

March 24, 2014

**VIA Electronic Submission**

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

**Re: Proposed Rule Amendments for Small and Additional Issues Exemptions  
Under Section 3(b) of the Securities Act; File No. S7-11-13**

Dear Ms. Murphy:

OTC Markets Group Inc.<sup>1</sup> ("OTC Markets Group") respectfully submits to the Securities and Exchange Commission (the "SEC") the following comments on the proposed rule amendments to Regulation A (the "Proposed Rules"). We support the SEC's proposal to develop a Tier 2 offering structure under Regulation A, and believe the revised Regulation A can drive capital formation for growth-stage businesses.

As the operator of the OTCQX®, OTCQB® and OTC Pink® marketplaces where many Regulation A securities are likely to trade in the secondary market, we are uniquely positioned to comment on issues relating to the secondary trading of Regulation A securities, which companies should have access to use Regulation A, and the type of information companies that offer securities under Regulation A should provide to investors on an ongoing basis. As a marketplace operator, we are interested in promoting efficient access to capital by removing unnecessary regulatory cost and complexity imposed on growing companies, ensuring that investors have transparent access to adequate current information about the companies in which they invest, and connecting companies, investors, regulators and other market participants so that our public markets are more efficient.

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<sup>1</sup> 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.

OTC Markets Group makes the following recommendations to further these goals:

- 1) We strongly support much of the Proposed Rules as written, including the expansion of maximum offering size, bad actor disqualification, and Blue Sky preemption of offerings done under Tier 2 of Regulation A.
- 2) Resales of Tier 2 Regulation A securities should be preempted from state Blue Sky laws for secondary trading. This will help promote an informed, efficient and more liquid aftermarket by removing an unnecessary hurdle for the brokers that facilitate sales, research and trading in these securities.
- 3) Tier 2 Regulation A offerings should be available to current SEC registrants. The Blue Sky preemption under Tier 2 would provide a significant benefit for SEC reporting companies seeking more efficient access to capital.
- 4) Non-registrants that utilize Regulation A should also have a simplified path to become SEC registered using Form 8-A.
- 5) We support Regulation A being available to Canadian issuers, and believe it should be available to foreign private issuers with securities eligible to trade in the U.S. under Exchange Act Rule 12g3-2(b).
- 6) Securities offered under Regulation A that are not Penny Stocks<sup>2</sup> and that trade on what the SEC has deemed to be an “established public market”<sup>3</sup> should be treated as having a “ready market” and thus be considered eligible for margin purposes. The ability to borrow against a security increases its value, and allows company management, employees and other holders to access some amount of liquidity without selling off their shares.
- 7) Companies that offer securities under Tier 2 of Regulation A should make ongoing disclosure on a quarterly basis, with unaudited financial information, in addition to the proposed requirement for annual audited financials. Quarterly disclosure is the standard in the U.S., and in our experience companies are not overburdened by quarterly disclosure requirements.
- 8) The Financial Industry Regulatory Authority (FINRA) process for reviewing broker-dealer filings under Rule 15c2-11 with respect to Regulation A securities should be streamlined. Securities offered under Regulation A need to have

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<sup>2</sup> Using the definition of a Penny Stock in Exchange Act Rule 3a51-1.

<sup>3</sup> See the SEC’s Compliance and Disclosure Interpretation available at <http://www.sec.gov/divisions/corpfin/guidance/sasinterp.htm> at Question 139.13, noting that the OTCQX and OTCQB marketplaces are recognized by the SEC as price-setting markets for establishing the value of a company’s securities for the purposes of equity line financings. This recognition gives the OTCQX and OTCQB marketplaces the status of “established public markets” or “established public trading markets” as those terms are used in communications from the SEC to issuers and in certain statutory contexts such as Section 201(a) of Regulation SK.

efficient access to the public trading markets, otherwise companies are likely to default to private offerings under Regulation D.

- 9) Securities offered under Tier 2 of Regulation A should have a streamlined process for becoming eligible for services offered by the Depositary Trust Clearing Corporation (DTCC), and companies issuing these securities should be required to use SEC registered transfer agents.
- 10) Officers, directors and controlling shareholders of companies that offer securities under Regulation A should be required to make ongoing disclosure of transactions in company securities, similar to reports made public for SEC reporting companies on Forms 3, 4 and 5, as well as Schedules 13D and 13G. Institutional investors in Regulation A securities should be required to disclose their ownership of such securities on Form 13F.
- 11) Securities offered under Regulation A will be well served by the OTCQX, OTCQB and OTC Pink marketplaces for secondary trading, particularly if the above-listed barriers to informed and efficient trading are removed. The OTC markets have traditionally served the role of the entry market for smaller companies.

### **We Support Many Facets of the Proposed Rules**

The Proposed Rules are well developed, and address many of the important issues that will lead to the success of the new Regulation A. In particular, we strongly support the creation of Tier 2 offerings under Regulation A, including the expansion of the maximum offering size. We believe that raising the offering limit to \$50 million is a good start, and that raising the limit even higher, to \$80 million, would make Regulation A an even more effective capital raising tool without exposing investors to additional risk.

We also believe the provisions in the Proposed Rules for Blue Sky preemption of Tier 2 offerings, bad actor disqualification, continuous or delayed offerings, electronic filing and submission of draft offering statements will bolster small company capital raising and give effect to the Congressional intent behind the JOBS Act. We agree with much of the concept behind the Proposed Rules, and offer our comments to further the goals of the SEC and Congress in providing an enhanced Regulation A to companies and investors.

### **Blue Sky Preemption for Secondary Trading of Tier 2 Securities**

Securities offered under Tier 2 of Regulation A should be exempt from Blue Sky laws for secondary trading. Blue Sky laws are important for regulating trading in securities over which federal regulators have limited visibility, but when a security type is closely reviewed and regulated by the SEC, as is the case with Regulation A, an additional level of review by each individual jurisdiction adds needless inefficiency to the process.

Blue Sky laws impact liquidity in secondary market trading in three primary ways. First, if a security is not Blue Sky eligible in a given state, broker-dealers and investment advisers cannot give advice relating to that security to investors in that state. Second, brokers and advisers cannot distribute research to retail investors on securities that are not Blue Sky eligible. Third, brokers are subject to “rescission risk,” meaning that if an investor claims he or she was solicited or offered advice on a security that is not Blue Sky eligible, the investor can later bring an arbitration claim to rescind a prior trade in that security.

Blue Sky laws can impact more than just specific jurisdictions. Certain broker-dealers will only provide their research to institutions if a security is not Blue Sky eligible in every jurisdiction, thus restricting retail investors from accessing valuable investment research. Blue Sky issues for secondary trading impact all types of non-exchange listed issuers, including SEC reporting companies.

The prohibition on advice and research in certain jurisdictions leaves investors uninformed of investment opportunities and risks, and, just as importantly, prevents investment professionals from advising their clients of the specific risks of investing in a security. Investors are left to determine the risks and potential benefits of an investment on their own, which runs counter to each jurisdiction’s otherwise very worthy investor protection goals.

The rescission risk related to transactions in non-Blue Sky eligible securities acts to chill some broker-dealers’ willingness to allow their customers to transact in those securities at all, including securities of SEC reporting companies. When a security is not Blue Sky eligible in a given state, investors in that state may still place an unsolicited order to purchase or sell that security. However, if a broker has solicited or advised on other securities, the broker is subject to the potential risk of the trade later being rescinded because an investor claims they were offered advice in that security. As a result, the broker may choose not to accept even unsolicited orders in the security. After all, investors only seek to rescind trades that did not work out in their favor, which subjects brokers to the potential for 100% downside.

The discussion of the impact of Blue Sky laws should be framed by an understanding of how difficult, or in some cases impossible, it is for a security to become Blue Sky eligible for secondary trading. There are 54 separate jurisdictions with their own body of Blue Sky laws – all 50 states plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. Many jurisdictions offer what is known as the “Manual Exemption,” meaning that the securities of companies with a profile published in a named or recognized securities manual<sup>4</sup> are automatically exempt, or have a path to exemption, from Blue Sky registration requirements for secondary transactions in that jurisdiction. Many jurisdictions that offer a Manual Exemption have additional criteria beyond

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<sup>4</sup> The most commonly accepted securities manuals are published by Mergent and Standard & Poors.

publication in a securities manual. 44 jurisdictions offer some form of a Manual Exemption for equity securities, some of which are quite difficult to achieve. Even if a security were able to qualify for every available Manual Exemption, that would still leave the security out of Blue Sky compliance for approximately 35% of the U.S. population<sup>5</sup>.

The generic version of the Manual Exemption was last updated in the Uniform Securities Act of 2002.<sup>6</sup> Only 18 jurisdictions have adopted the version from the Uniform Securities Act in the 12 years since its publication. The Manual Exemption was designed for a pre-internet age when investors could only access financial information through books at the local library, paper publications, or in brokers' offices. It seems evident that in 2014, more investors have access to the internet than to securities manuals. Given the advancements in technology, the SEC should review Blue Sky preemption for secondary trading for any non-Penny Stock that trades on an established public market, as long as that market requires adequate current information to be made publicly available via the SEC's EDGAR system or an internet website that is freely available to the public.

Due to some confusing statutory language, certain jurisdictions with the Manual Exemption still leave companies in the dark. Jurisdictions that offer the Manual Exemption jurisdictions do not publish lists of companies that are exempt from registration under the Manual Exemption or any other available exception. This means companies, and broker-dealer compliance departments, are left to make these determinations themselves or rely on third party providers. A company can only be sure of its exempt status if the state statute is written specifically enough to determine compliance. Certain jurisdictions, including Hawaii, Vermont, Ohio and Guam, Missouri and the U.S. Virgin Islands purport to have a Manual Exemption, but do not name a specific manual in their statutes. Accordingly, it is impossible to tell whether a company has actually qualified for the exemption, and conservative compliance departments will opt to treat the company as non-Blue Sky compliant in those jurisdictions.

Unfortunately, in some jurisdictions it will be impossible for issuers of Regulation A securities to become Blue Sky compliant for secondary trading. Despite such a company's compliance with all aspects of Regulation A, its inclusion in a securities manual and its best efforts in all other respects, investors in certain jurisdictions will have no chance at access to advice and research on that company. Alabama, Kentucky and Virginia, among others, have no statutory process for non-SEC registered

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<sup>5</sup> The ten jurisdictions that do not offer any form of Manual Exemption for equity securities are Alabama, California, Illinois, Kentucky, Louisiana, New Hampshire, New York, Pennsylvania, Tennessee and Virginia. Many of these are high population areas, which is why their exclusion leaves 35% of the population uncovered. Montana, which includes approximately .3% of the population, does not offer its Manual Exemption to U.S. companies.

<sup>6</sup> Available at <http://www.uniformlaws.org/Act.aspx?title=Securities%20Act>.

companies to comply with the Blue Sky laws for secondary trading.<sup>7</sup> This means companies taking advantage of the Proposed Rules will have unnecessary limits on their liquidity in the secondary market, which in turn diminishes a company's ability to raise capital using Regulation A.

Even in jurisdictions where Blue Sky compliance for secondary trading is possible, it is often extremely difficult, even for SEC reporting companies. For example, many jurisdictions have exemptions for banks, but not for bank holding companies. In Texas, Illinois and New Hampshire, Blue Sky compliance for a non-SEC reporting company requires the involvement of a broker-dealer. As current FINRA rules do not allow payment for market making and thereby limit the relationship between companies and broker-dealers, it is often difficult for companies to find broker-dealers willing to make the necessary filings.

Foreign companies, including Canadian based Regulation A issuers, also face additional hurdles in achieving Blue Sky compliance in many jurisdictions. Certain jurisdictions, including Alabama, Arizona, Illinois and Tennessee, require third-party confirmation of a foreign company's compliance with Exchange Act Rule 12g3-2(b). Foreign companies trading on the OTCQX marketplace, which requires a qualified third-party advisor<sup>8</sup> to confirm compliance with Rule 12g3-2(b), are generally considered compliant in these jurisdictions. Without the OTCQX marketplace process, it is difficult to confirm a company's Rule 12g3-2(b) compliance. In addition to the 12g3-2(b) confirmation requirements, some jurisdictions impose additional quantitative requirements. For example, Alabama requires that a foreign company have a \$500 million market capitalization.

We understand the struggles that even the most determined companies can face to get Blue Sky compliant for secondary trading in all 54 jurisdictions. OTC Markets Group is itself a non-SEC registered company that makes annual audited financial reports, quarterly and current information available to investors; has profiles published in both major securities manuals; and has worked at length with every jurisdiction to gain Blue

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<sup>7</sup> For example, Virginia's exemption statutes have no provision for non-reporting companies, and Virginia's Form SA-6 for notification of secondary trading (available at <https://www.scc.virginia.gov/publicforms/285/sa6.pdf>) precludes non-SEC reporting issuers from using this method to comply with the state's laws for secondary trading (available at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+21VAC5-30-50>). Kentucky's Blue Sky exemption for secondary trading covers only reporting issuers, with no similar provision for non-reporting companies. See Section 292.410(1)(o) of the Securities Act of Kentucky, available at (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=15555>).

<sup>8</sup> All International OTCQX companies are required to work with a Principal American Liaison, or PAL, which must be a qualified U.S. securities attorney, investment bank, or ADR Depositary Bank.

Sky compliance. Despite our diligence, we have gained only 44 jurisdictions, which means we are not Blue Sky eligible to over 11% of the U.S. population.<sup>9</sup>

Even though we experience frustration with the Blue Sky process, we appreciate the valuable role each individual jurisdiction plays in policing the securities industry, particularly in regulating broker-dealer sales practices and bringing enforcement cases against bad actors. It is very clear that for SEC reporting and non-reporting companies with securities in the public trading markets, the SEC is the primary regulator. The SEC has suspended trading in hundreds of companies, including SEC reporting and non-reporting companies. Suspensions have been based on a lack of current, accurate or adequate information about the company, or based on questions regarding the accuracy and adequacy of publicly disseminated information, including information about a company's business operations and assets.<sup>10</sup>

We strongly support pre-emption of Blue Sky laws for the purposes of secondary trading for Tier 2 Regulation A securities, and in fact for all securities offered under SEC Form S-1 and all other qualifying registration statements, but we also advocate for a process whereby the SEC will inform all 54 jurisdictions of all Regulation A offerings. We hope the SEC and individual jurisdictions will work together to protect investors, but the process must be efficient and sensible.

If the SEC determines it is too controversial to offer Blue Sky preemption for secondary trading of all securities offered under Tier 2 of Regulation A, an alternative would be to provide exempt status only for Regulation A securities that are not Penny Stocks. For Regulation A to function effectively and give effect to the Congressional intent behind the JOBS Act, the SEC's final rules on this topic should include preemption of Blue Sky laws for secondary trading.

To illustrate the issues with Blue Sky trading, we have provided additional information on the current state of Blue Sky laws in Appendix A, including statistics showing the compliance for secondary trading of companies with securities trading on the OTCQX marketplace, broken down by type of company, average number of jurisdictions in which each type of company is compliant, and average population coverage gained by each type of company. Appendix A also includes statistics on each jurisdiction, noting jurisdictions in which it is extremely difficult, or in some cases not possible, for certain security types to achieve compliance.

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<sup>9</sup> OTC Markets Group has not gained Blue Sky compliance in Alabama, Guam, Hawaii, Illinois, Montana, New Hampshire, Oklahoma, U.S. Virgin Islands and Virginia.

<sup>10</sup> See the SEC's Investor Bulletin regarding trading suspensions, available at <https://www.investor.gov/news-alerts/investor-bulletins/trading-suspensions#.Uy8eHV6prWw>.

## **Make Tier 2 Offerings Available to SEC Registrants**

SEC registered companies that are current in their reporting should be permitted to engage in Tier 2 offerings under Regulation A. SEC reporting companies already make ongoing disclosure available, and that disclosure should satisfy the ongoing responsibilities of a Tier 2 issuer under the Proposed Rules. Regulation A, particularly Tier 2, will be a valuable capital raising opportunity for a wide variety of SEC reporting companies, including the many that are still in a smaller, growth stage, and could benefit from a Tier 2 offering. Many SEC reporting companies are unable to gain Blue Sky compliance in every jurisdiction for initial offerings or secondary trading, making preemption from state registration for non-exchange listed SEC reporting companies a very useful feature for raising capital. There is no reason to limit the number of companies that could be positively impacted by the Proposed Rules. We would not want to see companies that are willing to be fully SEC reporting decide not to file, or see currently registered companies have to de-register, in order to access the value of Regulation A.

### ***“At The Market” Offerings Under Regulation A***

Also in the interest of furthering the potential benefits of the Proposed Rules, certain Regulation A issuers should be permitted to engage in “at the market” offerings following a Tier 2 issuance. The SEC is concerned that the secondary market for Regulation A securities may not be robust enough to support at the market offerings, standards can be put in place to limit such offerings to companies that qualify. Companies with securities that are not considered Penny Stocks and that trade on an established public market, such as our OTCQX and OTCQB marketplaces, will have the price formation necessary to support an at the market offering without the higher risk of volatility posed by Penny Stocks. Similarly, Tier 2 offerings under Regulation A should be available to shell companies. Many companies that fall into the definition of a shell are early stage growth companies such as biotechnology firms that need capital in order to grow. The initial and ongoing disclosure required by Tier 2 issuers will ensure that investors have the information necessary to make informed trading decisions.

### ***Fixing the Penny Stock Rule***

The Penny Stock definition serves an important purpose in separating companies that may pose a higher level of investment risk, however the definition under Rule 3a51-1 needs to be refined. Currently, a non-NMS security can be exempt from the Penny Stock Rule by meeting one of three quantitative requirements: 1) have an inside bid price of \$5.00 or more; 2) have net tangible assets (NTA) of greater than \$2 million if in continuous operation for at least 3 years or of \$5 million if less than 3 years; or 3) have average revenue of at least \$6 million for the last three years. The bid price test is responsive to changes in a company’s circumstance, even intra-day, as stock prices fluctuate. The NTA test should also be flexible and offer the ability to account for interim capital raises.

Under the current Penny Stock Rule, the NTA test must rely on audited financial statements. Most companies have an annual audit, which means their NTA number can be updated only once per year. This means that a company that does an interim capital raise, including a raise under Regulation A, cannot meet the NTA test until after its next audit. A Regulation A offering is filed with and reviewed by the SEC, and Tier 2 offerings will require ongoing disclosure as well. Companies raising capital under Tier 2 should be permitted to immediately count that capital, as expressed in pro-forma financial statements, towards their NTA for purposes of the Penny Stock Rule. Capital raises move quickly to support biotechnology companies and others in need of base capital to get their operations into a growth phase. These companies also need an efficient secondary market to support their capital raising efforts. The Penny Stock exemptions, including the NTA exemption, remove barriers to secondary trading. We do not permit Penny Stocks to qualify for OTCQX, the highest marketplace for non-exchange listed securities, but will allow companies that undergo an interim capital raise to qualify under the NTA test. The SEC should similarly update the Penny Stock Rule to remove yet another unnecessary barrier to companies that provide the engine of growth the JOBS Act intends to foster.

### **Give Companies Utilizing Tier 2 a Simplified Path to SEC Registration**

Just as SEC registered companies should have access to Tier 2 offerings, non-SEC registered companies utilizing Tier 2 should be provided with a simplified path to become SEC registered, if that is their goal. The short form registration under Form 8-A is currently only available to companies that are already subject to Exchange Act Sections 13 or 15(d). As the SEC notes in the Proposed Rules, many market participants recognize that a short form registration for Regulation A issuers would encourage companies to use Regulation A as a building block towards an eventual IPO or exchange listing, further expanding the potential benefits the JOBS Act and the Proposed Rules can bring to the market.

### **Make Regulation A Available to Qualifying Foreign Companies**

We support keeping Regulation A available to Canadian companies, and believe foreign private issuers with securities that trade in the U.S. in accordance with Exchange Act Rule 12g3-2(b) should also be permitted to engage in Regulation A offerings. As with SEC registrants, U.S. investors have the ability to access current information on these companies, and should be able to engage in capital raising in the U.S. under the SEC regulated structure set forth in the Proposed Rules. U.S. investors armed with current information about a company, and able to rely on the SEC oversight of all Regulation A offerings, will have the appropriate tools to determine whether participating in an offering is right for them. Regulation A serves investors as well as companies, and allowing qualifying foreign private issuers to access Regulation A will expand the pool of qualified investment opportunities available for U.S. investors.

## **Margin Eligibility for non-Penny Stock Regulation A Securities on an Established Public Market**

Securities offered under Regulation A, other than Penny Stocks, should be considered eligible for margin purposes as long as they trade on an established public market such as the OTCQX or OTCQB marketplaces. Margin is an important tool, as the ability to borrow against a security increases its value. Margin also provides investor liquidity without forcing a sale of the securities, which allows company management, employees and other holders to access some amount of liquidity without selling off their shares. Securities not traded on a national securities exchange are often denied margin treatment under existing rules, however as described in this letter many of these securities have robust, liquid secondary trading markets that provide significant value to investors. With proper risk controls, investors should be able to leverage that value by including certain non-exchange listed securities in margin accounts.

Securities offered under Tier 2 of Regulation A would be subject to SEC oversight, and issuers would make current information available on at least a semi-annual, if not quarterly, basis. Those Tier 2 securities that qualify to trade on an established public market, on which there is a depth of quotes sufficient to support price formation for the purposes of SEC registration statements, should be treated as having a “ready market” under Exchange Act Rule 15c3-1(11)(i), and therefore be afforded margin-eligible status. Allowing margin treatment for these securities is not only equitable, but will also help garner the necessary investor support to ensure a successful roll-out of the new Regulation A.

## **Ongoing Disclosure for Tier 2 Offerings Should Be Quarterly**

As the operator of the OTCQX, OTCQB and OTC Pink marketplaces, we process disclosure for thousands of companies. All companies that make current information available in the U.S., either through SEC reporting or our Alternative Reporting Standard,<sup>11</sup> provide quarterly disclosure. Any perceived benefit to companies by requiring only semi-annual reporting under the Proposed Rules will be more than offset by the loss of investor confidence from a community accustomed to receiving quarterly disclosure. Based on our experience, the Form 1-SA disclosure requirements would not be overly burdensome if applied to companies on a quarterly basis. Keeping disclosure under Tier 2 of Regulation A in-line with investor expectations for quarterly disclosure will increase the pool of potentially interested investors without deterring company

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<sup>11</sup> When SEC registration is not required, companies on our OTCQX and OTC Pink Current marketplaces generally must make certain information publicly available to satisfy the requirements of Rule 10b-5 under the Exchange Act and Rule 144(c)(2) under the Securities Act. The Alternative Reporting Standard may be satisfied through compliance with the OTCQX U.S. Disclosure Guidelines, available at <http://www.otcm Markets.com/content/doc/OTCQXGuidelines.pdf>, or the OTC Pink Basic Disclosure Guidelines, available at <http://www.otcm Markets.com/learn/upgrade-otc-tier>.

participation. The quarterly reports should not be required to be audited, but should require a balance sheet, income statement and statement of cash flows.

### **Regulation A Offerings Should be Approved on a Timeline Comparable to SEC-Registered Offerings**

While Tier 2 of Regulation A under the Proposed Rules will require a new process, the SEC's track record with Regulation A approvals already points to potentially harmful delays. According to the Proposed Rules, current Regulation A offerings using Model A disclosure take an average of 301 days to be approved. Offerings using Model B disclosure average 220 days, and offerings using S-1 type disclosure average 167 days for approval. Contrast that with an average approval time of 118 days for a typical S-1 offering. The SEC's likely delays in approving a Tier 2 offering, coupled with potentially extensive delays in getting FINRA approval of a Form 211, could cause issuers to avoid Regulation A offerings altogether, defeating the worthy goals of the Proposed Rules.

### **The Rule 15c2-11 Process Should Be Streamlined for Regulation A Offerings**

For a non-exchange listed security to be publicly quoted on a system such as OTC Link ATS, FINRA Rule 6432 requires a broker-dealer to file a Form 211 with FINRA. Form 211 requires the broker-dealer to certify that it has in its possession adequate current information about the company issuing the security, in compliance with Exchange Act Rule 15c2-11. FINRA Rule 6432 requires Form 211 to be filed at least 3 days prior to the broker-dealer publishing a quote, however in many cases it takes FINRA months to approve or reject a Form 211, which significantly delays the development of a liquid secondary market in many securities. Securities offered under Regulation A would not be exchange listed, and therefore could not be the subject of public quotations without the filing of a Form 211.

One of the main reasons for a company to engage in a public Regulation A offering instead of a private Regulation D offering is that Regulation A securities are not restricted and will be available for immediate public resale. However, if Regulation A securities are not quickly available on the public market due to lengthy delays with the Form 211 process, many companies could opt to engage in Regulation D offerings, which become available for public resale after a holding period of 1 year for non-SEC registered companies.<sup>12</sup>

### **DTCC Eligibility and Transfer Agent Regulation for Regulation A Securities**

Along with streamlining the Form 211 process for Regulation A securities, the SEC should take additional steps to ensure that these securities can reach the public markets quickly and with proper regulation at every step. The Depository Trust Clearing Corporation (DTCC) presents a significant barrier to non-exchange listed companies becoming freely tradable. To become eligible for DTCC's services, and thus for book

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<sup>12</sup> See Securities Act Rule 144(d)(1)(ii).

entry trading, a non-exchange issuer must somehow establish a connection with one of DTCC's members. For exchange listed IPO's using a large investment bank, these connections are often easy to come by. Other companies, however, are often forced to pay third-parties, with which they have little or no relationship, to find a DTCC member willing to walk the issuer through the DTCC process.

DTCC serves to efficiently hold and transfer securities between broker-dealers, and should mostly be concerned with ensuring that shares are free from restrictions. Under the Proposed Rules, Regulation A shares would be freely tradable, and thus should have an easy to understand, fully supportive on-ramp to DTCC eligibility.

Before securities even reach DTCC, they interact with a company's transfer agent. Transfer agents can, and should, play a critical role as key gatekeepers against fraudulent transfers of securities. While the vast majority of transfer agents are lawful, there is a small subset that facilitates fraud. Under the Proposed Rules, companies issuing securities under Regulation A would not be SEC registrants, and would be permitted to choose any transfer agent. To help ensure the lawful transfer of shares issued under Regulation A, all Regulation A issuers should be required to use SEC registered transfer agents. SEC oversight at every step of the transaction could significantly reduce the opportunity for fraud that could harm investors.

### **Public Ownership Reporting for Regulation A Securities**

Officers, directors and controlling shareholders of companies that offer securities under Regulation A should be required to make ongoing disclosure of transactions in company securities, similar to reports made public for SEC reporting companies on Forms 3, 4 and 5, as well as Schedules 13D and 13G. Institutional investors in Regulation A securities should be required to disclose their ownership of such securities on Form 13F. Prior to depositing shares or initiating trades with a broker-dealer, insiders and affiliates should be required to provide written notice of their affiliation with the issuer or be liable for antifraud and subject to potential rescission of their transactions.

Making this type of ownership information publicly available will allow investors to understand when insiders are trading, will allow regulators to monitor markets and will allow broker-dealers to know their customers. Broker-dealers cannot adequately fulfill their roles as gatekeepers if they do not have transparency into the identities of the affiliates of companies that have engaged in a Regulation A offering.

Some may argue that requiring enhanced transparency from company insiders will cause companies to avoid using Regulation A, and that similar requirements on significant institutional shareholders will chill investor participation in Regulation A offerings. As an initial matter, the SEC should celebrate it as a victory if unscrupulous company insiders choose not to use Regulation A in order to avoid making ownership disclosure to investors. Investors are much better protected if companies run by that type of insider choose not to make public offerings. Further, the basic value of the new

Regulation A is that companies will now be able to offer freely tradable securities to a wide variety of investors without conducting an SEC registered IPO and taking on the costs and burdens that come with SEC registration. The key advantage of the new Regulation A is the access to otherwise unreachable investors – those that are not accredited and therefore cannot participate in a Rule 506(c) offering under Regulation D, and those that seek the immediate free tradability that only Regulation A will provide. These investors are not company officers, directors and other affiliates, and they are not large institutions. In other words, the investors most likely to partake in offerings under the Proposed Rules would not be negatively impacted by increased ownership disclosure requirements. To the contrary, the typical investor in a Regulation A offering under the Proposed Rules would benefit from the additional insight that such disclosure would provide. In fact, one could argue that failing to require disclosure of insider ownership would be a disservice to the very investors that the new Regulation A has been designed to serve.

### **The Market for Regulation A Securities**

The OTCQX, OTCQB and OTC Pink marketplaces are the ideal venues to facilitate secondary trading in Regulation A securities. The Proposed Rules release incorrectly asserts that OTC-securities are significantly less liquid than securities traded on an exchange, citing, among other sources an outdated 1990 study.<sup>13</sup> The Proposed Rules also solicit comments as to whether the development of “venture exchanges” or other trading venues that are focused on attracting venture-stage issuers would facilitate secondary trading in Regulation A securities. In fact, the OTCQX, OTCQB and OTC Pink marketplaces currently serve that purpose, and have made significant advances in technology, transparency and regulation over the past ten years.<sup>14</sup>

The OTC markets exist to provide transparency and efficient trading for regulated broker-dealers in a wide range of securities, including SEC reporting companies with high volume trading such as Fannie Mae and Freddie Mac, 1,500 ADRs including many global blue-chip companies, and over 650 community and regional banks. Broker-dealers can provide best execution for their clients in even the most thinly-traded companies that do not provide information to investors. With widespread distribution of market data and more than 130 broker-dealers directly subscribing to OTC Link ATS, the OTC markets are more than capable of supporting trading in all Regulation A offerings. Any new “venture exchange” or trading venue would struggle to provide the efficient trading experience for investors, the widespread broker connectivity and the cost effective services for smaller and growth companies that already exist on the OTCQX, OTCQB and OTC Pink marketplaces.

<sup>13</sup> Sanger, G. and Peterson, J. *An Empirical Analysis of Common Stock Dealings*, Journal of Financial and Quantitative Analysis (1990).

<sup>14</sup> Further information regarding OTC Markets Group’s marketplaces, and the changes to them over the past 10 years, is attached as Appendix B.

The SEC should of course focus on ensuring efficient access to capital with proper investor protections. For Regulation A issuers that qualify, such as non-Penny Stocks trading on an established public market, the SEC should remove unneeded restrictions to allow efficient, vibrant public trading markets to develop without the company needing to make choices about the exchange, ATS or other venue on which investors and brokers may choose to transact. Specifically, the SEC should grant the Regulation A securities of qualifying companies Blue Sky preemption for secondary trading, make these securities margin eligible, streamline their time to entry into the public trading market, require transparency of public ownership and eliminate unequal regulatory treatment.

The history of the U.S. capital markets has seen the OTC markets traditionally fulfilling the important role of the entry market for smaller companies developing public trading markets. For example, NASDAQ operated as an OTC market for the majority of its history as a successful small company market until it registered as a national securities exchange in 2006. Our OTCQX, OTCQB and OTC Pink marketplaces currently support trading in nearly 10,000 securities, and the SEC's recognition of our OTCQX and OTCQB marketplaces as established public markets further underscores the breadth and depth of liquidity that our marketplaces can provide. 75 companies graduated from our marketplaces to an exchange listing during 2013, demonstrating the ability of our marketplaces to foster growth companies and help them achieve their goals. In short, the marketplaces that the SEC asks about in the Proposed Rules already exist, and we are looking forward to supporting Regulation A and helping small companies maximize the value of their public trading when the final rules take effect.

\* \* \*

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

Very truly yours,



Daniel Zinn  
General Counsel  
OTC Markets Group Inc.

## **APPENDICES**

Appendix A includes a table that sets forth the statistics relating to Blue Sky compliance for secondary trading for 395 companies on which OTC Markets Group has up to date information as of March 24, 2014, including all companies with securities traded on the OTCQX marketplace.

The table presents data on seven types of companies, including companies with securities traded on the OTCQX marketplace, SEC reporting companies, companies that disclosure information using the OTC Markets Group Alternative Reporting Standard, TSX and TSXV listed companies, foreign companies with ADRs trading on the OTCQX marketplace where the underlying shares are included in the FTSE All-World Index, and foreign companies with ADRs trading on the OTCQX where the underlying shares are not included on the FTSE All-World.

Note that some companies fall into multiple categories, for example a company that is SEC reporting and trades on the OTCQX marketplace, or a TSX listed company that trades in the U.S. on the OTCQX marketplace. For this reason the sum of the number of companies in each category equals well more than 395, although the data covers only 395 companies.

The data presented for each jurisdiction first shows the percentage of the 395 total companies that are in Blue Sky compliance for secondary trading in that jurisdiction, and then gives the percentage of companies of each type that are Blue Sky compliant for secondary trading. For example, in Alaska, 93.4% of the 395 total companies are Blue Sky compliant for secondary trading, while 97% of the 334 OTCQX companies are compliant and 91.2% of the 57 SEC reporting companies are compliant.

The table makes clear the difficulty with Blue Sky compliance for secondary trading in many jurisdictions, highlighted by the 2 companies, or just 0.5%, that are Blue Sky compliant for secondary trading in New Hampshire. California, Guam, Kentucky, Montana, North Dakota, Utah and Virginia, among others, also appear to be extremely difficult jurisdictions for certain security types.

Appendix B includes information on the current state of OTC Markets Group's marketplaces and services, and describes our evolution over the past ten years.

APPENDIX A

	All Securities with Blue Sky Data Available	OTCQX Securities	SEC Reporting Issuers	Alternative Reporting Standard Issuers	Toronto Stock Exchange Listed Issuers	TSX Venture Exchange Listed Issuers	OTCQX ADRs (included on FTSE All World Index)	OTCQX ADRs (Non-FTSE)
Total # of Securities	395	334	57	22	61	112	58	61
Average Number of Jurisdictions in Compliance	41.27	41.93	46.03	30.36	42.39	39.53	45.73	40.14
Average Population Coverage	78.83%	80.16%	88.49%	56%	76.87%	74.63%	93.90%	76.78%
State/Jurisdiction	% In Compliance	% In Compliance	% In Compliance	% In Compliance	% In Compliance	% In Compliance	% In Compliance	% In Compliance
AK	93.40%	97.00%	91.20%	77.30%	93.40%	97.30%	98.30%	98.40%
AL	35.20%	31.40%	86.00%	4.50%	14.80%	4.50%	89.70%	27.90%
AR	94.40%	97.00%	91.20%	72.70%	93.40%	97.30%	98.30%	98.40%
AZ	75.90%	79.30%	91.20%	40.90%	80.30%	76.80%	91.40%	67.20%
CA	32.20%	29.60%	86.00%	9.10%	9.80%	4.50%	96.60%	14.80%
CO	93.70%	98.20%	91.20%	68.20%	95.10%	98.20%	98.30%	100.00%
CT	65.60%	66.20%	87.70%	59.10%	59.00%	34.80%	100.00%	90.20%
DC	92.70%	96.70%	89.50%	72.70%	93.40%	97.30%	98.30%	98.40%
DE	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
FL	93.40%	97.00%	91.20%	77.30%	93.40%	97.30%	98.30%	98.40%
GA	92.70%	96.70%	91.20%	45.50%	100.00%	97.30%	98.30%	98.40%
GU	0.30%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
HI	43.30%	26.60%	91.20%	9.10%	100.00%	5.40%	0.00%	0.00%
IA	94.70%	98.20%	91.20%	77.30%	100.00%	97.30%	98.30%	98.40%
ID	92.20%	96.70%	91.20%	45.50%	100.00%	97.30%	98.30%	98.40%
IL	87.60%	91.00%	86.00%	4.50%	96.70%	91.10%	94.80%	95.10%
IN	94.70%	98.20%	91.20%	77.30%	100.00%	97.30%	98.30%	98.40%
KS	89.10%	92.20%	87.70%	77.30%	100.00%	81.30%	98.30%	98.40%
KY	13.70%	9.00%	86.00%	9.10%	3.30%	4.50%	0.00%	0.00%
LA	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
MA	93.40%	97.00%	91.20%	77.30%	93.40%	97.30%	98.30%	98.40%
MD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
ME	95.90%	98.20%	91.20%	77.30%	100.00%	97.30%	98.30%	98.40%
MI	94.20%	98.20%	91.20%	72.70%	100.00%	97.30%	98.30%	98.40%
MN	94.20%	98.20%	91.20%	72.70%	100.00%	97.30%	98.30%	98.40%
MO	74.70%	76.30%	91.20%	13.60%	100.00%	88.40%	86.20%	31.10%
MS	94.20%	98.20%	91.20%	72.70%	100.00%	97.30%	98.30%	98.40%
MT	30.40%	34.40%	3.50%	4.50%	34.40%	3.60%	96.60%	54.10%
NC	79.70%	82.30%	91.20%	63.60%	80.30%	75.00%	96.60%	80.30%
ND	29.10%	9.60%	80.70%	40.90%	3.30%	0.90%	0.00%	0.00%
NE	93.40%	97.00%	91.20%	77.30%	93.40%	97.30%	98.30%	98.40%
NH	0.50%	0.30%	1.80%	0.00%	0.00%	0.90%	0.00%	0.00%
NJ	93.70%	97.00%	93.00%	77.30%	93.40%	97.30%	98.30%	98.40%
NM	94.70%	98.50%	91.20%	77.30%	100.00%	97.30%	100.00%	98.40%
NV	60.30%	60.50%	87.70%	36.40%	52.50%	32.10%	96.60%	80.30%
NY	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
OH	93.90%	97.90%	89.50%	77.30%	95.10%	98.20%	98.30%	100.00%
OK	59.70%	61.70%	86.00%	4.50%	100.00%	22.30%	96.60%	68.90%
OR	72.20%	72.50%	78.90%	72.70%	67.20%	45.50%	98.30%	98.40%
PA	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
PR	58.00%	62.30%	50.90%	36.40%	73.80%	76.80%	43.10%	42.60%
RI	93.70%	97.00%	93.00%	77.30%	91.80%	97.30%	98.30%	98.40%
SC	94.70%	98.20%	91.20%	77.30%	100.00%	97.30%	98.30%	98.40%
SD	94.70%	98.20%	91.20%	77.30%	100.00%	97.30%	98.30%	98.40%
TN	89.90%	96.10%	86.00%	9.10%	100.00%	99.10%	98.30%	100.00%
TX	86.60%	93.40%	64.90%	68.20%	90.20%	92.90%	98.30%	100.00%
UT	31.60%	29.00%	86.00%	4.50%	8.20%	4.50%	96.60%	14.80%
VA	28.90%	26.00%	86.00%	4.50%	6.60%	4.50%	89.70%	6.60%
VI	43.30%	26.60%	91.20%	9.10%	100.00%	5.40%	0.00%	0.00%
VT	91.90%	96.40%	89.50%	45.50%	100.00%	97.30%	98.30%	98.40%
WA	97.50%	98.20%	98.20%	100.00%	100.00%	97.30%	98.30%	98.40%
WI	95.70%	99.40%	91.20%	77.30%	100.00%	100.00%	98.30%	98.40%
WV	73.70%	67.70%	91.20%	68.20%	78.70%	76.80%	43.10%	42.60%
WY	94.70%	98.20%	93.00%	77.30%	95.10%	98.20%	98.30%	100.00%

## APPENDIX B



# REVEALING OPPORTUNITY

Ten Years of Change in Technology,  
Transparency, and Regulation in the  
Public Markets

For Investors in Smaller  
& Growth Companies



# ➤ 01

This booklet is about you, the investor in smaller & growth companies. It's about the quantum changes that have built a new world of opportunity — and about the best way for you to navigate it.

It's about how technology, transparency, and regulation have transformed the world of public trading into a safer, better informed place for investors, and a streamlined, more efficient venue for the smaller & growth companies that wish to engage them.

It's about how over 10,000 U.S. and global securities, thousands of SEC-reporting companies, and hundreds of community banks will be traded today — and why still more will be traded that way tomorrow.

And it's about how the wider distribution of better information creates more opportunities, more alpha for the intelligent investor, and more visibility and liquidity for transparent and trusted companies.

During the last ten years, a new world of opportunity has evolved in publicly traded smaller & growth companies, and so have the new marketplaces that help you take advantage of it. The next few pages are intended to help you do just that.



# ABOUT OTC MARKETS GROUP

OTC Markets Group Inc. (OTCQX: OTCM) operates Open, Transparent, and Connected financial marketplaces for 10,000 U.S. and global securities. Through 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 tiered marketplaces to better inform investors of opportunities and risks: OTCQX®, the best marketplace; OTCQB®, the venture stage 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](http://www.otcmarkets.com).

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



### Marketplace Characteristics\*

10,000+ U.S. and global securities

3,100+ ADRs and foreign ordinaries

1,500+ dividend-paying stocks

650+ community banks

2,500+ SEC-reporting companies

1,400+ large and mid-caps

2,000+ smaller & growth companies

94% of the total dollar volume of trading takes place in companies that provide current information to investors

400+ companies have graduated to the exchanges in the past 6 years

\* Data as of December 31, 2013.

A modern meeting room with a large screen displaying the text "SHARE INFORMATION". The room features a long wooden table with three black chairs behind it. In the foreground, there are several white and teal chairs. To the right, there is a white storage unit with three drawers. The screen is framed in black and mounted on a light-colored wall.

**SHARE  
INFORMATION**

# ➤ 05

Over the past ten years, OTC Markets Group has created a superior trading experience for investors — one rooted in the essential elements of informed and efficient public markets.

## **Investors can see prices and access market data –**

OTCM sets the best price standard by broadly distributing our market data through multiple channels, including Bloomberg, Thomson Reuters, and other leading market distributors.

## **Investors can access company information –**

OTCM organizes securities into tiered marketplaces to help investors identify the highest-quality companies. OTCM's suite of Corporate Services empowers public companies and their advisors to improve visibility and availability of information.

## **Investors can trade through the broker of their choice –**

OTCM's technology enables investors to buy and sell securities through the institutional, retail or online broker-dealer of their choice, making the trading experience nearly identical to that of trading NYSE or NASDAQ securities.

More and more smaller & growth companies use our marketplaces to increase visibility, improve liquidity, build trust, and raise more capital at better valuations.



# TRUST IN TRANSPARENCY

➤ 06

To promote order and transparency, OTC Markets Group organizes equity securities into three tiered marketplaces to inform investors of opportunities and risks. The marketplaces reflect the quality of a company's operations, its management history, its level of disclosure, and its degree of shareholder engagement.

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## **OTCQX® The best marketplace**

The OTCQX® best marketplace is where investors can find a world of investment opportunities in established smaller and growth companies from the U.S. and around the globe. To qualify for the OTCQX marketplace, companies must meet high financial standards, demonstrate compliance with U.S. securities laws\*, be current in their disclosure, and be sponsored by a professional third-party advisor. Designed for investor-focused companies, OTCQX ensures that investors and brokers have the quality of information that's necessary to intelligently analyze, value, and trade their securities.

---

## **OTCQB® The venture stage marketplace**

The OTCQB® venture stage marketplace offers investors transparent trading in early stage and developing U.S. and international companies that are unable to qualify for OTCQX. To be eligible, companies must be current in their reporting and will be required to undergo a new annual verification and management certification process. There are no minimum financial standards other than a (.01) bid test, therefore, companies will vary in their level of financial strength.

---

## **OTC i k® The open marketplace**

The OTC Pink® open marketplace is designed to allow broker-dealers to electronically trade all types of securities without requiring company involvement. With no minimum financial standards, OTC Pink includes penny stocks, and shells, as well as distressed, delinquent, and dark companies not able or willing to provide adequate information to investors, and foreign companies that limit distribution of their disclosure to their home market. As the most inclusive marketplace, OTC Pink requires the least from companies and the most research and caution from investors.

\*Companies can use SEC 12g3-2(b) to submit their home country disclosure in English.



## The best marketplace with qualified companies.

Designed for established smaller & growth U.S. and global companies that meet high financial and operating standards, and are committed to building visibility with the investment community. Companies on OTCQX are distinguished by the diligence with which they provide information, demonstrate compliance with U.S. securities laws, and clearly convey their qualifications to investors.

### OTCQX

The most successful, high-growth companies

 ..... OTCQX: CESDF	 ..... OTCQX: CSVI	 ..... OTCQX: CGOOF	 ..... OTCQX: DTHRF	 ..... OTCQX: EDVMF
 ..... OTCQX: SGGH	 ..... OTCQX: SPHRY	 ..... OTCQX: TITXF	 ..... OTCQX: XELB	 ..... OTCQX: YGYI

## TOP OTCQX GLOBAL GROWTH COMPANIES\*

COMPANY	COUNTRY	SYMBOL	MARKET CAP	VOLUME	\$ VOLUME
Linc Energy, Ltd.	AUS	LNCGY	\$634,021,878	15,345,100	\$229,456,338
Canadian Energy Services & Technology Corp.	CAN	CESDF	\$1,458,766,024	3,108,705	\$50,270,019
DeeThree Exploration Ltd.	CAN	DTHRF	\$694,809,081	5,538,148	\$42,131,287
Golden Queen Mining Co. Ltd.	CAN	GQMNF	\$76,332,705	28,107,896	\$34,688,893
TAG Oil Ltd.	CAN	TAOIF	\$200,254,468	8,582,860	\$33,372,305
Spyglass Resources Corp.	CAN	SGLRF	\$220,292,013	16,139,354	\$29,515,483
Aurcana Corp.	CAN	AUNFF	\$30,573,136	15,347,264	\$29,424,587
Continental Gold Limited	CAN	CGOOF	\$393,075,056	6,109,266	\$26,599,828
Titan Medical Inc.	CAN	TITXF	\$62,537,504	35,400,834	\$25,626,997
Endeavour Mining Corporation	CAN	EDVMF	\$189,999,915	27,693,561	\$22,161,232

\*Representative sample. Annual data for 2013. Market cap as of December 31, 2013. Country denotes country of incorporation.

## TOP OTCQX U.S. COMPANIES\*

COMPANY	COUNTRY	SYMBOL	MARKET CAP	VOLUME	\$ VOLUME
Organovo Holdings, Inc.**	USA	ONVO	\$480,671,045	103,871,977	\$ 448,782,503
Altisource Asset Management Corp.**	USA	AAMC	\$1,227,270,024	1,690,399	\$274,409,415
Gulf Coast Ultra Deep Royalty Trust	USA	GULTU	\$517,888,566	94,145,959	\$199,882,824
Computer Services, Inc.	USA	CSVI	\$473,335,226	2,017,236	\$61,604,201
Destiny Media Technologies, Inc.	USA	DSNY	\$89,996,941	34,145,090	\$54,594,299
American Eagle Energy Corporation**	USA	AMZG	\$198,335,592	23,479,663	\$45,875,479
LiqTech International, Inc.**	USA	LIQT	\$81,093,250	15,410,719	\$41,338,267
IntelGenx Technologies Corp.	USA	IGXT	\$28,654,517	49,617,086	\$28,544,639
RXI Pharmaceuticals Corporation**	USA	RXII	\$40,427,169	6,004,589	\$20,196,103
Bio-Path Holdings, Inc.**	USA	BPTH	\$358,010,956	10,635,751	\$17,307,067

\*Representative sample. Annual data for 2013. Market cap as of December 31, 2013. Country denotes country of incorporation.

\*\*Company graduated to an exchange listing.



## The venture stage marketplace with reporting companies.

Designed for U.S. and international venture-stage companies that are current in their reporting. To improve transparency on OTCQB, companies will be required to undergo a new annual verification and management certification process. There are no minimum financial standards, other than a (.01) bid test, therefore, companies will vary in their level of financial strength.

### ACTIVE OTCQB COMPANIES\*

COMPANY	COUNTRY	SYMBOL	MARKET CAP	VOLUME	\$ VOLUME
AMR Corp.**	USA	AAMRQ	\$3,822,462,712	2,631,681,486	\$12,700,030,660
Fannie Mae	USA	FNMA	\$3,485,822,778	6,910,427,437	\$12,200,048,213
Freddie Mac	USA	FNCC	\$1,885,114,646	2,935,914,229	\$4,955,159,696
BHP Billiton Ltd.	AUS	BHPLF	\$113,762,819,000	43,125,631	\$1,402,524,200
Sony Corp.	JPN	SNEJF	\$17,459,669,920	47,176,613	\$812,175,264
Fairfax Financial Holdings Ltd.	CAN	FRFHF	\$7,799,826,198	1,938,546	\$770,521,160
NextEra Energy, Inc.	USA	NEXWU	\$690,000,000	13,770,228	\$715,217,145
Globalstar, Inc.	USA	GSAT	\$816,351,485	607,657,913	\$709,170,465
Komatsu Ltd.	JPN	KMTUY	\$20,554,153,578	27,609,340	\$658,460,776
Nokia Corp.	FIN	NOKBF	\$30,671,189,640	172,086,224	\$638,659,742

\*Representative sample. Annual data for 2013. Market cap as of December 31, 2013. Country denotes country of incorporation.

\*\*Company now traded on an exchange.



## The open marketplace with variable reporting companies.

Designed to allow broker-dealers to electronically trade all types of securities without requiring company involvement. With no minimum financial standards, OTC Pink includes penny stocks, and shells, as well as distressed, delinquent, and dark companies, and foreign companies that limit distribution of their disclosure to their home market. OTC Pink requires sophisticated investors to dig deeper and be extra thorough in their research before making any trading decisions.

### ACTIVE OTC PINK COMPANIES\*

COMPANY	COUNTRY	SYMBOL	MARKET CAP	VOLUME	\$ VOLUME
Nestle S.A.	CHE	NSRGY	\$237,313,032,000	167,033,131	\$11,500,624,655
Tribune Co.	USA	TRBAA	\$6,715,840,878	100,767,425	\$6,052,256,518
Gazprom OAO	RUS	OGZPY	\$102,387,930,750	215,392,879	\$1,811,468,777
LUKOIL Oil Co.	RUS	LUKOY	\$53,687,549,184	24,088,917	\$1,510,329,813
Tesco PLC	GBR	TSCDY	\$44,987,869,147	87,022,921	\$1,476,533,619
Motors Liquidation Company GUC Trust	USA	MTLQU	\$964,500,000	40,102,727	\$1,410,487,313
Bayer A.G.	DEU	BAYRY	\$117,426,587,600	9,952,509	\$1,108,217,332
SOFTBANK Corp.	JPN	SFTBY	\$97,059,214,980	30,964,143	\$1,044,048,554
SABMiller plc	GBR	SBMRY	\$82,304,400,000	19,305,769	\$974,360,045
Nissan Motor Co., Ltd.	JPN	NSANY	\$37,974,006,000	47,799,276	\$947,358,924

\*Representative sample. Annual data for 2013. Market cap as of December 31, 2013. Country denotes country of incorporation.

# THINK GLOBAL. TRADE LOCAL.

## Why invest in ADRs?

**ADRs** offer efficient pricing and depth of trading that is easily connected by leading electronic broker-dealers to home market liquidity through convertibility to ordinary shares.

**ADRs** are traded as U.S. securities, in U.S. dollars, by U.S. broker-dealers, during U.S. trading hours — making it easy for U.S. investors to hold non-U.S. securities.

**ADRs** reduce complexity and credit risk, as they are DTC eligible and are held by the highest-quality local financial institutions with cost-effective custodial fees. All dividends are paid and taxable in U.S. dollars, and all local taxes are managed by the depositary bank.

**ADRs** allow access to securities listed in smaller countries where firms don't have strong broker or custodian relationships.

**ADRs** create clear and better information channels, providing U.S. investors easy access to company news and disclosure with a U.S. trading symbol.

**ADRs** of global companies that trade on OTCQX® must comply with our International Reporting Standard, SEC Exchange Act Rule 12g3-2b, or be SEC reporting and current — and must be listed on a qualified international exchange.

**ADRs** are eligible for managed accounts, wrap accounts, and U.S. dollar accounts.

**ADRs** can be added to more portfolios by the largest fund managers.

**ADRs** can be traded during U.S. hours, when local markets are closed, to easily balance portfolios and meet investor liquidity needs.

**ADRs** are priced at 4:00 PM EST for consistent fund valuation.

**ADRs** traded on our marketplaces comprise 1,500 securities from 50 countries — 75% of all ADRs.

.59 Change: ↑ 3.59 (0.24%) Volume: 0 Time: 10:37 AM

# OTCM ADR INDEX

POWERED BY BNY MELLON



*"The OTCM ADR Index provides added visibility to the ADRs traded on the OTC Markets Group marketplaces, benefiting ADR issuers and investors alike. Our collaboration with OTC Markets Group offers the investment community an index that shows the depth, breadth and liquidity of all ADRs traded on the OTC Markets Group marketplaces, including some of the world's most well-known companies."*

2013

➤ 13

Mar

May

Jun

Jul

Aug

Sep

Oct

Nov

**Julio Lugo, Vice President, BNY Mellon  
OTCQX DAD/PAL**

# ➤ 14

## WHAT IS AN ALTERNATIVE TRADING SYSTEM (ATS)?

As defined by the SEC\*, an ATS is any organization, association, person, group of persons, or system that constitutes, maintains, or provides a marketplace or facilities for bringing together purchasers and sellers of securities, or for otherwise performing with respect to securities the functions commonly performed by a stock exchange; and that does not:

- a) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or
- b) Discipline subscribers, other than by exclusion, from trading.

\*Source: 17CFR§242.300 (a)

*“Through OTC Markets Group’s efficient trading process, broker-dealers can seamlessly post quotes and execute trades electronically. The platform has attracted both investors and broker-dealers, who now use it to trade over 1,500 ADRs.”*

**Scott Pollack**  
**Global Product and Capital Market Solutions Head**  
**Citi Depository Receipt Services**  
**OTCQX DAD/PAL**

## OTC Link® ATS

OTC Link® ATS is an SEC-registered Alternative Trading System for broker-dealer subscribers to provide investors with an electronic trading experience almost identical to trading a security on NYSE or NASDAQ. OTC Link® ATS directly links a diverse network of leading U.S. broker-dealers providing liquidity and execution services in a wide spectrum of U.S. and global securities. Its real-time price transparency and connectivity offer broker-dealers control of trades and choice of counterparties so they can efficiently provide best execution, attract order flow, and comply with FINRA and SEC regulations.

The OTCQX® and OTCQB® marketplaces are recognized by the SEC as “Established Public Trading Markets.” Companies filing registration statements with the SEC can use quoted prices on the OTCQX and OTCQB marketplaces to establish the market value of their securities.

### OTC Link® ATS links 130 Broker-Dealers, including:

Archipelago Trading Services, Inc. / ARCA
Automated Trading Desk Fincl Svcs, LLC / ATDF
BNY Mellon Capital Markets / BKMM
Canaccord Genuity Inc. / CSTI
Citadel Securities / CDEL
Credit Suisse Securities LLC / FBCO
G1 Execution Services LLC / ETRF
Intl FCStone Securities, Inc. / INTL
Jane Street Markets, LLC / JANE
JP Morgan Securities LLC / JPMS
Knight Execution & Clearing Services LLC / NITE
Maxim Group LLC / MAXM
Merrill Lynch, Pierce, Fenner & Smith / MLCO
UBS Securities LLC / UBSS

# ➤ 16

## WELL-REGULATED TRADING

### **Best Execution of Customer Orders**

FINRA Rule 5310: FINRA requires broker-dealers to use reasonable diligence to ascertain the best market to execute their customer orders. OTC Link® ATS market prices can be relied upon by electronic broker-dealers providing automated best execution.

### **Limit Order Display**

FINRA Rule 6460: Broker-dealers must display the price and full size of customer limit orders that improve or are equal to the price of the broker-dealer's proprietary quote. Qualifying customer limit orders must be displayed when the size is at or above the minimum quote size prescribed by FINRA Rule 6433.

### **Limit Order Protection**

FINRA IM-2110-2: Broker-dealers may not trade for their own account at prices that are equal to or better than the prices of limit orders that they have received from their customers or from another broker-dealer on behalf of its customers. Protecting customer limit orders encourages the use of such orders by the investing public and results in more capital committed to securities trading in the secondary markets by a source other than securities dealers.

### **Market Order Protection**

FINRA Rule 5320: Broker-dealers must give priority to customer orders. A broker-dealer holding a customer order may not trade for its own account at a price that would satisfy an existing customer order, unless immediately after the trade the broker-dealer executes the customer order at the same or a better price.

**Firm Quote**

FINRA Rule 5220 Offers at Stated Prices and 5220.01 Firmness of Quotations: To ensure the integrity of quotations, FINRA requires every broker-dealer to trade at its publicly quoted prices. Integrity of quotes is essential to the normal operation of the market. The failure to honor quotations, also known as “backing away,” can be disruptive to a fair and orderly market.

**Minimum Quote Sizes**

FINRA Rule 6433: Broker-dealers posting priced quotations on OTC Link® ATS are firm for certain minimum sizes. Minimum quote sizes are based upon quote price. As the price of a quote decreases, the size associated with a price increases. Mandatory sizes assure a minimum amount of liquidity in the market and add weight to a broker-dealer’s firm quote obligation.

**Real-Time Trade Reporting**

FINRA Rule 6622: Broker-dealers must report their transactions to FINRA’s OTC Reporting Facility within 30 seconds, which accommodates reporting and dissemination of last sale reports in OTCQX®, OTCQB®, and OTC Pink® securities. The rule creates a uniform method of reporting obligations of broker-dealers, including: who must report, when those reports are due, what must be reported, and how to cancel trades already reported.

**Order Audit Trail Systems (OATS)**

FINRA Rules 7410 through 7470: FINRA has established OATS as an integrated audit trail of order, quote, and trade information for equity securities. FINRA uses this audit trail system to recreate events in the life cycle of orders and monitor more completely the trading practices of broker-dealers.

**Short Position Disclosure**

FINRA Rule 4560: Broker-dealers must report their short interest positions in all OTCQX, OTCQB, and OTC Pink securities at mid-month and end-of-month. Short-interest reporting brings more transparency to the short selling activities, and reduces the possibility of manipulative behavior associated with naked short selling.



# REAL-TIME OTC MARKETS LEVEL 2+

(OTCQX®, OTCQB®, OTC PINK®, OTC BONDS) QUOTES

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*"The move to OTCQX® gave our stockholders easy and direct access to information about our company and greater pricing transparency, which, at the end of the day, was a reflection of our commitment to maximizing their returns."*

**Brad Colby**  
**President and CEO, American Eagle Energy Corporation**  
**NYSE MKT: AMZG\***

\*Company traded on OTCQX before graduating to NYSE MKT

*“Potential investors need a way to obtain information about a company to make an informed investment decision and must have access to an orderly market to buy and sell those securities. These two areas are where OTCQX® has really been a great benefit to CSI.”*

**David Simon**  
**CFO, Computer Services Inc.**  
**OTCQX: CSVI**

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