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October 9, 2019

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Release No. 34-87115; File No. S7-14-19

Dear Chairman Clayton:

This letter is in response to Exchange Act Release No. 34-87115 proposing certain amendments to current Rule 15 c2-11, adopted under the Securities Exchange Act of 1934. I believe the objective of the Securities and Exchange Commission to eliminate penny stock fraud is commendable and just. However, I have major concerns as to the actual effect of the proposed amendments. I am responding because I own directly and indirectly (through a partnership which I manage) shares in several hundred companies which are listed only in the OTC Markets and which do not publish their financial reports. With one exception, I am an outside investor in each of these companies and am not in any way associated with their management. None of the companies I have invested in is a "shell" company or the issuer of "penny stocks."

I believe the amendments should be rejected because:

1. Their adoption would substantially reduce liquidity and market value of many stocks that are not penny stocks causing losses to many thousands of individual investors.

2. They do not take into account all of the complexities of over-the-counter trading.

3. They are not likely to achieve their legitimate goal of preventing penny stock fraud.

4. Their effect is generally anti-competitive.

TWO EXAMPLES: Hershey Creamery Company and Pardee Resources

As I write this letter the market for Hershey Creamery Company common is $4,100.00 bid, $5,125.00 ask, and Pardee Resources is $164.00 bid, $169.00 ask. Although each is quoted only on the OTC Markets, neither of them resembles a so called "penny stock" even remotely.

Hershey Creamery Company, founded in 1894, manufactures and distributes quality ice cream products through grocery stores in the east and northeast, including Washington, DC.

Pardee Resources traces its roots to 1840, when Ariovistus Pardee began mining coal in West Virginia. The company now has timber, oil and gas, and coal properties in 15 states and has no long-term debt.

Hershey Creamery Company has an 11 to 1 current ratio.

Both companies have been consistently profitable for decades.

As solid as these companies are, neither has ever been an SEC reporting company, neither has elected to pay OTC Markets to publish financial information on the OTC Markets website, and neither sends out quarterly reports. Each sends out an annual report to shareholders, but there is a substantial portion of each year when the financials are more than 6 months old.

Are the stocks of these companies ones that prudent investors should avoid? No. The jobs of investors, brokers and regulators would be simplified if all companies were as consistently profitable and had balance sheets as strong as these two companies. The only things that distinguish these two companies from corporations listed on the New York Stock Exchange is they are small and their shares trade infrequently.

Are these isolated examples? No. There are thousands of community banks, dozens of insurance holding companies and thousands of small industrial and service companies which have shares that trade infrequently, that mail their financial information to shareholders and that do not publish their financial information anywhere.

Would market makers in the stocks of Hershey Creamery Company and Pardee Resources be affected by the proposed rule? Yes. Is it in the public interest to discourage or eliminate market making in these stocks and others like them? We don't think so.

"OTC MARKETS" IS NOT A SINGLE MARKET

Lumped together in the former Pink Sheets are several groups of very dissimilar securities. These include foreign stocks, thinly-traded preferred stocks, "penny stocks" issued by companies with few assets, and many thousands of respectable substantial companies that are not listed on any exchange because they have fewer than 500 shareholders. This last group I will refer to as "traditional inactive stocks." Hershey Creamery Company and Pardee Resources are in this group.

The "traditional inactive stocks" and "penny stocks" couldn't be more dissimilar. Not only are the companies issuing the securities different, but the buyers and the potential regulatory problems are different. The following list illustrates a few of the differences:

1. The typical "penny stock" company has few tangible assets. The balance sheet is likely to list difficult-to-value assets like patent rights, distribution rights, mineral rights or goodwill. On the other hand, the traditional inactive company is likely to be a family-controlled business with lots of tangible assets, including cash. Balance sheets with no long-term debt and current ratios of 3 to 1 or greater are not uncommon among the traditional inactive companies. Generally, these are solid companies (like independent telephone companies, water companies, and manufacturers) with long histories of financial success.

2. The typical "penny stock" company is interested in issuing more shares to the public given any opportunity to do so. The typical traditional inactive company probably hasn't issued new shares for years, and the company may be trying to buy back shares.

3. Promoters of penny stocks may try to hype the company and its prospects to get the stock prices up. The typical traditional inactive company does not hire financial public relations firms, does not promote its stock in any way, and would prefer to keep a low profile.

4. The average buyer of a penny stock is often an unsophisticated speculator while the buyer of traditional inactive stocks is usually a knowledgeable individual investor, a mutual fund, or the company itself.

5. The regulatory problems are different. With penny stocks it is usually the buyer or potential buyer who should beware and who may need legal and regulatory protection. With traditional inactive stocks, the market makers help to keep managements honest by creating a market that competes with the company insiders or the company itself for the purchase of shares. These market makers break up the company's monopoly of information on who the potential buyers and sellers are.

6. Regulatory solutions also must be different. It may be tempting for regulators to assume or hope that such a rule would cause companies to publish more financial information in order to gain access to a public market. But, management of the typical traditional inactive company has clear control. They don't need a public market for the minority shares. If the controlling shareholders want liquidity, they can sell the whole company.

7. Do potential buyers of traditional inactive stocks like Hershey Creamery and Pardee Resources need the protection of the proposed rule? Doubtful. Since these companies don't promote themselves, most buyers are already shareholders. New

buyers tend to be sophisticated investors who do their own research from annual reports. These buyers don't need the protection of your proposed rule.

WHY THE PROPOSED RULE WON'T PREVENT FRAUD

Fraudsters intent on beginning a pump and dump scheme will supply all of the information required by the proposed rule. But in writing public relations releases and telephone sales scripts, they will leave out the facts such as earnings per share, or book value. Instead they will be filled with glowing opinions of some new technology and their future earnings potential.

In order to carry out such a scheme, the promoters first need to get control of a company with a low equity market capitalization. Unless U.S. capital formation is shut down completely, there will always be a supply of companies. A decade or more ago it was new internet companies, now it is new biotechnology companies. A few of them will succeed, but some will fail. The failing company's stock prices will plummet, making them attractive targets for promoters. The promoters will not acquire control of traditional inactive stocks that have real businesses because they will always be too expensive.

AN UNSTATED ASSUMPTION

There seems to be an unstated assumption in the proposed rule that OTC companies with real businesses will want to comply with the new rule. This is false. A fraudster will want to comply and will. Traditional inactive stocks are traded over the counter because management has no interest promoting their stock. Some will comply. Some will not, but will still treat their minority shareholders fairly. And some will seize the opportunity to not comply with the new rule, pushing the price of their stock lower and making it easier to oppress the minority shareholders. It is the current minority shareholders in the last two groups of companies that will suffer losses if the proposed rule is adopted.

THE RESULTS OF THE PROPOSAL WOULD BE ANTI-COMPETITIVE

What is the likely effect of the proposal on stocks like those of Hershey Creamery Company and Pardee Resources? Market makers may be forced out of many traditional inactive stocks like these. The result would be less liquidity and much lower prices in any private transactions that do occur. Also, there would no longer be transparency as to the prices of any transactions.

A second effect is that the companies (issuers) power would be greatly increased relative to their minority shareholders. Some would discover they could use the new rule to prevent market making in their shares.

Third, more companies and shareholders would lose track of each other. Both companies and shareholders change names, move, and undergo other changes. The existence of market makers in OTC Markets is one of the simplest means by which lost companies and shareholders are found again. If you found a certificate for 100 shares of AMFI Corp. among the papers of a decreased grandfather, what would you do if there is no longer a market for the shares? You might assume they are worthless. AMFI Corp. is a real company with real businesses listed in the OTC Markets, but which would probably be eliminated by your proposal.

Fourth, managements of traditional inactive companies occasionally will try to freeze out minority shareholders. Management may put a low value on the shares and seek a fairness opinion from an investment banker. The investment banker has difficulty justifying a price below the recent bid prices for the stock. Thus, the bid prices tend to give minority shareholders some measure of protection by creating a floor below which freeze out prices cannot go. The proposal would reduce or eliminate this protection for many shareholders.

MISCELLANEOUS QUESTIONS AND COMMENTS

1. The proposed rule doesn't define "publicly available" and ignores financial information sent by the issuer to existing shareholders, but not published publicly. Some issuers have a policy of sending financial information to non-shareholders who inquire. Does that make a difference in terms of being "publicly available"?

2. More and more companies are posting their financial information on their websites. Others are posting the information in an area that is password protected and giving their shareholders the password. Would either the former or the latter satisfy the rule? If not, why not?

3. Footnote 6 on page 9 of the proposal refers to the tier system developed by OTC Markets Group. It implies that companies in their "Pink: no Information" category contains companies that are not able or willing to provide current disclosure…". This is inaccurate and misleading. OTC Markets charges fees to reprint financial information. Their fees are not scaled to the size of the company. So, many small companies consider the fees too high, but the companies are able and willing to make their information available.

   Hershey Creamery and Pardee Resources do not give information to OTC Markets, but both are quite generous in the information given to shareholders. We could provide dozens of similar examples.

4. Low trading volume does not imply low quality or smaller capitalization. Many of the traditional inactive stocks are issued by companies that have been buying back shares for years. As the float declines, trading volume goes down, but the remaining minority shareholders still need a trading market.

5. There is a wider variety of securities traded over-the-counter than are listed on exchanges. Therefore, there needs to be more flexibility in the information which is required to be published. For example, there are coal and oil royalty trusts which don't have balance sheets because they don't have assets or liabilities. They pay out 100% of their income every year. Also, some of them don't have officers or directors, only a bank trustee.

6. Why limit the "piggyback exception" to securities with two-sided quotations? Even bid-side only quotations help protect minority shareholders from greedy controlling shareholders.

7. The proposal of the new rule makes several references to Form 211, but the scuttlebutt regarding Form 211 is that the system is broken. If the system is relied upon in supporting the new rule, it would be helpful to get statistics on the following for 2018:
   a. How many Form 211s were filed,
   b. How many were approved,
   c. How many new trading symbols were established for non-reporting companies?
   d. How many trading symbols were cancelled and why?

8. Instead of restricting the disclosure of unsolicited orders, why not expand it for retail investors that give a market maker an affidavit that (a) they are an accredited investor, (b) they are not affiliated with the issuer, and (c) they are not in the SEC Action Lookup for Individuals. The display of unsolicited orders increases competition, which is positive, creates a fairer and more reliable marketplace, and accredited investors don't need to be protected by a new rule.

POTENTIAL LOSSES

As a private investor I've been investing in stocks for over 50 years. Almost 40 years ago I began a limited partnership to invest in stocks. Between my personal holdings and the investments of our partnership, we have many millions of dollars invested in stocks listed only on the OTC Markets. We've bought non-NASDAQ over the counter stocks because that was where we could use our own research to find good values (banks earning over 2% return on total assets, but trading at or near book value, or insurance companies with combined ratios below industry averages available at modest price earnings ratios). Up until now, our investment results have been quite satisfactory. We have sought and found brokers who are honest and ethical. We have never been the victim of "penny stock" fraud. Now, you're considering a rule change for our "protection" which could cause us to suffer significant and permanent losses in liquidity and market value.

Our situation is not unique. Thousands of individual investors are potentially affected.

CONCLUSION

The proposed rule should be rejected because:

1. It threatens losses to thousands of retail investors,

2. This is not a promising area for rule making because it is subject to the "prison designers dilemma". The prison designer has a time deadline. Then, a large number of motivated inmates have unlimited time to figure out an escape.

Securities fraudsters won't be stopped by a rule. And, the tougher the rule, the more collateral damage is caused to legitimate businesses and their investors.

3. Being a market maker in inactive OTC stocks is already marginally profitable for honest brokers. If compliance becomes more difficult, OTC Markets may lose market makers, and the markets would become less liquid.

4. Since there are many open questions regarding the exact terms of the current proposal (such as whether publication of information on the issuers own website can satisfy the rule) there should be a new comment period once a final form of a proposed rule is formulated.

Very truly yours,

James E. Mitchell

James E. Mitchell
General Partner

Cc: Commissioner Hester M. Pierce
Commissioner Robert L. Jackson, Jr.
Commissioner Elad L. Roisman
Commissioner Allison H. Lee