

**MEMORANDUM**

To: Prospective Uplist Candidate

From: Lucosky Brookman LLP

Re: Senior U.S. Exchange Listing Analysis

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Please find below an analysis of the uplisting requirements of the Nasdaq Capital Market (the “Nasdaq”) and the NYSE American Exchange (the “NYSE American”). For ease of reference, we have highlighted in the bold the differences between the exchanges.

***Financial and Liquidity Criteria******I. Shareholders’ Equity******a. Nasdaq***

Upon uplisting to Nasdaq, a company needs to have shareholders’ equity of **\$5 million**.

***b. NYSE American***

Upon uplisting to NYSE American, a company needs to have shareholders’ equity of **\$4 million**.

Typically, a combination of an equity offering and conversions of liabilities into equity will allow the Company to meet this requirement.

***II. Share Price******a. Nasdaq***

The **bid** price, upon uplisting to Nasdaq, has to be at least **\$4**.

***b. NYSE American***

The **closing** price, upon uplisting to NYSE American, has to be at least **\$3**.

Typically, undertaking a reverse stock split of the company’s stock, in combination with the closing of an equity offering priced above \$4 per share, will allow a company to comply with this requirement.

### **III. Number of Shareholders**

#### *a. Nasdaq*

Upon uplisting to Nasdaq, a company must have:

- i. at least **300 shareholders** who hold **at least 100 unrestricted shares** each (the “Round Lot Shareholders”);
- ii. a minimum of 150 Round Lot Shareholders holding shares with a market value of at least \$2,500;
- iii. at least **1 million unrestricted shares** held by public shareholders (shareholders other than officers, directors, and 10% holders);
- iv. minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day, with trading occurring on more than half of those 30 days<sup>1</sup>;
- v. shares held by the public shareholders with a market value of at least \$15 million; and
- vi. At least three market makers for its shares.

#### *b. NYSE American*

Upon uplisting to NYSE American, a company must have shares held by the public shareholders with a market value of at least \$15 million.

There is no Round Lot Shareholders requirement.

The Company can have:

- i. **800 public shareholders** who hold a total of at least **500,000 shares**.
- ii. **400 public shareholders** who hold a total of at least **1 million shares**.
- iii. **400 public shareholders** who hold a total of at least **500,000 shares** with daily trading volume on the OTC Markets over the six (6) months prior to listing of 2,000 shares.

Both Nasdaq and NYSE American count both shareholders of record who are listed on the transfer agent’s shareholder list and beneficial holders who are listed on a company’s NOBO list.

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<sup>1</sup> An exemption from this requirement is available for companies that are being listed on Nasdaq in connection with a firm commitment underwritten public offering of at least \$4 million. This exemption is typically available for a company that is contemplating an offering in connection with meeting Nasdaq’s stockholders’ equity requirements.

#### ***IV. Corporate Governance Criteria***

For smaller reporting companies, there are four main corporate governance criteria for each of Nasdaq and NYSE American:

##### **(1) Independent<sup>2</sup> members of the Board of Directors**

- a. Nasdaq: A **majority** of directors must be independent.
- b. NYSE American: **fifty percent (50%)** of directors must be independent.

##### **(2) Audit Committee**

- a. Nasdaq: **Three** independent directors with at least one member being a financial expert.
- b. NYSE American: **Two** independent directors with at least one member being a financial expert.

The definition of an audit committee financial expert is someone who:

- a. Understands GAAP;
- b. Can apply GAAP to accounting for estimates, accruals, and reserves;
- c. Has experience with preparing, auditing, analysing or evaluating, or supervising those engaged in such activities, with regard to financial statements with a level of complexity that match the company's financial statements;
- d. Understands internal control over financial reporting; and
- e. Understands audit committee functions.

##### **(3) Compensation Committee**

- a. Nasdaq: **Actual committee of two** independent directors.
- b. NYSE American: Vote of a **majority** of the independent directors or actual committee of two independent directors.

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<sup>2</sup> Nasdaq and NYSE American each define someone as NOT an "independent director" if, in the last three (3) years, they have: (i) been a company employee (other than as an interim executive officer for less than twelve months); (ii) accepted or a family member has accepted more than \$120,000 in compensation in any twelve (12) consecutive months other than Board fees or compensation for being an interim executive officer for less than twelve months or a family member who is a non-executive employee of the company; (iii) a family member who has been an executive officer of the company; (iv) been or a family member has been a partner, controlling shareholder or executive officer of an entity that makes payments to or receives payments from the company of the greater of (a) \$200,000 or (b) five percent (5%) of the recipient's gross revenues for the year in question; or (v) been or a family member has been an executive officer of another company for which an executive officer of the exchange listed company serves on the compensation committee of that other company. A person is also not independent if they are currently a partner of the company's outside auditor or have been or a family member has been a partner or employee of the company's outside auditor who worked on the company's audit during the past three (3) years.

(4) Nominations Committee

Nasdaq and NYSE American: Vote of a **majority** of the independent directors or actual committee of two independent directors.

*V. Other Criteria*

- Additional requirements may apply for companies formed pursuant to a reverse merger.
- Additional specific requirements may also be applicable upon review of the Company and its public filings.

As an alternative to the above, depending upon the uplisting candidate, alternate standards may apply for Nasdaq and NYSE American uplisting. Below, please find a synopsis of the different Nasdaq and NYSE American listing criteria standards.

Please contact us for a substantive Company-specific senior U.S. exchange listing analysis.

<b>Nasdaq Capital Market Listing Requirements</b>			
Requirements	Equity Standard	Market Value of Listed Securities Standard*	Net Income Standard
Stockholders' Equity	\$5 Million	\$4 Million	\$4 Million
Market Value of Publicly Held Shares	\$15 Million	\$15 Million	\$5 Million
Operating History	2 years	N/A	N/A
Market Value of Listed Securities	N/A	\$50 Million	N/A
Net Income from Continuing Operations	N/A	N/A	\$750,000
Unrestricted Publicly Held Shares	1 Million	1 Million	1 Million
Unrestricted Round Lot Shareholders**	300	300	300
Market Makers	3	3	3
Bid Price OR Closing Price***	\$4  \$3	\$4  \$2	\$4  \$3

\* Currently traded companies qualifying solely under the Market Value Standard must meet the \$50 million Market Value of Listed Securities and the applicable bid price requirement for 90 consecutive trading days before applying.

\*\* Per Nasdaq's recent revisions to their initial listing criteria to exclude securities subject to resale restrictions for any reason from the calculation of publicly held shares, market value of publicly held shares and round lot shareholders. In addition, the round lot shareholder requirements were revised to also require that at least half of the minimum required number of round lot holders must each hold unrestricted securities with a minimum value of \$2,500.

\*\*\* To qualify under the closing price alternative, a company must have: (i) average annual revenues of \$6 million for three years, or (ii) net tangible assets of \$5 million, or (iii) net tangible assets of \$2 million and a 3 year operating history, in addition to satisfying the other financial and liquidity requirements listed above.

In addition to the above requirements, if the security is trading in the U.S. over-the-counter market as of the date of application, the security must have a minimum average daily trading volume of 2,000 shares (including trading volume of the underlying security on the primary market with respect to an ADR), over the 30 trading day period prior to listing, with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment underwritten public offering of at least \$4 million.

NYSE American Listing Requirements				
Requirements	Standard 1	<b>Standard 2<sup>3</sup></b>	Standard 3	Standard 4
Pre-Tax Income	\$750,000	<b>N/A</b>	N/A	N/A
Market Cap	N/A	<b>N/A</b>	\$50 Million	\$75 Million
				OR
Total Assets and Total Revenue	N/A	<b>N/A</b>	N/A	\$75 Million
Market Value of Public Float	\$3 Million	<b>\$15 Million</b>	\$15 Million	\$20 Million
Stockholders' Equity	\$4 Million	<b>\$4 Million</b>	\$4 Million	N/A
Minimum Price	\$3	<b>\$3</b>	\$2	\$3
Operating History	N/A	<b>2 Years</b>	N/A	N/A

And one of the following:

Requirements	Option 1	Option 2	Option 3
Public Shareholders	800	400	400
Public Float	500,000	1 Million	500,000
Daily Trading Volume (6 Months Prior)	N/A	N/A	2,000 Shares

<sup>3</sup> For most companies listed on the OTC Markets, Standard 2 is by far the easiest to meet. Standard 1 requires \$750,000 in pre-tax income in the previous fiscal year or in two of the last three fiscal years. Standard 3 requires a market cap of \$50 million before uplisting. Standard 4 requires either a market cap of \$75 million before uplisting or both \$75 million in total assets and \$75 million in total revenue in the previous fiscal year or in two of the last three fiscal years.