OTC Markets

September 23, 2013

VIA Electronic Submission

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Amendments to Regulation D, Form D and Rule 156; File No. S7-06-13**

Dear Ms. Murphy:

OTC Markets Group Inc. [1] ("OTC Markets Group") respectfully submits to the Securities and Exchange Commission (the "SEC") the following comments on proposed amendments to Regulation D, Form D and Rule 156 (the "Proposed Rules"). Our comments focus on the "Advance Form D" requirement, the benefits of publicly available adequate current information regarding companies engaging in private offerings, and the SEC's decision to immediately impose restrictions on general solicitation and advertising in Rule 506(c) offerings.

Introduction

We have long supported Section 201 of the Jumpstart Our Business Startups Act (the "JOBS Act")[2], requiring the SEC to enact rules ending the ban on general solicitation and advertising in certain transactions conducted under Rules 144A and 506 of Regulation D that traditionally required private capital raises to take place in a confidential manner. The beneficial transparency allowed by general solicitation and

[1] OTC Markets Group Inc. (OTCQX: OTCM) operates Open, Transparent and Connected financial marketplaces for 10,000 U.S. and global securities. Through our OTC Link® ATS, we directly link a diverse network of broker-dealers that provide liquidity and execution services for a wide spectrum of securities. We organize these securities into marketplaces to better inform investors of opportunities and risks – OTCQX®, The Best Marketplace with Qualified Companies; OTCQB®, The Venture Stage Marketplace with U.S. Reporting Companies; and OTC Pink®, The Open Marketplace with Variable Reporting Companies. Our data-driven platform enables investors to easily trade through the broker of their choice at the best possible price and empowers a broad range of companies to improve the quality and availability of information for their investors.

[2] See Letters from Daniel Zinn, General Counsel, OTC Markets Group Inc. to Elizabeth M. Murphy, Secretary SEC, dated July 9, 2013, available at: http://www.sec.gov/comments/jobs-title-ii/jobstitleii-42.pdf and October 8, 2012, available at: http://www.sec.gov/comments/s7-07-12/s70712-149.pdf.

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advertising will allow investors public access to a wealth of information previously forced to be kept confidential by companies planning to participate in a private offering under Regulation D. Allowing transparency in private offerings will aid in producing more efficient pricing and company valuation, and increased public disclosure will make capital more accessible. We applaud the SEC for adopting rules allowing for general solicitation and advertising, and look forward to their implementation beginning on September 23, 2013.

We are deeply concerned, however, that the additional requirements imposed by the Proposed Rules would counteract the positive impact of the new general solicitation and advertising rules, contradict the intent of the JOBS Act, and ultimately harm small company capital formation. Specifically, the proposed "Advance Form D" requirement may effectively deter small companies from making offering information publicly available as a fundraising tool.

Advance Form D

Regulation D currently provides that an issuer conducting a Rule 506 offering must file a Form D with the SEC within 15 days of the date of the first sale of securities. This requirement serves a legitimate purpose. Once an issuer has prepared the necessary private offering materials, met with potential investors and begun to sell securities, the SEC and state regulators should be made aware of the issuer's activity and given the opportunity to review the issuer's compliance with applicable securities laws. The offering may extend beyond the date on which the Form D is filed, which allows for the type of continuous offerings frequently utilized by start-up businesses. The issuer may file an amended Form D if any material information regarding the issuer or the offering changes subsequent to the initial filing. Under this system the SEC receives the necessary regulatory information while allowing the issuer the freedom to conduct a successful offering.

The Proposed Rule would require that the issuer file an "Advance Form D" with the SEC at least 15 days *prior* to sharing offering or issuer information in a non-confidential manner. This requirement would greatly restrict the different forms in which offering and issuer information can be shared, including continuous public disclosure of company information and press communications.[3] The lack of clarity regarding when general

[3] In 2011 "Goldman Sachs Group Inc. slammed the door on U.S. clients hoping to invest in a private offering of shares in Facebook Inc., because it said the intense media spotlight left the deal in danger of violating U.S. securities laws." Liz Rappaport, Aaron Lucchetti and Geoffrey A. Fowler, *Goldman Limits Facebook Offering*, The Wall Street Journal Online, January 18, 2011, available at: http://online.wsj.com/article/SB10001424052748703396604576087941210274036.html

solicitation or advertising will commence with respect to a specific offering will likely lead to confusion about when an Advance Form D must be filed. This uncertainty may discourage companies from providing the type of publicly available offering information and issuer disclosure that the JOBS Act intended to promote. For many small companies, the fear of violating the Advance Form D requirement will cause them to keep information confidential. Investors, employees, the press and regulators would be deprived of valuable company information, leading to unreliable price discovery, a lack of market efficiency, reduced incentive to participate in private offerings, and less capital raising by small companies. In short, the Advance Form D requirement may completely frustrate the Congressional intent behind the JOBS Act and make the end of the ban on general solicitation and advertising a non-event for small companies.

The SEC seeks to better understand the market for Rule 506 private placements, but the Advance Form D requirement would not further that goal. In fact, in the Proposed Rules release, the SEC notes that it does not plan to review of each Advance Form D when it is filed.[4] In addition to the information gathered from the current Form D filing requirements, the SEC also has access to FINRA data relating to private placements. Under FINRA Rule 5123[5], all member broker-dealers that sell securities in a private placement must submit to FINRA any offering documents used in connection with the sale within 15 days of the date of the first sale. The SEC's current Form D filing requirements, in combination with FINRA Rule 5123, would provide more than enough information to analyze the impact of the end of the ban on general solicitation and advertising on Rule 506 offerings, without harming small company capital formation by imposing Advance Form D filings. The capital formation process would be much better served if the SEC engaged in thoughtful private placement rulemaking 12 months from now after conducting a thorough analysis of the impact of the new general solicitation rules on the private placement market. Implementing the Advance Form D requirement simultaneously with the end of the ban on general solicitation and advertising deprives the markets of the opportunity to properly evaluate the impact of the JOBS Act on small company capital formation.

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[4] Amendments to Regulation D, Form D and Rule 156, Securities Act Release No. 9416 (July 10, 2013), 78 Fed. Reg. 44808 (July 24, 2013) at 44811.

[5] FINRA Rule 5123 reads, in relevant part:
"Each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act ("private placement") must: (i) submit to FINRA, or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale; or (ii) notify FINRA that no such offering documents were used. Members must provide FINRA with the required documents or notification and related information, if known, by filing in an electronic form in the manner prescribed by FINRA."

Benefits of Adequate Current Public Information

The JOBS Act and the SEC's new rules allowing for general solicitation and advertising present the opportunity for issuers to offer public access to current company information. Concerns about investor protection do not require scaling back the opportunity for disclosure, but instead should be addressed through minimum disclosure requirements. Specifically, we advocate mandatory public disclosure of the information required under Securities Act Rule 144 in connection with any Rule 506(c) offering that utilizes general solicitation and advertising.

The ban on general solicitation and advertising has for years forced companies that participate in private offerings to keep offering documents, company financials and other company information confidential. Regulation D effectively banned non-confidential offerings, and as a result companies like Facebook conducted private sales and developed secondary trading markets without ever making company information public. The SEC should seize the present opportunity to encourage public disclosure of current company information in connection with any issuance of new securities or sale by company insiders.

The real estate market provides a simple example that highlights the danger of keeping offering information confidential. If houses could only be sold in private, closed sales, without the benefit of public listings on signs, brochures, newspaper advertisements and websites, homeowners and home buyers would never be sure they were making an appropriate deal. Public disclosure of for-sale listings leads to better price discovery and a more efficient housing market. The same holds true for securities, and Rule 144 under the Securities Act already includes provisions that address the type of information most beneficial in public disclosure.

Under Rule 144, a company's "control persons" cannot sell securities in the public secondary market the company has made certain adequate current information available to the public. The Rule 144 standard requires disclosure of essential information regarding the issuer and its securities, including the issuer's current financial statements and capital structure. This disclosure provides the basic information and transparency that allows potential investors to easily analyze a company's general financial condition prior to engaging in further diligence or a participating in a transaction.

Public availability of company information builds trust in our capital markets and provides vital protection against fraud. When a security trading on our OTC Link® ATS participates in active promotion without having adequate current information disclosed to the market, we mark it as "caveat emptor," or buyer beware, and flag the company's quote page with a skull and crossbones to warn investors of a potential public interest concern. Investors, the press and regulators armed with current public information are not only in a better position to analyze, value and trade securities, they are also less likely to be deceived by unsubstantiated promotion.

506 Ban for Form D Non-Compliance

In conjunction with the Advance Form D requirements in the Proposed Rules, the SEC proposed to ban from Rule 506 offerings for one year any issuer that has failed to comply with Form D filing requirements within the past five years. The introduction of the Advance Form D requirement and the complex nature of the Form D process will surely lead many well-intentioned small companies to find themselves in technical non-compliance with the Rule. The one-year ban will leave these small companies unable to raise capital, and as a result may lead to a direct negative impact on the job growth Congress sought to spur through the JOBS Act.

The one-year ban would be an extremely harsh penalty for a technical infraction in the filing process. The punishment doesn't fit the crime, and the threat of such a penalty will further dissuade companies from using the JOBS Act to access much needed capital. Amending the Form D requirements to allow for a broader range of compliant responses, or limiting the potential ban for non-compliance to 30 days, would still serve to encourage companies to file Form D without causing unnecessary damage to small company capital formation.

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We appreciate the opportunity to comment on this proposal. Please contact me at (212) 896-4413 or dan@otcmarkets.com with any questions.

Very truly yours,

Daniel Zinn

General Counsel

OTC Markets Group Inc.