

Carl Dilley

Listing On The OTCBB

Carl Dilley is Managing Partner at Spartan Securities Group, Ltd. We recently spoke to him about the advantages and hurdles for a company to be listed on the OTC Bulletin Board.

OPP: Carl, I'm glad we have a chance to talk about one of the hottest topics today — how to get a your stock listed on the OTC markets. I understand that Spartan Securities is doing a lot of this work and perhaps you can shed some light on what it takes to get listed on either the Pink Sheets or the Bulletin Board (OTCBB).

Carl: My pleasure. We do a lot of listings and the one thing I can tell you is that there is a lot of miss-information out there concerning this topic. Maybe the first thing to clarify is that just because you are fully reporting with the SEC does not automatically get you listed. For non-Nasdaq/Exchange eligible securities, A FINRA (formerly NASD) member Broker-Dealer and Market Maker must file a Form 211 with FINRA in order request approval to quote the security on either the Pink Sheets or Bulletin Board marketplaces.

OPP: What is the difference in qualification to get a Pink Sheets listing versus a Bulletin Board listing?

Carl: In order to qualify for a Bulletin Board listing the company has to be a mandatory fully reporting entity with the SEC. This can be accomplished in a few different ways, such as either filing a Form 10SB to register the company, or filing a registration statement, such as a Form SB-2, which registers for sale, or re-sale, a number of shares of company stock. The SEC must declare the registration statement effective prior to FINRA providing approval for the Bulletin Board quotation.

One unwritten rule to consider is the total number of shareholders holding free-trading shares.

Typically, there is a need to have 40-50 free-trading shareholders to sustain a viable market and, therefore, FINRA does review the number of shareholders and the degree of concentration of shares held by these shareholders

OPP: Why would someone do a Form SB-2 filing versus a Form 10-SB filing?

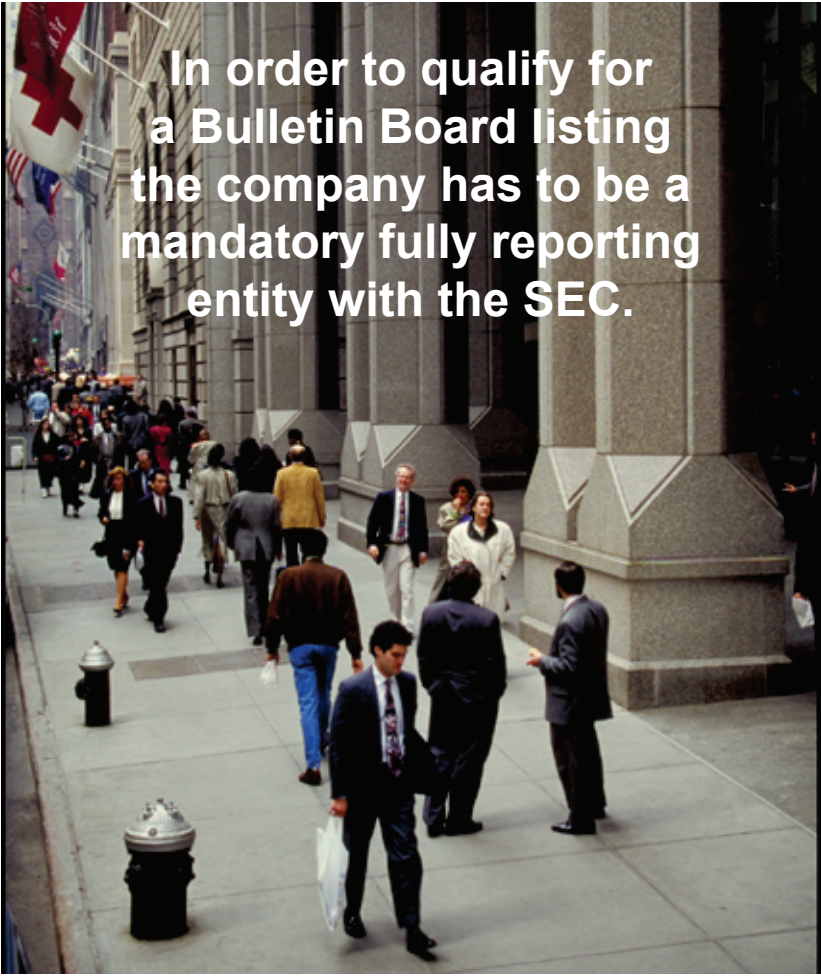
Carl: In short, the Securities Acts of 1933 and 1934 were promulgated to govern the registration of public company securities. In order to qualify for a Bulletin Board listing you must be a fully reporting company under the Act.

You can accomplish this through a few different methods, such as; A) by filing a Form SB-2 with the SEC, which registers the shares of your shareholders, thereafter allowing them to be free trading and, with the appropriate indication, also causes your company to be subject to reporting requirements under the Act, requiring the company to be a mandatory reporting company or; B) filing a Form 10-SB, which then registers the company under the Act and, therefore, also causes it to become a mandatory fully reporting company.

The decision to make between the two filings is determinate upon the needs of the company to register shares for sale or resale. Either way, these effective filings will allow a company to meet the necessary conditions to enable the market maker to request the shares to be quoted on the Bulletin Board.

OPP: Can anybody do these SB-2 or Form 10 filings? And how long does it take?

Carl: I am not sure there is any rule that says you can not file these Forms on your own, but I have never heard of anyone doing it successfully. Even though



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really the same standard of accounting and related notes that must be produced for a fully reporting company, with the exception that they need not be audited.

The GAAP standard does not mean simply print off your latest quick books file and you're good to go. In order that your financials meet this standard you will need to have a CPA prepare them or have significant accounting experience if you are going to prepare the financials internally.

OPP: It sounds like it is a lot of extra trouble and cost to get an OTCBB listing, why does anyone do that?

Carl: There are a lot of reasons, but approaching this from the practical point of why you want to be public in the first place, the biggest reason is normally access to public financing.

Because the OTCBB listing requires you to be "fully reporting" and subject to SEC oversight and all that means including your independently audited statements and your "go to jail card" for

these forms appear to be straightforward in terms of information required there are a million nuances and other SEC rules and regulations that govern what information is required and how it is presented. You need to hire a qualified securities attorney and be prepared to pay \$30,000.00 plus and expect a 3 to 9 month process in order to get your registration declared effective.

OPP: People always ask, do you need audits to get listed?

Carl: In order to get an OTCBB listing you need to be fully reporting, etc., as I've explained. One of the SEC reporting requirements is the company must have financial statements audited. This must be done by a PCAOB (Public Company Accounting Oversight Board) qualified auditor. PCAOB is the entity that qualifies auditors to audit public companies. In order to get a Pink Sheets listing you do not need audits, but you must produce financial statements for the last two fiscal years and latest quarter that are prepared and certified to be to US GAAP (Generally Accepted Accounting Practices) standards. This is

willingly making material misrepresentations in your filings and statements, the investing public, institutions and broker-dealers have a much higher level of confidence in the accuracy and completeness of the information available on your company. Therefore you may stand a much better chance of finding an acceptable financing partner and potentially better liquidity for your stock with an OTCBB listing than you do with a Pink Sheets listing.

OPP: Ok, that's clear enough, but then let me go back to the Form 211 filing you mentioned earlier, what is that all about?

Carl: From the points we discussed earlier you can determine which of the two OTC listings your company qualifies for. These are either Pink Sheets or OTCBB.

A Market Maker is the only entity allowed to make these filings with FINRA based on the desire of the Market Maker to trade, quote and "Make a Market" in your stock.

The Market Maker is required to do a certain amount of due diligence in determining that the information

presented to the public is accurate and therefore they will request quite a bit of additional information from the company other than just what is required on the Form 211.

OPP: Is there any difference in what is required for a Pink Sheet company listing versus an OTCBB listing company.

Carl: Yes, in the case of a pink sheet company the issuer must complete a disclosure statement which is typically 15-20 pages long and contains a lot of information regarding the company including management and capital structure, financials and business operations. The Market maker will submit this Disclosure Statement along with the Form 211 when they file the application with FINRA. As there are no SEC filings and sworn certifications related to these the broker dealer is charged with conducting sufficient due diligence and investigation to be reasonably assured that the information presented in the disclosure statement is accurate.

The other key issue is how the company got its "Free Trading" shareholder base. FINRA will ask for "a regression diagram from the date of incorporation that details every share issuance, the applicable exemption available, the nature of the issuers business from the date of incorporation to present including copies of subscription agreements and cancelled checks and any Form D filings". The challenge here is to clearly demonstrate through documentation and probably a tradability opinion from your securities council supporting the free trading status of the shareholders. That documentation must clearly indicate that your shareholders have held the shares for more than two years and are eligible for free trading status under rule 144. If there have been mergers etc in the corporate history you must supply this information for all of the entities involved.

In the case of an OTCBB listing the Market Maker can rely on the representations management has made in its filings and the auditors certification of its financial statements thereby lessening the burden on the Market Maker to substantiate the information presented to the public. The same issues apply to demonstrating how the issuer obtained its free trading shareholder base unless they have filed and

have an effective S-B2 registration statement that "Registered" the shares that are claimed to have free trading status.

OPP: ok, so how long does it take to get approved?

Carl: There are no set time lines, but the process goes like this and is very similar to the SEC registration process: The market maker submits the application and FINRA will typically respond with comments in 7-10 business days. The Market Maker will work with the issuer to craft a response and send that response back to FINRA and you go back and forth until the market maker and FINRA are satisfied that you meet the requirements. FINRA will finally send a faxed letter to the market maker indicating the market maker is approved to submit the quotation for the securities.

On average, if the application is well prepared and the market maker receives all of the required documentation, in the case of a Pink Sheets listing you can expect 4-5 or more rounds of comments and in the case of an OTCBB listing probably 2-3 rounds. This probably equates to 3-4 months or more for a Pink Sheet listing and 45-60 days for an OTCBB listing.

OPP: So how much does it cost to do this ?

Carl: Actually SEC rules prohibit the Market Maker from taking compensation for either Making a Market or any related activity including filing a Form 211 to get a company's stock listed. What the market maker hopes to gain is trading activity in the stock and is granted 30 day exclusivity for trading when the stock is listed. The challenge for the company or its shareholders desiring the listing is to convince the Market Maker that there is going to be sufficient trading in the companies stock to make the listing process worth the effort. Many times the issuer's shareholders will open accounts with the market maker as well, which provides revenue to the market maker in the form of commissions.

OPP: Carl this has been very enlightening. Thank you for your time.

Carl: My pleasure.

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