



December 10, 2008

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Subject: Comments to Securities Exchange Act Release No. 3-8975
File No. 4-573**

Dear Ms. Harmon:

Pink OTC Markets Inc. (formerly, Pink Sheets LLC) ("Pink OTC") respectfully submits the following comments concerning the study of "mark-to-market" accounting to be conducted by the Securities and Exchange Commission (the "SEC") under the Emergency Economic Stabilization Act of 2008.

Pink OTC is the leading provider of pricing and financial information for the equity securities traded over-the-counter ("OTC Equity Securities"). Among other things, Pink OTC operates Pink Quote, an internet-based, real-time quotation service for OTC Equity Securities used by market makers and other broker-dealers registered under the Securities Exchange Act of 1934 (the "Exchange Act"). The market operated by Pink OTC represents the largest worldwide pool of liquidity among alternative or entry-level markets for the equities of public companies, with a 2007 dollar volume in securities quoted on Pink Quote amounting to \$162 billion on 762 billion shares traded. Pink OTC believes that "mark-to-market" accounting enhances the quality of information provided to investors, regulators and other interested persons, and supports its continued use for OTC Equity Securities.

Any discussion regarding changes in use of market pricing should consider the vast differences in market structure employed in the trading of various types of securities in the over-the-counter markets. The market for OTC Equity Securities operated by Pink OTC is vastly superior to the market for other securities traded over the counter, such as the CDS, CMO and CDO markets that have been disrupted by the recent credit crisis.

The superiority of the market operated by Pink OTC is attributable to its transparency, competition and the sophisticated regulation of its broker-dealer participants. Prices are established in CDS, CMO, CDO and other institutional markets through non-public quotations, often indicative, rather than firm, made in private conversations among bond dealers and their customers. These markets are often quite inactive, with prices established through proprietary formulas and

internal pricing models. In contrast, Pink OTC provides a regulated, transparent market where broker-dealers submit quotes to buy and sell OTC Equity Securities at firm prices established in active market transactions. Broker-dealer quotes are binding offers to buy or sell OTC Equity Securities based on actual market transactions. Due to the importance of these quotes in the market for OTC Equity Securities, Pink OTC requires quoting broker-dealers to take affirmative action to “open” their quotes at the beginning of trading each day, reaffirming their willingness to buy or sell quoted securities at published prices. The prices that broker-dealers publish on the Pink Quote platform are easily accessed by competing broker-dealers and investors. These prices are widely disseminated through securities information vendors and are readily available to the investing public.

The privilege of submitting quotations into Pink Quote is available only to SEC-registered broker-dealers who are members of the Financial Industry Regulatory Authority, Inc. (“FINRA”), formerly known as the National Association of Securities Dealers, Inc. (“NASD”). As FINRA members, all broker-dealers submitting quotes to Pink Quote must meet the rules of conduct applicable to FINRA members that deal in OTC equity securities.¹

NASD Rule 3320, “Offers at Stated Prices” or the “Firm Quote Rule” requires broker-dealers submitting quotes in Pink Quote to stand by the price and size of their quotes. It provides that “[n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.” NASD Interpretive Material (“IM”) specifically includes Pink Quote quotations within the sphere of the Firm Quote Rule, and states that this rule prohibits “backing away” from a quote upon inquiry by a prospective purchaser or seller.² IM-3320 also requires a broker-dealer submitting a quote into Pink Quote to be prepared to buy or sell a “normal

¹ After the consolidation of the member regulatory organizations of the NASD and the NYSE into FINRA on July 30, 2007, FINRA members were governed by the FINRA Transitional Rulebook, composed of NASD rules and incorporated NYSE rules. FINRA is currently in the process of creating the new Consolidated FINRA Rulebook. As rules are added to the Consolidated FINRA Rulebook they will be removed from the Transitional Rulebook. See SR-FINRA-2008-028 (September 25, 2008). The SEC approved the first series of additions to the FINRA Consolidated Rulebook in SR-FINRA-2008-028, and such changes become effective December 15, 2008.

² IM-3320, “Firmness of Quotations,” explains that “[m]embers and persons associated with member in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and wire quotations as well as quotation in the National Quotation Bureau sheets.” The National Quotation Bureau was a predecessor company to Pink OTC Markets Inc.

unit of trading” in a quoted security. NASD Rule 6650, the “Minimum Quote Size Rule,” mandates minimum share amounts on a sliding scale from 5,000 for shares priced at \$0.50 or less, to 1 share if the price is \$2,500.01 or greater.³ It should be noted that the minimum size for OTC Equity Securities quoted on Pink Quote is larger than that required for NMS securities.

The OTC market displayed on Pink Quote is open and transparent. As an “interdealer quotation system” under Exchange Act Rule 15c2-11, Pink Quote is a “system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” Accordingly, Pink Quote disseminates to securities information vendors such as Bloomberg, Reuters and other distributors of its market data continuous updates of quotations provided by broker-dealers from 8:00 a.m. to 4:00 p.m. daily. Where two or more priced bid and two or more priced ask quotes are available from independent broker-dealers, Pink Quote disseminates an inside market quote consisting of the best bid and best ask. While quotations in the corporate bond markets generally are only known to potential customers of the broker-dealer or other broker-dealers on an individual basis, every Pink Quote quotation, along with the identity of the broker-dealer who posts it, is available to all market participants.

Broker-dealers quoting on Pink Quote are also subject to FINRA rules governing post-trade transparency. NASD Rule 6620, “Reporting Transactions in OTC Equity Securities,” requires FINRA members to report transactions to FINRA’s OTC Reporting Facility within 90 seconds after execution.⁴ These real-time trade reports are also disseminated through securities information vendors as part of the UTP Level 1 Feed, and widely distributed among market participants. Short interest positions in OTC Equity Securities are reported under NASD Rule 3360, “Short-Interest Reporting,”⁵ and the trading practices of FINRA members are monitored under the Order Audit Trail System (OATS) of NASD Rule 6950, an integrated audit system that tracks order, quote and trade information.⁶ FINRA’s reporting requirements and its regulatory oversight reinforce the open and

³ NASD Rule 6650 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 6450 will apply.

⁴ NASD Rule 6650 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 6450 will apply.

⁵ NASD Rule 3360 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 4560 will apply.

⁶ NASD Rule 6950 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 7400 will apply.

transparent structure of the market for OTC Equity Securities operated by Pink OTC.

As a result of the integrity of pricing in the market for OTC Equity Securities operated by Pink OTC, FINRA has ruled that the quotations submitted to Pink Quote can be relied upon by broker-dealers to determine best execution for their customers. The Best Execution Rule (NASD Rule 2320) requires broker-dealers to determine that the market in which they are making a transaction for a customer or a customer of another broker-dealer is the best market for the subject security, and that the price obtained is the most favorable for the customer under prevailing market conditions. NASD Rule 2320(g)(3)(A) provides that where two or more priced quotations of an OTC equity security are “displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis,” members may rely on those two quotes in making a best execution determination. Pink OTC is such an inter-dealer quotation system, and it publishes an “inside market quote” that can be relied upon for best execution determinations when two or more priced quotations are displayed for an OTC equity security.

Pink OTC believes that its inside market quotations are and should be considered Level 1 inputs under Financial Accounting Standards Board (“FASB”) Statement No. 157, Fair Value Measurements, and therefore used to mark OTC Equity Securities to market in financial statement reporting. Under FASB Statement No. 157, mark-to-market accounting is required where Level 1 inputs, consisting of unadjusted quoted prices in active markets for identical assets or liabilities, are available under the FASB “Fair Value Hierarchy.”⁷ An active market is defined as one in which “the transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis.”⁸ Recent guidance issued by FASB further provides that “[i]n an active market, a broker quote should reflect market information from actual transactions”⁹ Pink OTC believes that Pink Quote quotations displayed for an OTC Equity

⁷ FASB Statement No. 157 organizes inputs to fair value determinations into a “Fair Value Hierarchy” of unadjusted quoted prices in active markets for identical assets or liabilities (Level 1), observable inputs other than quoted prices, such as prices for similar assets, or similar or identical assets in non-active markets (Level 2) and unobservable inputs for the asset or liability (Level 3). When making fair value determinations accountants must use data from the lowest level available. See FASB Statement of Accounting Standards No. 157, “Fair Value Measurements,” paragraph 22, FAS157-10.

⁸ FASB Statement of Accounting Standards No. 157, “Fair Value Measurements,” paragraph 24, FAS157-10.

⁹ FASB Staff Position No. FAS 157-3 (October 10, 2008).

Security satisfying the requirements of the Best Execution Rule represent broker quotes in an active market from actual transactions, qualify as Level 1 inputs under the Fair Value Hierarchy, and should be used for mark-to-market accounting.

We believe that mark-to-market accounting is of vital importance to the markets and the investing public. Mark-to-market accounting enables investors to make meaningful comparisons among the financial statements of different financial services issuers. *In its absence, investors will have to compensate for the risk that issuers will use different methods of valuing securities.* The result would be greater market instability and volatility.

FASB Statement No. 157 acknowledges that there may be circumstances where a market for a particular security may be inactive, so that mark-to-market accounting may not be appropriate. Pink Quote disseminates market maker quotes when the number of quotes is insufficient to establish an inside market, and mark-to-market accounting may not be appropriate in these situations. These situations are clearly identified to the investing public. In contrast, the inside market quote identifies markets where there are at least two or more bid and two or more ask quotations for a particular security, such quotations are updated continuously, and mark-to-market accounting is appropriate.

It should be noted that, in contrast to debt securities, there are no “promises to pay” in equity securities and therefore no stream of cash flows to use as a basis for valuation. As a result, alternative methods to market prices for valuing equity securities are notoriously *unreliable*. *The market prices published by competing market makers on Pink Quote are a much better method of valuing OTC Equity Securities than the alternatives and, because they are readily available to the public, enable investors to make meaningful comparisons among the various entities that hold a position in them.*

Rather than abandoning mark-to-market accounting altogether, FASB should provide further guidance identifying situations where mark-to-market accounting would or would not be appropriate. This guidance should state that where an inside quote is published from a transparent, competitive and regulated OTC market such as Pink OTC, that quote should be qualified as a Level 1 input under FASB Statement No. 157, and the quoted security marked-to-market. We submit that the guidance provided by FASB should encourage greater market transparency and market data publication in all markets, including the markets for swaps and corporate debt securities, as this would provide investors with the information necessary to properly value securities holdings and reduce market risk and volatility.

Thank you for the opportunity to comment on the issue of mark-to-market accounting that the Commission will be studying. Please call if you have any questions or require any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Coulson', with a long horizontal flourish extending to the right.

R. Cromwell Coulson
Chief Executive Officer