



**February 23, 2007**

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

**Subject: File No. S7-12-05**

Dear Ms. Morris,

Pink Sheets LLC ("Pink Sheets") appreciates this opportunity to comment on the recent re-proposal by the Securities and Exchange Commission (the "Commission" or "SEC") to amend the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and to cease its reporting obligations regarding a class of securities under Section 15(d) of the Exchange Act.<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, real-time quotation service for OTC equities and bonds for market makers and other broker-dealers registered under the Exchange Act.

Pink Sheets strongly supports the Commission's proposal. For the reasons described below, we also make the following comment intended to further enhance the protections offered investors under the re-proposed rules. We propose that a foreign private issuer should be able to satisfy the conditions for obtaining the "information-providing" exemption available under Exchange Act Rule 12g3-2(b) by posting the information required under the Rule on a website operated by Pink Sheets for this purpose, as an alternative to posting the information on the issuer's own website or on a website maintained by the primary market for the issuer's shares.

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<sup>1</sup> Pink Sheets made two comments on the Commission's initial proposal. See Mr. R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC (Comment Letter), October 11, 2006, *available at* <http://www.sec.gov/rules/proposed/s71205/s71205-61.pdf>; and Mr. R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC (Comment Letter), March 1, 2006, *available at* <http://www.sec.gov/rules/proposed/s71205/rccoulson030106.pdf>.



U.S. investor demand for international investment opportunities continues to increase. This demand has been accompanied by improvements in disclosure standards for securities listed on non-U.S. exchanges because foreign regulators have imitated the success of U.S. markets, which enhance investor confidence through sophisticated disclosure requirements supported by strong and enlightened regulation. Unfortunately, U.S. investors have not been able to reap the benefits of these regulatory improvements because they do not have direct access to the disclosure produced by non-U.S. companies listed on non-U.S. markets.

Pink Sheets therefore strongly supports the proposed changes to the “information providing exemption,” which will for the first time provide U.S. investors with home country disclosure in English through the Internet. This proposal will level the playing field between U.S. investors and foreign investors.

We also support the Commission’s position that foreign issuers should not be able to raise capital in U.S. public offerings without being subject to the ongoing disclosure requirements imposed on issuers with a class of securities registered under the Exchange Act, or be listed on a national securities exchange. On the other hand, we also agree with the Commission that U.S. investors should not be deprived of the benefits of transparent secondary trading in foreign securities in the U.S. A substantial group of U.S. investors access foreign securities through ADR programs because they lack direct access to non-U.S. exchanges or efficient foreign clearing, settlement and custody arrangements. U.S. investors benefit from being able to trade foreign securities on transparent U.S. over-the-counter (OTC) markets, such as the Pink Sheets, which are limited to registered broker-dealer participants subject to best execution requirements and the other investor protection rules imposed by the National Association of Securities Dealers, Inc. U.S. ADR programs provide efficient custody, clearing and settlement arrangements for U.S. investors in foreign securities.

On a related issue, we agree with commentators who have proposed that 5 percent of U.S. average daily trading volume (“ADTV”) during a recent 12-month period as a condition for deregistration eligibility may be too low. We are concerned that issuers with an ADTV between 5 and 10 percent may simply terminate their ADR programs to drive their ADTV below 5 percent, to the great disadvantage of U.S. investors. On the other hand, issuers with an ADTV greater than 10 percent are unlikely to terminate their ADR programs because this would risk offending a significant group of investors. The marketplace would therefore seem to suggest that issuers are more likely to remain registered when U.S. investment exceeds 10 percent of ADTV, rather than terminating their ADR programs or resorting to other deregistration strategies that would be antagonistic to their U.S. investors.



## OTCQX and International OTCQX

### **Overview**

Pink Sheets recently established its OTCQX market tiers to distinguish the operating companies traded in the OTC markets that provide adequate, current, public information to investors from the thousands of other OTC-traded securities that may be economically distressed, speculative development stage companies, shells or questionable companies that often provide inadequate or no disclosure to investors.<sup>2</sup> OTCQX consists of two categories of issuers: (1) OTCQX for issuers primarily traded on the Pink Sheets and (2) International OTCQX for companies with securities listed on certain well-known, reputable non-U.S. securities exchanges.

To achieve an International OTCQX designation, a foreign private issuer is required to post the information required to satisfy the “information-providing” exemption available under Exchange Act Rule 12g3-2(b) on the Pink Sheets News Service,<sup>3</sup> an Internet repository designed to provide ready access to information about OTC issuers free to U.S. investors. International OTCQX therefore makes the information required under Rule 12g3-2(b) readily and freely available to U.S. investors for the first time in a place where U.S. investors are most likely to look for it. Accordingly, Pink Sheets requests that the Commission include listing on International OTCQX as one of the options available to foreign private issuers seeking to supply information in reliance on Exchange Act Rule 12g3-2(b).

The Commission stated that the “electronic posting of an issuer’s home country documents would increase an investor’s ability to access those documents.”<sup>4</sup> The Commission has further observed that any “trading of a foreign private issuer’s [unregistered] securities in the United States would have to occur through the over-the-counter markets such as that maintained by Pink Sheets, LLC.”<sup>5</sup> Since the purpose of electronic posting is to increase the availability of the issuer’s home country disclosure to U.S. investors, we submit that posting this disclosure on a website maintained by Pink Sheets, closely related to the place where trading among U.S. investors is most likely to occur, would further enhance the ability of U.S. investors to access these documents.

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

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<sup>2</sup> Pink Sheets intends to rank all of the securities quoted in its system based on the quality of information disclosed by their issuers. See [www.otcqx.com](http://www.otcqx.com) and [www.pinksheets.com/about/pr\\_110606.jsp](http://www.pinksheets.com/about/pr_110606.jsp).

<sup>3</sup> The Pink Sheets News Service, an electronic service owned and operated by Pink Sheets, allows issuers of OTC securities to publish formal disclosure, news releases and financial reports on a Pink Sheets’ website

<sup>4</sup> Securities and Exchange Commission Release No. 34-55005, at 77.

<sup>5</sup> Securities and Exchange Commission Release No. 34-55005, at 72, n. 120.



that [www.pinksheets.com](http://www.pinksheets.com) has a larger presence with U.S. based Internet users than any of the non-U.S. exchanges or regulatory disclosure services seeking to provide investment information regarding foreign securities to U.S. investors.

## U.S. Internet Users Visits and Usage of Securities Market Internet Sites

Exchanges » All sites » Monthly rankings for the month of December, 2006 » Ranks by 'Visits'

Rank	Name	Domain	Market Share	November	October	September
1	Nasdaq Stock Market	www.nasdaq.com	41.27%	1	1	1
2	New York Stock Exchange	www.nyse.com	16.16%	2	2	2
3	Securities and Exchange Commission	www.sec.gov	11.59%	3	3	3
4	Pink Sheets	www.pinksheets.com	8.97%	4	4	4
5	TSX Group	www.tsx.com	8.34%	5	5	5
6	OTC Bulletin Board	www.otcbb.com	4.50%	6	6	6
7	The American Stock Exchange	www.amex.com	3.96%	7	7	7
8	NASD	www.nasd.com	1.96%	8	8	8
9	Australian Stock Exchange	www.asx.com.au	1.23%	9	9	9
10	London Stock Exchange	www.londonstockexchange.com	0.92%	10	10	10
11	www.sedar.com	www.sedar.com	0.33%	11	11	12
12	EuroNext	www.euronext.com	0.26%	12	12	14
13	Tokyo Stock Exchange	www.tse.or.jp	0.16%	13	14	17
14	New Zealand Exchange	www.nzse.co.nz	0.09%	16	15	16
15	OMX Corporate	www.omxgroup.com	0.07%	18	0	0
16	Singapore Exchange	www.sgx.com	0.07%	14	13	13
17	SWX	www.swx.com	0.06%	19	18	19
18	Archipelago Exchange	www.archipelago.com	0.03%	17	17	11
19	The Stock Exchange of Hong Kong	www.sehk.com.hk	0.02%	0	16	18

Exchanges » All sites » Monthly rankings for the month of December, 2006 » Ranks by 'Average Visit Time'

Rank	Name	Domain	Time	November	October	September
1	Pink Sheets	www.pinksheets.com	11:26	1	1	1
2	Securities and Exchange Commission	www.sec.gov	9:10	2	2	2
3	Nasdaq Stock Market	www.nasdaq.com	9:03	5	5	5
4	www.sedar.com	www.sedar.com	8:06	9	8	10
5	TSX Group	www.tsx.com	7:46	4	4	3
6	NASD	www.nasd.com	6:58	8	7	8
7	New York Stock Exchange	www.nyse.com	6:39	6	6	7
8	EuroNext	www.euronext.com	6:27	10	13	13
9	OTC Bulletin Board	www.otcbb.com	5:54	7	3	4
10	Australian Stock Exchange	www.asx.com.au	5:04	11	11	9
11	London Stock Exchange	www.londonstockexchange.com	4:36	12	14	12
12	Archipelago Exchange	www.archipelago.com	2:40	16	10	19
13	The Stock Exchange of Hong Kong	www.sehk.com.hk	2:28	0	18	6
14	New Zealand Exchange	www.nzse.co.nz	1:49	14	15	17
15	The American Stock Exchange	www.amex.com	1:12	15	16	16
16	Singapore Exchange	www.sgx.com	1:05	13	17	18
17	Tokyo Stock Exchange	www.tse.or.jp	0:57	17	9	15
18	SWX	www.swx.com	0:47	18	12	14
19	OMX Corporate	www.omxgroup.com	0:36	19	0	0

A Pink Sheets website repository for the documents required under Exchange Act Rule 12g3-2(b) is expected to benefit investors in three ways. First, U.S. investors will expect to find the information on a website related to the U.S. trading venue for the securities. Moreover, investors in the United States are more likely to visit U.S. websites than non-U.S. websites and therefore more likely to access information contained on a website maintained by Pink Sheets in the United States. Second, U.S. investors are more likely to find the information on a U.S. website that is written in English, rather than attempting to navigate a foreign website primarily posted in a foreign language targeted to foreign



investors. Third, our proposal would encourage the successful formation of a privately-operated, central, electronic repository in the United States for disclosure regarding the securities of foreign private issuers that would make these disclosures readily available to the U.S. investing public.

### ***Issuers' Eligibility for OTCQX***

International OTCQX consists of two tiers – International PremierQX and International PrimeQX. The lower tier, International PrimeQX, provides disclosure services for any foreign private issuer that (1) has proprietary quotations published by a market maker in the Pink Sheets electronic quotation and trading system, (2) has been listed on a qualifying non-U.S. stock exchange for a minimum of the preceding 40 days, (3) either (i) is current and fully compliant in its obligations under Exchange Act Rule 12g3-2(b) and has posted the information required under Exchange Act Rule 12g3-2(b) in English on the Pink Sheets News Service or (ii) has a class of its securities registered under Section 12(g) of the Exchange Act and is current and fully compliant in its reporting obligations, and (4) is included in a recognized securities manual, such as Standard and Poor's or Mergent. For the higher tier, International PremierQX, a foreign private issuer must satisfy the eligibility standards of International PrimeQX and must also be qualified to list its securities under the financial standards of the Worldwide (Non-U.S) Listing Standards of the New York Stock Exchange, except that the issuer is not required to have a class of securities registered under Section 12 of the Exchange Act or meet the bid price standard.

Officers and directors of a foreign private issuer are responsible for complying with the rules concerning International OTCQX (the "International OTCQX Rules")<sup>6</sup> and are solely responsible for the content of any information posted on International OTCQX. Finally, all securities listed on International OTCQX must be eligible for deposit with the Depository Trust Company.

### ***Disclosure Required for Designation on International OTCQX***

The International OTCQX Rules require foreign private issuers to post the same information on the Pink Sheets News Service that is required under Exchange Act Rule 12g3-2(b). Foreign private issuers listed on International OTCQX must either (a) be current and fully compliant in their obligations under Exchange Act Rule 12g3-2(b) and the information required under Exchange Act Rule 12g3-2(b) must be posted in English on the Pink Sheets News Service or (b) have a class of their securities registered under Section 12(g) of the Exchange Act and be current and fully compliant in their SEC reporting obligations. Accordingly, the addition of International OTCQX as one of the options available for qualifying for the "information-providing" exemption of Exchange Act Rule 12g3-2(b) would

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<sup>6</sup> The International OTCQX Rules are available at [http://www.otcqx.com/docs/OTCQX Rules.pdf](http://www.otcqx.com/docs/OTCQX_Rules.pdf).



improve the access of U.S. investors to foreign issuers' home-country disclosure, but would not result in any change in the substance of that disclosure.

The Pink Sheets International OTCQX rules also ensure continued compliance with the disclosure requirements of federal securities laws, including Exchange Act Rule 12g3-2(b), by requiring the following actions by foreign private issuers:

1. *Issuer Compliance Statement.* Each listed foreign issuer must provide a letter to Pink Sheets at least once a year and not later than 90 days after the close of the preceding fiscal year that states that (a) the issuer continues to satisfy the requirements for listing on the applicable International OTCQX tier and (b) the issuer is current and fully compliant in its obligations under Exchange Act Rule 12g3-2(b) and the information required under Exchange Act Rule 12g3-2(b) is posted in English on the Pink Sheets News Service, or if a class of the issuer's securities is registered under Section 12(g) of the Exchange Act, the issuer is current and fully compliant in its SEC reporting obligations.
2. International OTCQX listed foreign private issuers are required to appoint a Principal American Liaison ("PAL") to provide third-party confirmation of the issuer's compliance with the disclosure requirements of federal securities laws.

### ***The Role of Principal American Liaisons on International OTCQX***

The PAL appointed by a foreign private issuer listed on International OTCQX must be (i) the ADR Depository of its sponsored ADR program (an "ADR Depository PAL"), (ii) a qualified U.S. attorney in good standing (an "Attorney PAL") or (iii) a qualified NASD member and registered broker-dealer ("Investment Bank PAL").<sup>7</sup> Each foreign private issuer is required to retain a PAL while listed on International OTCQX.

A PAL's primary responsibilities are to communicate with the issuer to confirm that (i) the issuer's securities are eligible for listing on the appropriate tier of International OTCQX and (2) the issuer is current with respect to its disclosure obligations under federal securities laws.

### ***Eligibility of Attorney and Investment Bank PALs***

An Attorney PAL must be a U.S. resident and must be in good standing in each jurisdiction in which he or she is licensed to practice law. Accordingly, an Attorney PAL is required to provide a certificate of good standing from such jurisdictions. Furthermore, Attorney PALs must have a clean disciplinary record and must not have been suspended or denied the privilege of practicing before

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<sup>7</sup> Pink Sheets maintains a list of PALs on <http://www.otcqx.com> and <http://www.pinksheets.com>.



the Commission for the past five years. Finally, Attorney PALs are required to demonstrate substantial experience, either alone or through collaboration with another attorney, providing advice regarding federal or state disclosure obligations to an issuer with a class of securities registered under Section 12(b) of the Exchange Act.

Each Investment Bank PAL must be a U.S. resident, registered broker-dealer and member of the NASD in good standing. Investment Bank PALs and a majority of their board of directors, general partners or managing members, as applicable, must also have been actively engaged in the investment banking or securities business for at least the past two years. Furthermore, each Investment Bank PAL must also (1) be actively engaged as an underwriter or selling agent in public or private offerings of equity securities, as a manager or co-manager, (2) have participated during the last twelve months in at least one such offering in such capacity and (3) have raised more than \$50 million of aggregate gross proceeds during the last five years in such offerings for issuers of equity securities that were listed on a national securities exchange at or after the time any such offering closed. In addition, Investment Bank PALs must have net capital of not less than \$5 million computed pursuant to the provisions of Exchange Act Rule 15c3-1, or in the case of a broker-dealer that has been engaged in the investment banking or securities business for more than five years, not less than \$2 million. Finally, Investment Bank PALs must be approved by the NASD to participate in firm commitment underwritings under the category "Underwriter or Selling Group Participant (corporate securities other than mutual funds)."

Pink Sheets also prohibits Investment Bank PALs from employing the following individuals in a supervisory position responsible for organizing, structuring or performing due diligence with respect to public or private offerings of securities: (1) anyone that has been convicted within the last five years of a violation of the antifraud provisions of the federal or state securities laws, in connection with the distribution of a registered or unregistered offering of securities, (2) anyone that is subject to any order, judgment, or decree of any court of competent jurisdiction entered within the last five years permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, in connection with the distribution of a registered or unregistered offering of securities, or (3) anyone that has been suspended or barred from association with any member by an order or decision of the Commission, any state, the NASD or any other self-regulatory organization within the last five years for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws or the anti-fraud rules of any self-regulatory organization, in connection with the distribution of a registered or unregistered offering of securities.

### ***PAL Letters***



Prior to admission and within 30 days after the annual anniversary of a foreign issuer's admission date to International OTCQX, the foreign private issuer must submit to Pink Sheets a letter from its PAL. The letter must discuss the qualifications and appointment of the PAL and must assert that the issuer satisfies the requirements for listing on the applicable International OTCQX tier. The PAL must also state in the letter that the PAL has made specific inquiry of the issuer, and based on that inquiry, confirms that the issuer (a) has not been delisted, removed or suspended from a qualifying foreign stock exchange, (b) has not failed to submit or make materials required under Exchange Act Rule 12g3-2(b) available on the Pink Sheets News Service or continues to have a class of securities registered under Section 12(g) of the Exchange Act and is current in its filing responsibilities thereunder, and, (c) if applicable, has not terminated, or announced the termination, of its sponsored ADR program.

### **Conclusion**

An International OTCQX listing requires a foreign private issuer to make the same substantive disclosure that is required under Exchange Act Rule 12g3-2(b). However, International OTCQX also enables U.S. investors to easily access that information on an English-language, U.S.-based website that is the primary U.S. trading venue for foreign private issuers' securities. Moreover, International OTCQX will provide U.S. investors with a central location to review the disclosures of *all* foreign private issuers listed on International OTCQX. Finally, an International OTCQX listing requires independent confirmation from a PAL that the foreign private issuer has satisfied the applicable disclosure requirements under federal securities laws, a self-policing method of ensuring the issuer's continued compliance with its disclosure obligations. An International OTCQX listing will therefore be an especially effective way of providing access to information about foreign private issuers to U.S. investors and a procedure for keeping the information current. Accordingly, we respectfully request that the Commission consider making an International OTCQX listing one of the ways that a foreign private issuer can provide the information required under Exchange Act Rule 12g3-2(b) available to U.S. investors.



We appreciate this opportunity to provide additional comments on this important proposal. Please call if you have any questions.

Very truly yours,

/s/ R. CROMWELL COULSON

R. Cromwell Coulson  
Chief Executive Officer