



August 21, 2007

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

**Subject: File Number S7-11-07**

Dear Ms. Morris:

Pink Sheets LLC ("Pink Sheets") appreciates this opportunity to comment on the recent proposal by the Securities and Exchange Commission (the "Commission") to amend Rules 144 and 145 under the Securities Act of 1933 (the "Securities Act").

Pink Sheets is the leading provider of pricing and financial information for the over-the-counter (OTC) securities markets and, among other things, operates an Internet-based, real-time quotation service for OTC equities and bonds for market makers and other broker-dealers registered under the Exchange Act. Pink Sheets also operates "The Pink Sheets News Service," an Internet repository where issuers of unregistered securities can publish disclosures, and all issuers can publish news releases, concerning their operations and securities that are freely available to investors, securities regulators and other interested persons.

Pink Sheets strongly supports the current proposal. We believe that the proposed reductions in the holding period requirements under Rule 144 will lower the cost of capital for smaller issuers without sacrificing investor protection. For similar reasons, we support elimination of the volume, manner of sale and Form 144 filing requirements of the Rule for non-affiliates of the issuer. At the same time, we strongly support retention of these requirements for affiliates. Most of the abuses in transactions involving unregistered securities are, in our experience, attributable to sales and purchases by affiliates of the issuer. We strongly support codification of the view expressed by the staff in a letter to the NASD that Rule 144 is not available for the sale of securities issued by shell companies, whether registered or unregistered, as most micro-cap frauds result from the purchase and sale of securities issued by shell companies.



Pink Sheets nonetheless believes that the proposed Rule could be improved considerably by clarifying the means by which issuers that are not subject to Exchange Act reporting can make current information publicly available. We also believe that the disclosure requirements of the Rule 144(c)(2) should be integrated with the disclosure requirements for private offerings in reliance on Regulation D of the Securities Act of 1933 (the "Securities Act"). Moreover, the integrated information requirements contemplated in private offerings should drive the disclosure requirements of Rule 15c2-11 under the Securities Exchange Act of 1934 (the "Exchange Act"), thereby providing the touchstone for whether adequate current information is being provided to market participants, as well as the obligations of quoting broker-dealers. Finally, Pink Sheets believes that Form 144 should be filed electronically and made available on EDGAR and that certain information, in addition to the items proposed, should be required in the Form.

### **Disclosure Requirements under Rule 144(c)(2)**

The current safe harbor of Rule 144 is not available for sales of securities unless adequate current information is publicly available with respect to the issuer of the securities. This requirement is satisfied under Rule 144(c)(1) if an issuer has been subject to the reporting requirements of Section 13 of the Exchange Act for at least 90 days immediately prior to the sale of securities, and the issuer is current in its reporting requirements for the preceding 12 months or such shorter time as the issuer has been subject to the reporting requirements. For non-reporting issuers, Rule 144(c)(2) requires the issuer to make publicly available the information contained in Exchange Act Rule 15c2-11, paragraphs (a)(5)(i) through (xiv) and (a)(5)(xvi).

Rule 144(c)(2) suffers from two glaring deficiencies that should be addressed in amendments to Rule 144. First, the information required under Rule 144(c)(2) is not adequate to protect investors when insiders are selling or buying in the market. Second, the Rule fails to state the means by which the information is to be made publicly available. These deficiencies call attention to the need to fully integrate the information required to be provided to purchasers in private offerings relying on Regulation D under the Securities Act with the information provided to market participants under Rule 144(c)(2) of the Securities Act and Rule 15c2-11 under the Exchange Act.

It is worth noting that the Commission's concerns about the adequacy of information produced under Rule 144(c)(2) has caused it to make some invidious distinctions in the current proposal. For example, investors in a reporting shell company are permitted to sell securities in reliance on Rule 144 ninety days after the company has ceased to be a shell. Investors in non-reporting shell companies are never permitted to sell their securities in reliance on Rule 144. It



is difficult to justify this restraint when considering the harm it is intended to address. After a sufficient amount of time has elapsed since an operating business has been acquired by a former shell company, the investors in that operating business cannot be rationally distinguished from investors that purchased securities of an operating business in the first instance. Moreover, many private offerings have as their goal the establishment of an operating business. When that goal is realized, there would not seem to be any legitimate reason to prevent the sale of securities by investors in that enterprise who have borne the initial risk of a start-up enterprise.

The Commission's concerns about the adequacy of information provided to investors in unregistered securities also has led it to propose a longer holding period for unaffiliated investors that purchase securities that are part of class of registered securities. We submit that adopting the information requirements of Rule 502 would ameliorate these concerns. If the Commission further required a non-reporting issuer to include audited financials in the information that is made publicly available to the market, there would be very little to distinguish reporting from non-reporting issuers for purposes of Rule 144(c)(1) and (c)(2). While we agree that there should be a longer holding period for non-reporting issuers that do not provide audited financials, we believe that investors in unregistered securities for which the adequate current information available to the public includes U.S. GAAP audited financials should have the same holding period as investors in the securities of reporting issuers.

In the case of shell companies that have acquired an operating business, we believe that the Rule should allow for unaffiliated investors to rely on Rule 144 six months after current information is made publicly available under Rule 144(c)(2), provided that the information includes U.S. GAAP audited financials of the combined operations.

The form of transactions that result in securities being held by investors should not control whether those securities ultimately can be resold in a public market without registration under Section 4(1) of the Securities Act. Appropriate amendments to improve the information required under Rule 144(c)(2) and make certain that the information is publicly available to investors in the OTC markets would obviate the necessity of adopting this confusing and impractical proposal for investors holding the securities issued by operating companies that were formerly shells.

### ***The Information Required under Rule 144(c)(2) Is Not Adequate***

Rule 144(c)(2) currently requires non-reporting issuers to make certain information specified in Rule 15c2-11 under the Exchange Act available to investors when holders of restricted and control securities are selling securities



on the public markets. Rule 15c2-11 prescribes the information that must be gathered and reviewed by a registered broker-dealer before it may initiate quotations in the market. Rule 15c2-11 is essentially a third party merit review process that places the burden of information gathering and review on broker-dealers that are often not affiliated, engaging in transactions with nor have any relationship, with the issuer. The following information is required:

- (i) the exact name of the issuer and its predecessor (if any);
- (ii) the address of its principal executive offices;
- (iii) the state of incorporation, if it is a corporation;
- (iv) the exact title and class of the security;
- (v) the par or stated value of the security;
- (vi) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;
- (vii) the name and address of the transfer agent;
- (viii) the nature of the issuer's business;
- (ix) the nature of products or services offered;
- (x) the nature and extent of the issuer's facilities;
- (xi) the name of the chief executive officer and members of the board of directors;
- (xii) the issuer's most recent balance sheet and profit and loss and retained earnings statements;
- (xiii) similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence; and
- (xvi) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for



any exemption under the federal securities laws for any sales of such securities on behalf of such person.

In contrast, non-reporting issuers that sell securities under Securities Act Rules 505 or 506 are generally required to provide the same information to unaccredited investors that would be required in a registration statement under the Securities Act, except for audited financial statements that would require unreasonable effort and expense to produce. Issuers are not required to provide any particular information to accredited investors on the assumption that in private offerings accredited investors can fend for themselves by demanding information they consider material from the issuer prior to making an investment. It must be assumed that many of the investors purchasing securities in secondary market transactions under Rule 144 are unaccredited investors. In any event, very few investors, whether or not accredited, purchasing securities available in the OTC market will have the power to require additional disclosures from the issuer when the resale transactions contemplated by Rule 144 take place.

As a result, the market disclosures required under Rule 144(c)(2) are deficient in the many respects and in the case of sales by affiliates, we believe do not satisfy the information requirements demanded by Exchange Act Rule 10b-5. Securities Act Rule 502 would require considerably more disclosure to unaccredited investors in offerings that rely on Rule 505 and 506. At a minimum, Rule 144(c)(2) should be amended to require additional disclosure in the following areas, which are not required under the existing regime, but are inexpensive to produce, of great value to investors and would be required under Rule 502:

1. Market participants interested in the securities of smaller public companies are particularly concerned about the qualifications and reputations of the management teams responsible for managing their investments. The Rule currently requires an issuer to disclose only the names of the chief executive officer and members of the board of directors. Investors should also be provided with the names of the other executive officers of the issuer and large shareholders. The employment and regulatory history of an issuer's insiders are highly material to an investment decision, as well as any relationships that may exist among the issuer's insiders, related party transactions, excessive executive compensation agreements and conflicts of interest.
2. With this universe of companies, material agreements are frequently the difference between astonishing results and complete catastrophe. Yet, the current rule requires no disclosures regarding material agreements.





144(c)(2) or Exchange Act Rule 15c2-11 to respond to changes in technology and market practices because amendments to Regulations S-B and S-K without further Commission action would by reference result in amendments to the requirements of Rule 144(c)(2) and Exchange Act Rule 15c2-11, as is currently the case with Securities Act Rule 502.

Moreover, the requirements of Rule 144 should also control the conduct of broker-dealers dealing in OTC Equity Securities. Exchange Act Rule 15c2-11 currently requires broker-dealers to obtain the information required under Rule 144(c) and verify its accuracy prior to entering a quotation in an inter-dealer quotation system. However, for unaffiliated securities holders, the proposed amendments to Rule 144 would no longer require that adequate current information be publicly available as a condition for reliance on the rule. Similar relief should also flow through to broker-dealers that are not affiliated with the issuer or who make markets on behalf of unaffiliated securities holders.

At present, Rule 15c2-11 requires quoting broker-dealers to obtain the information required under Rule 144(c),<sup>2</sup> confirm its accuracy and then place it in their files. Broker-dealers are required to provide the information to a customer on request, but it is our experience that it is extremely rare for broker-dealer to receive such a request. It goes without saying that information locked in a broker-dealer's files is not useful to anyone and rapidly grows stale in any case. This is information that should be made available to the market and updated by the issuer. It is other market participants, after all, who will be purchasing or selling the securities from the quoting broker-dealer. It is fundamental that this information, which may be non-public while locked away in a broker-dealer's file cabinet, should be made available to the public markets by issuers.

A broker-dealer entering a quotation on behalf of a control person, or that is itself an affiliate of the issuer, should have no difficulty obtaining the information required under Rule 15c2-11 and confirming its accuracy. On the other hand, a broker-dealer that is not affiliated with an issuer, or that accepts orders from a customer who is not affiliated with an issuer, cannot obtain any more information from an issuer than the issuer wishes to provide and is in no position to confirm its accuracy. That is why re-proposals of Rule 15c2-11 have foundered.

Without the cooperation of the issuer, an unaffiliated broker-dealer has limited information gathering ability. An unaffiliated broker-dealer often has trouble obtaining a simple balance sheet, revenue statements and other financials or the number of shares of its outstanding common stock. As an outsider they cannot obtain, under current rules, material agreements, history of offerings, the names

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<sup>2</sup> Although technically it is true that the information requirements are listed in Rule 15c2-11, the reality is that the information under Rule 144 is the same as that required under Rule 15c2-11.



and employment histories of the issuer's executive officers or directors. Moreover, lacking any relationship with the issuer, it is not clear how an unaffiliated broker-dealer is supposed to verify the information gathered, or how that verification will benefit investors. Notwithstanding the market's need for information, imposing additional information gathering and review requirements on unaffiliated broker-dealers would appear to be a pointless exercise, doomed to futility and providing little if any benefit to investors.

The proposal correctly distinguishes affiliated investors, who can cause the issuer to make information available, and unaffiliated investors, who lack the ability to influence the issuer. The policy established under Rule 144 should also flow through to Exchange Act Rule 15c2-11. Rule 144 is applicable to insiders of issuers who have access to and the ability to create disclosure that is far superior to any information that can be gathered by unaffiliated broker-dealers. It follows that Rule 144 should require better disclosure than currently required under Rule 15c2-11 be provided by affiliates who are in a position to cause its production. At the same time, the information requirements of Rule 144 should not apply to unaffiliated investors, who cannot cause its production, and the information gathering and verification requirements of Rule 15c2-11 should for similar reasons not apply to unaffiliated broker-dealers.

As a matter of disclosure policy, the proposal raises an issue of regulatory consistency. Rule 144 sets forth the Commission's views as to the circumstances under which information must be made available to the public before an investor can sell securities in an anonymous marketplace. We think the proposal strikes the correct balance. When affiliated investors purchase and sell in the marketplace, it is essential that the adequate current information required under rule 144(c) should also be made publicly available for all purposes, including Rule 15c2-11. Otherwise, uninformed investors will be victimized by the affiliate's access to superior information. In contrast, unaffiliated investors lack information about the issuer and the means to require its public availability. Their purchases from and sales to other uninformed investors in the marketplace may not be efficient, but are at least fair. The same balance should be applied in Rule 15c2-11. Accordingly, if Rule 144(c) does not require adequate current information to be made publicly available by the issuer, then a quoting broker-dealer should not be required to obtain it or review it under Rule 15c2-11.

### ***The Control of Control Persons***

It is our experience that most of the frauds that occur in the OTC Equity Securities markets involve purchases and sales of securities by control persons into the public markets. In seeking to deter fraud in the OTC markets, the



Commission should therefore pay special attention to the regulation of control persons.

While the Commission generally does not have regulatory authority over control persons, the conduct of control person in the OTC markets can be regulated indirectly through the regulation of broker-dealers with control person customers and transfer agents. We believe that Rule 15c2-11 review should focus on broker-dealers accepting orders from control persons, whether or not they publish quotations or engage in market making activity. Rule 144 should be amended to provide that control persons may not rely on the rule unless the transfer agent for the securities is registered with the Commission. In turn, registered transfer agents should be prohibited from transferring securities that contain a restrictive legend or removing restrictive legends from securities owned by control persons, unless they receive an opinion from the issuer's counsel that the securities may be sold in reliance on Rule 144. It is our understanding that there are transfer agents registered with the Commission that currently do not require an opinion of counsel to remove legends from securities, and this practice places responsible transfer agents at a competitive disadvantage.

### ***Making Rule 144(c)(2) Information Publicly Available***

In a recent speech to the American Enterprise Institute, Commission Chairman Cox pointed out that despite the revolution in technology, financial information is still derived from the "printed page of the Guttenberg press of the 15<sup>th</sup> century." We wholeheartedly agree with Chairman Cox: "What we need is something that will give individuals faster access to better information that they can easily use and understand. We need to make searches for information easier. It should be easy to call up information about any company you choose."<sup>3</sup> Unfortunately, many small public companies remain in the dark ages.

No definition is provided for the term "publicly available" in Rule 144(c)(2). In Securities Act Release No. 6099 (August 2, 1979), the Staff initially expressed the view that information would be publicly available if the issuer made the information available on an ongoing and continuous basis (e.g., through the issuance of annual and quarterly reports) to security holders, market makers, brokers, financial statistical services, and any other interested persons. Thereafter, the Commission periodically issued no-action letters confirming this guidance. See DASI, Inc. (July 26, 1982). In 1990, the Staff reconsidered its earlier positions on the grounds that whether information was publicly available involved a factual determination that the Staff was unable to verify. ANADAC

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<sup>3</sup> C. Cox, "The Interactive Data Revolution: Improved Disclosure for Investors, Less Expensive Reporting for Company," Speech before the American Enterprise Institute, Washington DC (May 30, 2006).



No-Action Letter (March 15, 1990). Accordingly, non-reporting issuers and their advisors at the present time cannot rely on any guidance from the Staff, even from the “Guttenberg” era, that any particular method of distributing information to the public is sufficient to satisfy the standard of public availability under Rule 144(c)(2).

In the absence of guidance from the Commission, the salutary public information requirements of Rule 144(c)(2) are most often honored in their breach. Because issuers cannot determine how to make information publicly available under Rule 144(c)(2), little or no information is being provided. As a result, Pink Sheets believes that affiliates of non-reporting issuers generally are selling the securities of non-reporting issuers without making any serious effort to achieve compliance with Rule 144(c)(2). The Staff’s unwillingness to provide guidance as to public availability has opened the door for fraudulent operators to take advantage of the lack of information with respect to non-reporting issuers by supplying false and misleading information to fill the void. The Internet and other technologies enable miscreants to distribute fraudulent information to millions of investors at incredibly low cost. The Commission should use the current opportunity to amend Rule 144 to provide clear rules that will result in the dissemination of accurate information to investors.

The Commission has long recognized that providing appropriate disclosures to the market where securities trade is an acceptable method of providing information to investors who purchase and sell the securities on that market. For example, in a rule promulgated prior to the advent of EDGAR, with respect to securities traded on a national securities exchange, prospectus delivery can be accomplished by delivering copies to the exchange for redelivery to its members. See Securities Act Rule 153.

Moreover, in the reproposal of its proposed amendments to Exchange Act Rule 15c2-11<sup>4</sup>, the Commission proposed to designate an entity, upon written application, as an information repository to foster access to information about issuers that do not file periodic reports to the Commission. In determining to grant or deny such a designation, the Commission proposed to consider the following factors regarding whether the entity:

- Collects information about a substantial segment of issuers of securities subject to the Rule;
- Maintains current and accurate information about such issuers;

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<sup>4</sup> Publication or Submission of Quotations Without Specified Information, Release No. 34-41110 (February 25, 1999).



- Has effective acquisition, retrieval, and dissemination systems;
- Places no inappropriate limits on the issuers from or about which it will accept or request information;
- Provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and
- Charges reasonable fees.

The Commission has also acknowledged that electronic methods of information disclosure are an acceptable substitute for the delivery of paper documents under certain circumstances. For example, an issuer can limit a public offering to those persons willing to accept electronic delivery of documents. See "Use of Electronic Media," SEC Release No. 33-7856 (May 4, 2000). In the case of a non-reporting issuer without a general obligation to disclose, we submit that posting the information in an Internet site managed by the primary venue where its securities trade is an acceptable means to ensure that investors who trade these securities have access to the information.

To improve the quality of information available to investors in securities of non-reporting issuers, Pink Sheets established the Pink Sheets News Service, an Internet-based information repository that provides a means for issuers to disclose current information to investors. The Pink Sheets News Service would appear to satisfy the requirements of an information repository described in the Commission reproposal of Exchange Act Rule 15c2-11. For a modest fee, participating issuers post information in a secure environment to an issuer information repository, [www.otciq.com](http://www.otciq.com). Current information posted by issuers in the repository is then displayed on Pink Sheets' Internet site, [www.pinksheets.com](http://www.pinksheets.com). Investors, regulators and other interested persons may access issuer information through Pink Sheet's Internet site free of charge.

Pink Sheets is far and away the primary venue for the public trading of the securities of non-reporting issuers. Investors interested in such securities search Pink Sheets' website for current trading information about such securities and naturally expect that any information that is available about their issuers would be found there. Information posted by a non-reporting issuer on Pink Sheets' website therefore is likely to be discovered by interested investors and can be accessed by such investors free of charge.

The following table provides data published by Hitwise ([www.hitwise.com](http://www.hitwise.com)) tracking U.S. Internet users by visits and length of visit. The data clearly shows that [www.pinksheets.com](http://www.pinksheets.com) has a larger presence with U.S. based Internet users than any of the regulatory disclosure services or non-U.S. exchanges seeking to





12	NASD	www.nasd.com	294	10	9	7
13	www.sedar.com	www.sedar.com	219	4	7	2
14	The American Stock Exchange	www.amex.com	205	9	15	15
15	www.bovespa.com.br	www.bovespa.com.br	183	3	0	14
16	Australian Stock Exchange	www.asx.com.au	154	16	13	12
17	New Zealand Exchange	www.nzx.com	132	14	16	10
18	OMX Corporate	www.omxgroup.com	118	15	14	19
19	Singapore Exchange	www.sgx.com	9	19	12	16
0	Archipelago Exchange	www.archipelago.com	0	17	17	0

We therefore propose that Rule 144(c)(2) be amended to clarify that information posted by an issuer in an information repository, such as the Pink Sheets News Service, that satisfies the five requirements for an information repository under proposed Exchange Act Rule 15c2-11, would be deemed “publicly available” within the meaning of Rule 144(c)(2).

### Form 144 Requirements

The current Commission proposal would coordinate the filing requirements of Rule 144 for affiliates of a reporting issuer with Form 4 filings required under Section 16 of the Exchange Act. We believe this coordination would be useful to investors who could then view all pertinent information in one place. However, the information currently required in Form 4 would be especially important and material to investors in unregistered securities, which are often very thinly traded. In the case of unregistered securities, there is no Form 4 requirement; so Form 144 needs to provide all of the disclosure that would otherwise be contained in a Form 4. We therefore propose that Form 144 should be used to disclose actual purchases and sales, as well as the present intent to purchase and sell.<sup>5</sup>

For the same reasons, we propose that Form 144 be amended to require affiliates to disclose the total amount of the issuer’s securities currently held by the affiliate. This is extremely useful disclosure to investors in thinly traded securities because securities held by affiliates represent an “overhang” of securities that may be sold in a way that will affect market prices.

We also believe that Form 144 should require disclosure for non-exchange listed securities the primary inter-dealer quotation system on which the securities are quoted.

<sup>5</sup> A present intention to purchase or sell is indicated when action is taken to remove a restricted securities legend from the certificates representing the securities. A Form 144 should therefore be filed in connection with that event.



It is imperative that the information provided under the Rule be publicly available to the investing public. For this reason, we strongly support the Commission's proposal to combine Form 144 with Form 4 and require it to be filed electronically in the EDGAR system.

## **Conclusion**

We strongly support the Commission's proposed revisions of Rule 144, which we believe will improve the ability of smaller public companies to raise capital efficiently from qualified investors. Nevertheless, we believe that some simple amendments would also provide great benefits to the markets in which the securities for smaller companies trade by improving the disclosures available to market participants.

We submit that the ultimate pragmatic goal of the Commission's proposal is to improve the liquidity of securities issued in private offerings, which will reduce the cost of raising capital for smaller companies. However, the removal of restrictions is necessary, but not sufficient, to enable initial purchasers to sell these securities. Liquidity also requires a receptive marketplace. But, without adequate current information, public investors are disadvantaged, or demand a substantial risk premium for making the investment, thereby defeating the purpose of limiting the restrictions in the first place.

We believe the Commission should change the market disclosure requirements of control persons from being based on the limited information that a non-affiliate broker-dealer can be expected to collect under Rule 15c2-11 to what is needed for the public markets to have adequate current information.

The Rule as proposed therefore would be considerably improved by clarifying the method by which information for non-reporting issuers can be made publicly available and modernizing the substantive disclosures required under the Rule. It goes without saying that, in this post-Gutenberg era, this information should be freely available to investors in an Internet site maintained by the trading venue where investors would expect to find it. Investors will then have access to information that will better allow them direct their investment dollars. This small change in the proposal will vastly improve the small business capital formation process and increase the efficiency of OTC markets.





## EXHIBIT A

### GUIDELINES FOR PROVIDING ADEQUATE CURRENT INFORMATION

Pink Sheets encourages all issuers of OTC equity securities to make *adequate current information* available to the public markets. Pink Sheets believes that federal securities laws, such as Rules 10b-5 and 15c2-11 of the Securities Exchange Act of 1934, as amended from time to time (“Exchange Act”), and Rule 144 of the Securities Act of 1933, as amended from time to time (“Securities Act”), and state Blue Sky laws require issuers to provide adequate current public information. With a view to encouraging compliance with these laws, Pink Sheets has created these Guidelines for Providing Adequate Current Information (“Guidelines”) in order to assist issuers with understanding their disclosure obligations.<sup>6</sup>

Pink Sheets believes *adequate current information* **must** be publicly available when an issuer’s securities are quoted by a broker-dealer under the following circumstances:

- At the time of initial quotation in public markets;
- At any time corporate insiders or other affiliates of the issuer are offering, buying or selling the issuer’s securities in the OTC market;
- During any period when a security is the subject of ongoing promotional activities having the effect of encouraging trading of the issuer’s securities in the OTC market;
- At the time securities initially sold in a private placement become freely tradable in the OTC market; or
- At any time the issuer’s securities are quoted on OTCQX, or included in the Pink Sheets Emerging Equities List or Current Information categories. (*This does not include issuers listed on International OTCQX, as such issuers either (i) have a class of their securities registered with the Securities and Exchange Commission (“SEC”) under Section 12(g) of the*

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<sup>6</sup> This is not legal advice, and Pink Sheets cannot assure anyone that compliance with our disclosure requirements will satisfy any legal requirements.



*Exchange Act and are current in their SEC reporting obligations or (ii) are non-U.S. issuers that are exempt from registration pursuant to Exchange Act Rule 12g3-2(b) and make their home country filings available in English to the public via the Pink Sheets News Service).*

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## General Considerations

An issuer preparing responses to the following items shall consider the purpose of adequate disclosure. Current and potential investors in the issuer's securities should be provided with all "material" information — the information available to the issuer necessary for the investor to make a sound investment decision. The disclosure should enable an investor of ordinary intelligence and investment skills to understand the issuer's business and prospects.

The disclosure must therefore present the issuer's business plan and include a full and clear picture of the issuer's assets, facilities, properties, investments, management and other resources, as well as a complete description of how they will be used to make profits. The issuer's business plan should clearly describe the competition, regulatory environment and other risks to the issuer's business, as well as the issuer's plans for confronting these challenges.

It is also important for an investor to understand how the issuer raises capital and treats investors. At a minimum, the issuer must describe the ways it has raised capital by issuing shares in the past – to whom and the amount of consideration involved. The investor should also be provided with market information, including the past price history of any transactions in the issuer's shares.

Finally, the disclosure should use plain English.<sup>7</sup> This means using short sentences, avoiding legal and technical jargon and providing clear descriptions. Your goal, as an issuer, should be to give the investor the information you would wish the investor to supply if your positions were reversed. You don't need to be Shakespeare; you must, though, have a sincere desire to inform.

### **Instructions relating to initial, quarterly and current disclosure statements:**

***Issuers shall provide information pursuant to each item and sub-item of the Guidelines and shall include in their response (i) whether a particular item is not applicable or unavailable and (ii) the reason it is not applicable or unavailable. The disclosure shall be provided in the***

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<sup>7</sup> For tips, you may wish to consult the SEC's Plain English Handbook, available for free on the SEC's website, at <http://www.sec.gov>.



*format listed below. Issuers may incorporate by reference financial statements and other exhibits that are posted elsewhere on Pink Sheets News Service or on SEC's EDGAR system, as long as the incorporated documents are current, and as long as issuers clearly explain where the incorporated documents can be found.*



## **Section One: Issuers' Initial Disclosure Obligations**

### **Part A General Company Information**

#### **Item I The exact name of the issuer and its predecessor (if any).**

In answering this item, please also provide any names used by predecessor entities in the past five years and the dates of the name changes.

#### **Item II The address of the issuer's principal executive offices.**

In answering this item, please also provide (i) the telephone and fax number of the issuer's principal executive offices, (ii) if applicable, the URL of each website maintained by or on behalf of the issuer, and (iii) if applicable, the name, phone number, email address, and mailing address of the person responsible for the issuer's investor relations.

#### **Item III The state and date of the issuer's incorporation or organization.**

Provide the issuer's state of incorporation or state of organization (if the issuer is not a corporation) and the date on which it was incorporated or organized.

#### **Item IV The name and address of the transfer agent\*.**

In answering this item, please also provide the telephone number of the transfer agent, indicate whether or not the transfer agent is registered under the Exchange Act, and state the appropriate regulatory authority of the transfer agent.

\*To be included in OTCQX, Pink Sheets' Emerging Equities Category or Pink Sheets' Current Information Category, the issuer's transfer agent *must* be registered under the Exchange Act.



















**Item XIII Beneficial Owners.**

Provide a list of the name, address and shareholdings of all persons beneficially owning more than five percent (5%) of any class of the issuer's equity securities.

To the extent not otherwise disclosed, if any of the above shareholders are corporate shareholders, provide the name and address of the person(s) owning or controlling such corporate shareholders and the resident agents of the corporate shareholders.

**Item XIV The name, address, telephone number, and email address of each of the following outside providers that advise the issuer on matters relating to the operations, business development and disclosure:**

1. Investment Banker
2. Promoters
3. Counsel
4. Accountant or Auditor - the information shall clearly (i) describe if an outside accountant provides audit or review services, (ii) state the work done by the outside accountant and (iii) describe the responsibilities of the accountant and the responsibilities of management (i.e. who audits, prepares or reviews the issuer's financial statements, etc.). The information shall include the accountant's phone number and email address and a description of the accountant's licensing and qualifications to perform such duties on behalf of the issuer.
5. Public Relations Consultant(s)
6. Investor Relations Consultant



























## **Section Two: Issuers' Continuing Disclosure Obligations**

Issuers are considered to have adequate current information publicly available to the extent such information is updated to reflect new developments after the publication of the initial issuer disclosure statement. In general, an issuer shall provide updates to the most recent balance sheet, income statement and statement of cash flows, as required under Item XV above, as well as disclose changes in any other of the above disclosure items no later than 45 days after the end of any fiscal quarter ("Quarterly Updates") and 90 days after the end of any fiscal year ("Annual Updates"). Issuers shall also provide updates ("Current Updates") within 10 business days in the event that any of the information contained in the disclosure statement (including information contained in any prior Update) has become materially inaccurate or incomplete, or upon the occurrence of certain events described under the Current Reporting Obligations section. The specific requirements for Quarterly, Annual and Current Updates are set forth below.

Insiders, affiliates and control persons of issuers shall be aware that Rule 144 under the Securities Act requires that adequate current information be publicly available if they wish to sell any of their securities in the public secondary markets.

### ***Quarterly Reporting Obligations***

In order to be considered as having adequate current information publicly available, issuers must publish Quarterly Updates to their disclosure statements on the Pink Sheets News Service, no later than 45 days after the end of each fiscal quarter. Quarterly Updates should contain responses to the following items, and should follow the format below.

#### **Item I      Exact name of the issuer and the address of its principal executive offices.**

In answering this item, the issuer shall provide the information required by Items I and II of the requirements for initial disclosure statements in Section One of these Guidelines. The issuer may state "No Change" if there has been no change to the information previously provided.



**Item 2 Shares outstanding.**

In answering this item, the issuer shall provide the information required by Item X of Section One of these Guidelines with respect to the fiscal quarter end.

**Item 3 Interim financial statements.**

The issuer shall include financial statements for the most recent fiscal quarter, which quarterly financial statements shall meet the requirements of Item XV of Section One of these Guidelines.

**Item 4 Management's discussion and analysis or plan of operation.**

The issuer shall provide the information required by Item XVII of Section One of these Guidelines.

**Item 5 Legal proceedings.**

The issuer shall provide the information required by Item V(a)(11) of Section One of these Guidelines, to the extent not already disclosed in a prior disclosure statement.

**Item 6 Defaults upon senior securities.**

If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the issuer exceeding 5% of the total assets of the issuer, (i) identify the indebtedness and (ii) state the nature of the default, the amount of the default and the total arrearage as of a recent date.



If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the issuer, give the title of the class and state the nature of the arrearage or delinquency. In the case of a default in the payment of dividends, state the amount and the total arrearage as of a recent date.

The issuer need not respond to this item with respect to any class of securities all of which is held by, or for the account of, the issuer or its totally held subsidiaries. Issuers need not repeat information that has been previously disclosed in a prior disclosure statement, although the issuer shall provide updates regarding previously reported defaults.

#### **Item 7 Other information.**

The issuer shall include here responses to any items that the issuer would be required include in a Current Update. See the Current Update section below regarding the information required to be in a Current Update.

#### **Item 8 Exhibits.**

The issuer shall either describe or attached any exhibits that are required under Items XVIII and XIX of Section One, and which have not already been described or attached in any prior disclosure statement, except that the issuer must describe or attach any amendments to any previously described or attached exhibits. The issuer shall also include current certifications, meeting the requirements contained in Item XX of Section One, relating to the Quarterly Update.





















