



August 13, 2007

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-2001

Re: **Comments to SEC Release 34-56103**  
**File No. SR-NASD-2007-039**

Dear Ms. Morris:

Pink Sheets LLC (“Pink Sheets”) respectfully submits the following comments on the aforementioned rule proposal [SR-NASD-2007-039] filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”), formerly known as the National Association of Securities Dealers, Inc.<sup>1</sup> In Release 34-56103, the Securities and Exchange Commission (the SEC” or the “Commission”) approves a FINRA request to delay the effective date to November 26, 2007, for its Manning interpretation to include all OTC Equity Securities.

Pink Sheets strongly supports the proposed expansion of the Manning interpretation because we believe that the Rule provides significant benefits to investors in OTC Equity Securities. Nonetheless, we agree that the implementation date should be delayed to allow for proper systems changes to avoid disruption to an orderly market.

In addition, Pink Sheets urges the Commission to require FINRA to disseminate publicly real-time trade reports it receives in OTC-traded ADRs. This dissemination should commence concurrently with the expansion of the Manning interpretation on November 26, 2007.

The expansion of Manning will encourage investors to submit limit orders, rather than market orders, because broker-dealers that accept such orders will be required to execute them at the same or better price as the broker-dealer’s proprietary executions for its own account. However,

---

<sup>1</sup> 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, electronic quotation and trade negotiation service for OTC equities and bonds used by over 200 market makers and other broker-dealers registered under the Securities Exchange Act of 1934 (the “Exchange Act”).



FINRA's failure to disseminate real-time trade and volume information for ADRs prevents investors from determining whether their broker-dealers have complied with Manning. Some less scrupulous broker-dealers may exploit the inability of customers to monitor their behavior by trading around customer orders. The proposed rule therefore creates a trap for investors by encouraging them to engage in behavior – the submission of limit, rather than market orders -- that will cause them to become the Rule's unwitting victims. The Commission should not approve a Rule that is so plainly detrimental to the interests of public investors.

Real-time trade information enables investors to evaluate the quality of executions they receive, rather than relying solely on the word of their broker. The monitoring of real-time trade information by investors deters "trading ahead" of orders and other improper trading practices. The compliance departments of broker-dealers require this information to monitor compliance with the best execution obligations of their trading desks. Market participants need real-time transaction and volume information to monitor the quality and firmness of quotations. Mutual funds require real-time trade information to determine accurately the net asset value or fair value of fund assets. The dissemination of real-time trade information therefore benefits investors and strengthens markets.

FINRA collects real-time trade reports from broker dealers for all OTC Equity Securities, including ADRs.<sup>2</sup> For all OTC Equity Securities, except for ADRS, this information is immediately disseminated to the investing public on a real-time basis.<sup>3</sup> FINRA withholds this information only for ADRs. Instead, a limited summary of ADR trading data is disseminated at the end of the day.<sup>4</sup> There can be no valid reason for this failure to protect the investing public, particularly when the remedy is readily at hand, requiring little more than simply releasing this information to public securities information processors, as is done with all other trade reports for OTC Equity Securities.

ADRs are the largest share of the OTC market with over \$7 billion in dollar volume traded during the month of July 2007. This is twice the monthly dollar volume of the entire OTC Bulletin Board. Level 1 ADRs are a well-established investment product offering significant custody, clearing, tax and cost advantages that make them an efficient way for U.S. investors to own and hold international investment opportunities. They are held by some of the largest public

---

<sup>2</sup> SEC Release 34-55745 (May 11, 2007)(SR-NASD-2007-030) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Obligations for Transactions in Foreign Equity Securities.

<sup>3</sup> For the most part, these securities are traded through the facilities of the OTC Bulletin Board (the "OTCBB") and Pink Sheets.

<sup>4</sup> The end of day data is a summary report consisting of opening price, high price, low price, last price and volume for OTC trading of ADRs. Individual trade data is not disseminated to the public.

mutual and pension funds. The issuers of foreign securities held in ADR programs are required to remain in compliance with the Exchange Act Rule 12g3-2(b) Information Supplying Exemption from Exchange Act registration. Rule 12g3-2(b) was recently modernized by the Commission, and many Commissioners took that opportunity to express their support for the Information Supplying Exemption and the protections it offers to U.S. investors. It is shocking that U.S. investors are unable to monitor the quality of executions they receive from their broker-dealers in such an important part of the market for OTC Equity Securities.

It has been suggested that this wanton failure to protect public investors is based on some misguided notion that the release of trade reporting will encourage investments in unregistered securities. That fact is that FINRA distributes real-time trade information for all domestic OTC Equity Securities, whether or not registered. In contrast, FINRA does not disseminate real-time trade data for the ADRs of issuers that are listed on the world's leading exchanges and are compliant with the Information Supplying Exemption. There are over 20,000 unregistered domestic OTC Equity Securities trading in the grey markets, including almost all of the domestic securities previously suspended by the SEC in the last few years, for which FINRA publicly disseminates real-time trade reports. This means that investors are "discouraged" from investing in the ADRs of some of the largest and most financially powerful corporations in the world, internationally renowned corporations that publish abundant amounts of disclosure about their operations, while "encouraged" to invest in the securities of highly questionable issuers whose promoters fill the email inboxes of the investing public with every sort of fraudulent promotional spam campaign. It is unimaginable that the Commission would adopt such an inconsistent and ill-conceived regulatory policy.

In fact, the Commission and FINRA have repeatedly acknowledged the benefits to the investing public from the dissemination of real-time transaction and volume data. In 1992, FINRA stated that the "dissemination of real-time trade and volume data during market hours will significantly benefit investors by providing the same high degree of market visibility and more efficient price discovery for all . . ."<sup>5</sup> In 1997, the Commission commented specifically on the issue of trade reporting for unregistered foreign securities (including ADRs), flatly stating that real-time transaction reporting has the potential "to better enable investors to monitor the executions they receive in foreign securities."<sup>6</sup>

It has been 10 years since the Commission urged FINRA to provide for public dissemination of trade reports for over-the-counter transactions in unregistered ADRs. The continued failure of FINRA to disseminate real-time transaction reports for unregistered ADRs serves no valid policy objective and deprives investors and the OTC markets of the important benefits of real-time transaction reporting in foreign securities. The proposed expansion of Manning without also

---

<sup>5</sup> SEC Release No. 34-30608, 1992.

<sup>6</sup> SEC Release No. 34-38456, (March 31, 1997), 62 Fed. Reg. 16635.



providing real-time trade reporting for ADRs -- the most substantial part of the market for OTC Equity Securities -- will needlessly victimize investors and is simply inexcusable.

We urge the Commission to require FINRA, concurrently with the implementation of Manning limit order protection, to commence real-time dissemination of transaction and volume reporting for ADRs.

Please call if you have any questions or require any additional information.

Very truly yours,

/s/ R. CROMWELL COULSON

R. Cromwell Coulson  
Chief Executive Officer

CC: Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Annette L. Nazareth  
Commissioner Kathleen L. Casey  
Dr. Erik R. Sirri, Director, Division of Market Regulation  
John W. White, Esq., Director, Division of Corporation Finance  
Robert L. Colby, Deputy Director, Division of Market Regulation