maker on OTC Link • Submit a Letter of Introduction from an OTCQX Sponsor • Have a transfer agent that participates in the Transfer Agent Verified Share Program 	<ul style="list-style-type: none"> • U.S. companies must have PCAOB audited annual financials¹⁰ • Meet minimum bid price test of \$0.01 • NOT in bankruptcy • Have at least 50 Beneficial Shareholders, with 100 shares each • Have a freely traded Public Float of at least 10% of the total issued and outstanding of the security¹¹ • Have a transfer agent that participates in the <u>Transfer Agent Verified Share Program</u> (U.S. Companies) • International companies must be listed on a <u>Qualified Foreign Exchange</u> (or SEC Reporting) with a Letter of Introduction from a <u>OTCQB Sponsor</u> 	<ul style="list-style-type: none"> • No financial requirements • Only required to obtain quotes from a broker-dealer registered with FINRA, and have a broker-dealer file Form 211 under SEC Rule 15c2-11.¹²

⁹ See https://www.otcm Markets.com/files/OTCQX_Rules_for_US_Companies.pdf and <https://www.otcm Markets.com/corporate-services/get-started/otcqb>

¹⁰ Tier 2 Regulation A Companies are exempt from requirement to use a PCAOB auditor for their initial audit

¹¹ Companies with a freely traded Public Float of at least 5% (and \$2 million in market value of public float), or a separate class of securities traded on a national exchange may apply for an exemption

¹² <https://www.finra.org/filing-reporting/market-transparency-reporting/otcbb/faq#600>

	OTCQX	OTCQB	Pink
Disclosure Standards	<p>Meet one of the following Reporting Standards:</p> <ul style="list-style-type: none"> • SEC Reporting Standard • Regulation A Reporting Standard • Alternative Reporting Standard • Audited annual financials by a PCAOB auditor and unaudited interim financial reports, prepared in accordance with U.S. GAAP <p>Timely disclosure of material news</p>	<p>Meet one of the following <u>Reporting Standards</u>:</p> <ul style="list-style-type: none"> • SEC Reporting Standard • Regulation A Reporting Standard (Tier 2) • U.S. Bank Reporting Standard • International Reporting Standard • Alternative Reporting Standard <p>Timely disclosure of material news</p>	<ul style="list-style-type: none"> • No reporting requirements • Not required to register with SEC <p>Companies are categorized by the information they provide to investors: current, limited, or no public disclosure.</p>
Corporate Governance	<ul style="list-style-type: none"> • Have a board of directors with at least 2 Independent Directors • Have an Audit Committee with a majority of members being Independent Directors • Conduct annual shareholders' meetings with annual financial reports available 15 days before meetings 	<p>(Alternative Reporting only)</p> <ul style="list-style-type: none"> • Have a board of directors with at least 2 Independent Directors • Have an Audit Committee with a majority of members being Independent Directors <p>Verification Requirements:</p> <ul style="list-style-type: none"> • Maintain a Verified Company Profile • Post initial and annual verification and management certification 	Unregulated

Michael Best's Securities & Capital Markets team has experts who advise public companies, broker-dealers, and investment advisors about compliance with SEC and FINRA regulations. We assist companies in meeting and maintaining the eligibility and disclosure standards for quotation on any OTC market and listing on U.S. stock exchanges. Please do not hesitate to contact a member of the Securities & Capital Markets team for additional information or assistance with regulatory or listing matters.

Glossary of Common Warnings

Caveat Emptor



“Buyer Beware.” OTC Markets Group has determined that there is a public interest concern associated with the company, which may include a spam campaign, questionable stock promotion, known investigation of fraudulent activity committed by the company or insiders, regulatory suspensions, or disruptive corporate actions.¹³

Stock Promotion



OTC Markets designates a security with a promotion flag when it becomes aware of current stock promotion related to the issuer. The promotion flag remains on the security for 15 days following the end of the stock promotion.¹⁴

Stop Sign



No Information. Stocks with a stop sign in the Pink Market include defunct companies that have ceased operations as well as “dark” companies with questionable management and market disclosure practices. Stocks labeled with the stop sign are not willing to provide information to investors and should be treated with suspicion. Their securities should be considered highly risky.¹⁵

Yield Sign



Limited Information. The yield symbol in the Pink Market was designed for companies with financial reporting problems, economic distress, or in bankruptcy, that make the limited information they have publicly available. Companies in this category have limited financial information not older than six months available on www.otcmarkets.com, on the SEC’s EDGAR system or, for companies in bankruptcy, through publicly available information filed with a United States Bankruptcy Court. Companies who provide adequate information within six months of the current date may qualify for Limited Information.¹⁶

¹³ <https://www.otcmarkets.com/glossary>. See the OTC Markets Policy on Caveat Emptor: <https://www.otcmarkets.com/learn/caveat-emptor>

¹⁴ See the OTC Markets Policy on Stock Promotion:

https://www.otcmarkets.com/files/OTC_Markets_Group_Policy_on_Stock_Promotion.pdf

¹⁵ <https://www.otcmarkets.com/corporate-services/information-for-pink-companies>

¹⁶ [Id.](#)

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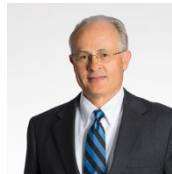
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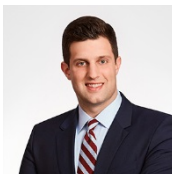
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