



October 8, 2012

VIA Electronic Submission

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

Re: File No. S7-07-12; Release No. 33-9354

Dear Ms. Murphy:

OTC Markets Group Inc. ("OTC Markets Group")¹ respectfully submits the following comments on the proposal by the U.S. Securities and Exchange Commission (the "Commission") to eliminate the prohibition against general solicitation and general advertising in Rule 506 and Rule 144A offerings (the "Proposed Rule"). Our comments focus on the need for adequate current information under the Rule 144 standard to be made available to investors in conjunction with a Rule 506 or Rule 144A offering that actively solicits investors and the informational and efficiency benefits derived from the widespread dissemination of prices in securities for which general solicitation and advertising is permitted.

On July 9, 2012, we submitted a letter in response to the Commission's request for public comments relating to JOBS Act rulemaking.² This letter discusses the value of having adequate current public information, as defined in Securities Act Rule 144, made available by any company in which secondary trading takes place in reliance on

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 Intelligent Marketplace for the Best OTC Companies; OTCQB® - The Venture Marketplace; and OTC Pink® - The Open Marketplace.

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. To learn more about how we create better informed and more efficient financial marketplaces, visit www.otcmarkets.com.

OTC Link ATS is operated by OTC Link LLC, member FINRA/SIPC and SEC registered Alternative Trading System.

² In a prior letter, we discussed the benefits of public dissemination of priced quotes posted by qualified broker-dealers in an interdealer quotation system relating to the secondary trading of securities originally issued in reliance on Rule 144A and Rule 506. These securities will soon be exempt from the requirements of Section 5 of the Securities Act as a result of the end of the ban on general solicitation and advertising as set forth in the Proposed Rule. Our prior letter also advised the Commission to seize the opportunity provided by JOBS Act rulemaking to allow public dissemination of prices for secondary transactions in all securities issued in reliance on Section 4(2) of the Securities Act, provided that they are limited to transactions among accredited investors.

permitted general solicitation under the Proposed Rule, and reiterates the positions noted in our prior letter.

Benefits of Adequate Current Public Information Under Rule 144

Rule 144 includes a definition of adequate current public information that would be appropriate for use in conjunction with trading of Rule 144A, Rule 506 and other private securities by affiliates of the issuer. Such a requirement would incentivize disclosure by non-reporting issuers, and would dramatically increase the amount and quality of disclosure available to investors and regulators. Moreover, the increased disclosure incentivized by these rules may reduce instances of fraud under Exchange Act Rule 10b-5, which applies to the purchase and sale of any security.

Under Rule 144, issuers not reporting to the SEC must make publicly available basic financial information. This standard requires disclosure of essential information regarding the issuer and its securities, including the issuer's current financial statements and capital structure. The simplified Rule 144 disclosure provides the basic information and transparency that allows all potential investors to easily analyze a company's general financial condition before engaging in further diligence or a transaction.

When a security trading on the OTC Markets Group platform participates in active promotion without having adequate current information disclosed to the market, we flag it with a skull and crossbones symbol to warn investors of a potential public interest concern. Investors armed with current public information are not only in a better position to analyze, value and trade securities, they are also less susceptible to fraud. With the end of the prohibition on general solicitation, the mandatory public disclosure of the information required under Rule 144 would protect the additional investors that may be presented with the issuer's offering information.

The Benefits Derived From the Widespread Dissemination of Prices

In enacting the JOBS Act, Congress did not repeal Section 5 of the Securities Act. Accordingly, it is still unlawful to offer to sell securities in interstate commerce unless a registration statement has been filed with the Commission. It also remains unlawful to accept an offer to purchase securities, unless the Commission has declared the previously-filed registration statement effective. Instead, Congress, and the Commission through the Proposed Rule, have determined that general solicitation and advertising of securities that ultimately will be sold under Rule 506 or Rule 144A to qualified investors, without first filing a registration statement with the Commission, does not constitute an unlawful offer of securities prohibited by Section 5 of the Securities Act.

The Commission historically has taken the position that the public dissemination of priced quotations for securities in a secondary trading market constitutes general

solicitation and advertising as that term is used in Rule 502. Accordingly, in a series of related No Action letters beginning in 1996,³ the Commission took the position that including offering materials related to a private offering on a website would constitute general solicitation, and therefore an unlawful offering of securities in violation of Section 5, unless access to the website was restricted to accredited investors. In connection with NASDAQ's proposed PORTAL platform, the Commission stated that the public dissemination of quotes from the secondary trading of Rule 144A securities would constitute prohibited general solicitation and advertising and required NASDAQ to limit access to quotation information for securities quoted on PORTAL to qualified institutional buyers ("QIBs").⁴

In the Proposed Rule, the Commission acknowledges that "eliminating the prohibition against general solicitation would significantly affect private trading systems by permitting information vendors to provide more information about Rule 144A securities. Indeed, since offers could be made to the public, *the information on private trading systems for Rule 144A securities could be made available to all investors, even though sales would be limited to QIBs*" [emphasis added]. We applaud the Commission's recognition that the Proposed Rule would reverse the prior policy dictated through No Action letters, and wholeheartedly support this assertion. We support an extension of the Commission's recognition to cover the dissemination of priced quotes in Rule 506 securities as well.

Prices in Rule 506 Securities

Rule 506, unlike Rule 144A, is primarily used directly by issuers. In removing the ban on general solicitation in Rule 506 offerings, Congress intended to promote capital formation by allowing issuers to broadly disseminate information concerning an offering in an effort to reach the largest number of accredited investors. The widespread issuer disclosure will also provide the market with transparency into companies that previously only operated behind closed doors. Opaque markets are a breeding ground for fraud. The issuer disclosure made available by the JOBS Act will advance the twin goals of capital formation and fraud prevention.

Accredited investors often rely on the principles of Rule 506 to conduct secondary transactions with other accredited investors in transactions sometimes referred to as relying on the Rule 4(1-1/2) exemption. Since an accredited investor that purchases a security in a so-called Rule 4(1-1/2) transaction could have purchased the security from the issuer initially, no useful regulatory objective is achieved by preventing a secondary transaction in a Rule 506 security between two accredited investors. The Commission has generally acknowledged that such transactions would not violate federal securities

³ "The Commission has indicated that placement of private offering materials on an Internet web site, without sufficient procedures to limit access to accredited investors, would be inconsistent with the prohibition against general solicitation or advertising in rule 502(c) of Regulation D." Lamp Technologies, Inc. No Action Letter, May 29, 1998.

⁴ SR-NASDAQ-2006-065

laws, even though Rule 506 by its terms does not literally cover a transaction between two accredited investors. As with Rule 144A, priced quotes can be valuable to accredited investors interested in purchasing a security originally offered under Rule 506 to other accredited investors. With the JOBS Act and the Proposed Rule ending the ban on general solicitation and advertising in Rule 506 offerings, the Commission should take the necessary steps to improve transparency and reduce fraud in the private markets by specifically permitting the dissemination of priced quotes in Rule 506 securities.

Prices in other Private Securities

Although the JOBS Act and the Proposed Rule focus on general solicitation and advertising only in relation to securities originally issued in reliance on Rule 144A and Rule 506, the Commission should consider permitting the dissemination of quotation information in all securities. The Commission's goal to protect investors can only be advanced by shining the light of disclosure into all corners of the securities markets. Private offerings expose limited information only to a select group of qualified investors hidden from public view. Public disclosure of prices in these securities would quickly reveal suspicious or unlawful activity. However, public dissemination of pricing information should not result in investments by unqualified persons.

Just as the public would benefit from the transparent dissemination of prices in Rule 144A, Rule 506 and other private securities, we recommend that any solicitation, advertising or promotion of these securities be conditioned on public availability of adequate current information regarding the issuer, as defined in Rule 144.

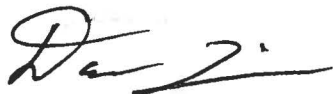
Conclusion

OTC Markets Group supports the Congressional intent demonstrated by the JOBS Act, and the Commission's recognition of the benefits of widespread public dissemination of prices displayed in the Proposed Rule. We advise the Commission to take two additional steps: first, require that for trading in Rule 144A and Rule 506 securities utilizing general solicitation, the company must directly or indirectly make adequate current information publicly available in accordance with the Rule 144 standard; and second, extend its implicit approval of price dissemination in Rule 144A securities to Rule 506 and to other private security types.

The widespread public dissemination of prices for Rule 144A, Rule 506 and other private securities supports capital formation, better informs investors and provides the Commission and other securities regulators with a valuable tool to fight fraud. Widespread transparency of prices and basic current information regarding the issuer empowers investors, analysts, the press and regulators with information on current valuations and trading activity. This openness creates a more efficient and reliable capital formation process. By enacting the JOBS Act, Congress recognized the importance of public availability of information to the capital raising process and the value of increased transparency in the operation of healthy capital markets.

OTC Markets Group appreciates the opportunity to provide comments on the Proposed Rule. Please contact us if you have any questions or would like any additional information.

Very truly yours,



Daniel Zinn
General Counsel
OTC Markets Group Inc.

