SUBJECT FILE NUMBER S7-14-19
VIA ELECTRONIC SUBMISSION

Thank you for the opportunity to comment on File No. S7-14-19. I am a professional money manager and my firm manages money for high net worth individuals. We use a "buy and hold" approach and apply a Graham and Dodd valuation methodology to seek out securities that are cheap relative to their intrinsic value. In other words, we actually look at the financial statements in order to make investment decisions. Our firm has been active in investing in OTC securities since our founding in 1982. Over the course of my career, I've served as a Floor Official on the Pacific Options Exchange as a member of the Floor Trading Committee and on the Pacific Exchange Ethics and Business Conduct Committee. I concluded a term in 2013 as a FINRA District Committee Member representing District One, and I have volunteered for the same role beginning in 2020. I am also a CFA charterholder and a member of the San Francisco CFA Society.

It is my professional opinion that the amendments being proposed to 17 CFR 240.15c2-11 will NOT reduce fraud and manipulation. The proposed amendment presumes that "pump and dumps" primarily occur in securities where there is no current information. While perhaps a factor in some of these situations, it is not nearly as important as other factors that are nearly always present. Generally speaking, these schemes can typically be characterized as focused in securities of companies in "hot" sectors that appeal to unsophisticated investors. A recent example would include cannabis and crypto-currency schemes. The promoters put out a constant stream of press releases and promotional emails/announcements implying large, quick profits designed to create a "fear of missing out." The lack of current financial statements is not the problem here -- but rather too much "mis-information" that overstates the reward potential, while understating the risk of investing in companies lacking tangible assets and revenues. This proposed amendment doesn't directly target this sector.

The goal of this comment letter is for the Commission to understand two important things:

1) The Commission needs to understand that there are legitimate companies with real businesses having significant value, that are owned by sophisticated and disciplined investors, who will be adversely affected if the current proposals are adopted.

2) The Commission also needs to understand that the current proposals would assist unscrupulous manipulators in making money at the expense of shareholders. Suppressing the market for some of these securities will give majority shareholders more leverage in taking advantage of minority shareholders.

POINT #1 Markets of legitimate companies and their investors will be adversely affected.

It is acknowledged that many of the securities that trade OTC are probably not suitable for investment, either by retail or institutional investors, young or old, rich or poor. The same could be said for many listed securities and “pre-IPO unicorns” - but that isn’t the focus of this letter. All markets involve risk. However, there are many legitimate companies listed OTC that have substantial value. Generally speaking, these legitimate companies share the following characteristics:

- They have a majority owner or founding family that is focused on running and operating the underlying business, not promoting their stock to interested investors so they can exit the investment as new investors buy in.

- Typically these businesses have a small market cap, with a smaller available trading float. They previously recognized little value or financial benefit from being listed on an exchange and were overly burdened by the significant costs of being an SEC Registrant.

- These companies often have no plans to access new capital from Wall Street, and instead rely on their operating business to generate cash flow and earnings that are reinvested into the business for the benefit of all shareholders. What a novel concept!

- Some of these businesses never went public in an IPO. The market for their shares has emerged over time on the OTC Market as the ownership has dispersed over several generations. Some of these businesses made the strategic decision to de-register from the SEC in order to save money and generate more earnings for their shareholders.

- Many of these companies do not seek out recognition by investors or analysts, and it is ironic that their shareholders would be harmed by a well-intentioned (but largely misguided initiative) to prevent “pump and dumps.” These companies comply with the state laws that they are incorporated in, report annually to their shareholders and take their fiduciary duty to shareholders seriously. JG Boswell (BWEL), National Stock Yards (NSYC) and Boston Sand and Gravel (BSND) would fit this category.

The current OTC listing structure allows for buyers and sellers to transact in these securities by quoting depth and pricing. This transparency has created a pricing mechanism and limited market place that allows investors to acquire or dispose of shares in stocks that would otherwise be very difficult to transact in. OTC Markets has done an exceptional job in classifying these securities by creating tiers designed to inform prospective and current investors. Regulators have already sufficiently conveyed to the public that this is a “buyer beware” environment. This is NOT a broken market in need of a fix.

What will happen to these securities under your proposals? I believe they would be traded on the equivalent of the “grey market” and there would no longer be posted bids and offers, just last trades. This is a step backwards and will hurt many more investors (and their pocket books) than you are trying to protect. The frictional cost of executing transactions will rise. Transparency of market depth will decline. Valuations will decline. Investors in these securities and issuers alike (that have nothing to do with “pump and dumps”) will be adversely, and unfairly, affected.

POINT #2 The current proposal would disadvantage minority shareholders.

Pump and Dumps are not the only way for shareholders to be cheated, it is just one way. Another way to steal money from shareholders is to suppress information that shareholders are legitimately entitled to and then acquire the remaining shares at an unfair price. Here is the step by step playbook:

> Step One: Use outdated definition of “record holder” to define how many shareholders a corporation has. In calculating the number of shareholders, ignore all of the individual investors who hold shares in street name. (Even when holding shares in street name is actively promoted by the DTC’s Dematerialization Program.) Use this artificially low number to deregister from SEC reporting.
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> Step Two: Limit information given to shareholders or make accessing that information difficult.
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> Step Three: Take steps to make the marketability of your stock as restrictive as possible.
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> Step Four: Use buybacks, private placements, reverse stock splits, and eventually short form mergers to squeeze out minority shareholders at unfair prices.

If the SEC adopts this new rule proposal it would be aiding in the entire process described above. For many structural reasons, the OTC Market does not price securities as efficiently as national exchanges do. Yet fairness opinions used in short form mergers, tenders, and reverse stock splits often anchor to these inefficient prices.

Has the Commission considered how this would affect orphaned preferred securities? In the prospectuses of many preferred securities that once traded on a national securities exchange, it is allowable for private companies to acquire the common equity but leave the preferred stock outstanding. This happened in American Land Lease, LBA Realty, W2007 Grace Acquisition and many other preferred stocks. The rights and privileges of the preferred remain intact, but there is no financial reporting by the parent company. The parent company has a financial obligation to the preferred shareholder, but does not adopt a fiduciary obligation to the preferred shareholder. The difference between the two is very important. The common is cashed out, but the preferred is left to fend for itself on the OTC Markets. The preferred shareholders are typically risk averse, but have essentially been left stranded in a risky asset that can no longer be analyzed and now trades at a large valuation discount on the OTC Market. Under this amendment, is the Commission deciding that these shareholders, who hold valuable and credit worthy securities that may have been initially purchased on a public exchange, should be “protected” from a pump and dump scam? And is the best form of “protection” the Commission can deliver to eliminate a quotation for their security?

Absent an abandonment of this entire flawed initiative, I also would support the OTC Markets proposal of an “Expert Market” for these securities. I agree with a prior comment that perhaps some securities should be “grand-fathered in.”

I can’t really imagine a reputable broker or brokerage firm would solicit retail (or institutional) buy orders in a company that is subject to a pump and dump. I can’t imagine that a reputable and professionally managed Registered Investment Adviser would advise clients to buy into a pump and dump either. Unsophisticated retail investors submitting <u>unsolicited</u> trades through a discount brokerage firm are the ones that are most likely getting hurt in pump and dump scams. These investors have decided that they want to pick their own stocks. They have decided that they don’t want to pay for advice or investment guidance. Many individual retail investors manage their own money and do exceptionally well and are exceptional investors and analysts. But I think in this case we are talking about a certain subset of special individuals here: These are the investors that can’t spot the patsy at the table. These are the people that don’t care about financial statements and instead rely on “chat rooms” and “message boards” to guide their investment decisions. In this game of roulette, in the rare case that the investor wins he or she attributes this to skill and intelligence. However, when he or she loses, they attribute it to market manipulation, short sellers, bad timing, etc. Why should legitimate companies and their investors be penalized because discount brokers abdicate all responsibility when accepting an unsolicited trade? If a discount broker can’t establish a process or recognize this pattern in a client, perhaps they shouldn’t accept unsolicited orders in OTC securities from that client. Alternatively, I believe that if discount brokers only allowed unsolicited retail orders from account holders that provided proof of accreditation, the amount of pump and dumps would decline dramatically.

Lastly, If the SEC suspects a pump and dump scheme, why can’t the SEC go after the broker and the firm that facilitated the orders and the account holder and individuals that orchestrated and conceived of the pump and dump directly? Why alter an entire market landscape versus simply seeking better, more focused enforcement against bad actors?

As drafted, the proposed amendment will not solve the current problem and will create an entirely new set of problems. Market pricing transparency and market depth should be encouraged, not eliminated.

Sincerely,

Joe Helmer, CFA