



December 30th, 2009

Securities and Exchange Commission
Att.: Vanessa Countryman, Secretary
100 – F Street NE
Washington DC. 20549-0609

Re.: File # S7-14-19
Submission of Comments on Proposed Changes to Rule 15c2-11

Dear Ms. Countryman:

We at Coral Capital Partners very much appreciate the opportunity to provide comments to the SEC concerning the proposed changes to Rule 15c2-11. The opportunity to provide comments to the Commission is a tremendous opportunity that we are grateful for, and take very seriously.

Coral Capital Partners is an independent consulting and advisory services firm that provided services to both privately held and publicly traded companies. We very much appreciate the opportunity to comment on the proposed changes to Rule 15c2-11. Since our founding in 1995, we have advised numerous companies on the preparation of their disclosure statements pursuant to Rule 15c2-11, and many more companies in maintaining current information as defined by the various SEC rules and regulations.

Our activities have allowed us to interact with broker/dealers, publicly traded and privately held companies, law firms, and accounting firms, virtually every type of entity or individual affected by the proposed changes to Rule 15c2-11. We have encountered countless hard working and honest individuals, as well as several bad actors while providing these services. However, the vast majority have been honest individuals, working hard to try to make their companies successful.

Based upon our general familiarity with the process of requesting comments on proposed new regulations, we felt our perspective might be different from the typical submission. As a result, we would like to take this opportunity to provide the following comments to the proposed changes to Rule 15c2-11. Please note that we reserve the right to amend these comments in the event that an extension is granted to the comment period.

In general, we believe that the proposed changes to Rule 15c2-11 contained within Release # 34-87115 (the "Release"); File # S7-14-19 are too broad and expansive. This is a significant rewriting of Rule 15c2-11, which to our understanding has been many years in the works. However, we have concerns that extensive nature of the changes proposed to Rule 15c2-11 and the limited amount time to respond, actually reduce the number of comments and hurts their overall quality. Release 34-87115 is 228 pages in length. It is one thing for a very large broker/dealer with a significant legal staff to provide comments to a proposed rule change such as this, or a large



law firm with hundreds of attorneys to provide comments within a sixty (60) day time frame. However those firms do not provide services to participants (issuers and shareholders) in OTC securities. The firms that typically provide services to participants in OTC securities are typically smaller broker/dealers, law firms, and other forms of advisors. It is extremely difficult and burdensome for small firms to review a release of this length and provide comments within a sixty (60) day deadline. What happens is many participants miss the announcement and are unaware that the proposed rule changes have been published; and due to the size of the Release they are either intimidated by its size and do not read, or simply do not have time to comment on all areas of the Release. This is a disservice to our securities markets, and the capital formation process of the US economy.

Additionally, we believe that the proposed changes do not adequately address other regulatory and market based reforms that already impact the market¹, or have the potential to impact the market² with a significantly lower regulatory burden.

We believe that it would be in the best interest of all parties if the Commission abandoned the changes to Rule 15c2-11 as proposed in Release # 37-87115. We believe that it is in the best interested of all involved if the proposed changes contained within Release # 34-87115 were split into several smaller releases and proposed changes³. This would allow the various proposals contained within Release # 37-87115 to receive the proper attention and discussion that they deserve. We believe that this would be a much more efficient and effective manner of achieving meaningful market reform, while reducing the possibility of negative unintended consequences that could prove very damaging to the market and take many years to correct.

Overview of the Proposed Changes

We believe that one of the principal attractions and benefits of the US securities markets is their liquidity and the availability of current and relevant information concerning the securities that are traded on these various markets. It is important to understand that the various securities

¹ Recent AML enforcement action brought by the SEC against several major clearing firms have virtually eliminated the ability of small and medium sized investors/shareholders to deposit shares of stock under \$5.00/share in price into their brokerage accounts. Additionally it is now extremely difficult for investors to deposit certificates of OTC companies that they may have held for decades even if they purchased those shares in an open market transaction through a broker/dealer and simply took possession of their shares in certificate form.

² It is our opinion that many of the improvements to the OTC market that the SEC is seeking could be accomplished through changes in the way that OTC Markets displays information on companies that utilize its disclosure service.

³ We believe that the proposed changes to Rule 15c2-11 should be separated into their various individual segments, and prioritized for release. The 1st proposed rule change should be released for comments and voted upon. If approved, then there should be a reasonable period of time, not less than two (2) years to determine the effectiveness of the changes before the next set of proposed changes are submitted for comments.



exchange and markets serve a variety of functions including price discovery and as a mechanism for the dissemination of information concerning the securities traded on these exchanges and markets.

We believe that it is very important to understand that the participants in the securities markets⁴ are widely varied and not all the same. In broad terms the participants in the markets include the following:

- **Broker/dealers:** This includes broker/dealers of all sizes from the largest to the smallest
- **Market Makers:** This is further subdivided into retail and wholesale market makers.
- **Investment Banks:** Broker/dealers that raise money for, and advise Issuers of Securities
- **Issuers of securities:** The companies that issue securities to be traded in the securities markets.
- **Individual shareholders:** Shareholders who are not institutional shareholders.
- **Institutional shareholders:** Shareholders that manage money for other investors.

It is important to note that there are a variety of other service providers and that allow for a securities market to function. This may include various information dissemination services, quotation, and trade execution services.

It is important to note that not every member of the above list market participant categories are created equal or have the same objectives and goals.

The Individual Shareholder category is easily further subdivided into categories of short and long term investors, as well as speculators others who are only interested in various trading opportunities. It is unwise to assume that these subcategories of Individual Shareholders all have the same level of knowledge, education, or risk tolerance. Furthermore the variety of investment objectives contained within even a single subcategory is most likely highly varied. Very simply put, not every shareholder has the same investment goals, objectives or time frame.

It should also be noted that the Market Maker category includes market makers who service retail investors (“*retail market makers*”), and those who service only broker/dealers (“*wholesale market makers*”). These two (2) different types of securities firms serve vastly different types of customers⁵. It is unrealistic to expect a wholesale market maker to conduct a full information review pursuant to Rule 15c2-11 prior to entering the market for a particular security. It is also unrealistic to expect wholesale market makers to continually monitor all the issues they trade to determine if they are current in the information disclosure requirements. The proposed changes to

⁴ For purposes of discussion going forward “securities markets” shall be deemed to refer to both the Over the Counter (OTC) Market as well as the various US securities exchanges.

⁵ A discussion of the various types of customers and their objectives, as well as the various functions/services provided to the markets by the different type of market makers could fill several books.



Rule 15c2-11 would dramatically reduce the number of wholesale market makers in OTC securities.

We do not believe that the proposed changes to Rule 15c2-11 adequately acknowledge the differences among the various participants in the securities markets. It is our belief, that while well intended, the proposed changes to Rule 15c2-11 will effectively end the Over the Counter (OTC) market for domestic securities, in the process destroying market liquidity, and dramatically reduce the number of broker/dealers that make markets in OTC securities.

The Commission states in the Release that one of its stated goals is to combat and reduce the number of Pump & Dump frauds being perpetrated on the OTC market. The approach being taken is very heavy handed, and will unfairly punish scores of legitimate companies with no evidence that it will stop any pump & dump fraud we are familiar with. We believe that the proposed changes to Rule 15c2-11 completely fail to address the issues related to selling of massive amounts of securities into the market through toxic financings⁶. We are not convinced that the proposed changes will have a meaningful impact on combatting the problem of securities being promoted and then large numbers of shares being dumped into the market. However we do believe that recent changes at the clearing firm level, and in other areas of market regulation are in the process of, and have already had a noticeable impact on these activities.

In the Release, the Commission enters into a discussion of the number of broker/dealers that make markets in OTC securities. While it states that the number of broker/dealers that filed 15c2-11 disclosure documents in the last year was 39, we believe that this number is misleading. The vast majority of these firms file 15c2-11 application for the initiation of trading in foreign securities. In 2017, we conducted an extensive review of the additions to the OTC market through the information supplied on the FINRA OTC Daily list⁷. Approximately 90% of the securities approved for trading were foreign securities that were already listed on a foreign exchange. That left approximately 10% of the issuers approved for trading on the OTC market being domestic issuers, as defined as those companies that were incorporated in the United States. However it did not exclude those companies that were incorporated in the US, but whose operations were outside the United States. It was very easy to identify the broker/dealers that were primarily responsible for filing 15c2-11 application on the securities of domestic issuers.

Our research indicated that there were four (4) broker/dealers that filed 15c2-11 applications for the majority of these domestic issuers. Since then, three of these broker/dealers have ceased filing 15c2-11 applications. There is effectively one (1) broker/dealer left in the United States that is willing to file a 15c2-11 application for a domestic issuer. We are of the opinion that market is structurally broken for a domestic company to have a 15c2-11 filed on its behalf by a broker/dealer. It has evolved into an extremely onerous and high risk process for a broker/dealer, for which it has very limited prospects from which it can profit. Broker/dealers are

⁶ For more information on the issues related to Toxic Financings, please see: <http://coralcapital.com/toxic-financing-explained/>

⁷ <https://otce.finra.org/otce/dailyList>



not allowed to charge a fee for filing a 15c2-11 on behalf of an issuer; and the broker/dealer has enormous regulatory risk for the information disclosed and the market making process. It worth noting that the number of broker/dealers registered with FINRA is down dramatically since 2007, and the number of firms making markets has declined severely since then.

We believe that the process for submission of a 15c2-11 should be reformed to allow an easier path for domestic issuers to become publicly traded. We believe that free market competition is the best path for achieving this goal. This would include allowing broker/dealers to charge a fee for filing a 15c2-11.

Greater Information Availability

As a matter of principal we support all efforts to increase information availability and transparency. This includes access to historical data that may be contained in various information repositories including OTC Marktes, Inc. and FINRA. We believe that historical 15c2-11 information in the possession of FINRA should be made available to the public via. an information database similar to the SEC's EDGAR system. Additionally, we would like to see the inclusion on information received pursuant to FINRA Rule 6420 added to this repository.

Piggy Back Exemption

We believe that the piggyback exemption is an important and integral part of the functioning of the OTC market, and should be preserved. It is important to note that the OTC market is very complex and dynamic, and subject to constant changes. In that respect, it is also worth noting that not all broker/dealers are the same; and that the function of wholesale market makers is different than retail market makers. It is not entirely clear why a wholesale market maker should be subject to the same information requirements of a retail market maker; as there may be a better and more effective way of preventing fraud and market manipulation.

We believe that the piggyback exemption should be expanded to improve the capital formation process by allowing for companies that are fully reporting and current in their filing requirements, and already have common shares that are piggyback qualified to have securities, such as subscription rights, units, and warrants issued in a Regulation A offering or through a Registered offering be automatically piggyback qualified. This would be in addition to the exemption provided to underwritten securities and allow for more companies to undertake self-underwritten capital raises. Our work indicates that more companies are electing to pursue Subscription Rights offerings, and not all of them elect to retain a broker/dealer to assist in the process.

We believe that many of the anti-fraud goals being pursued by restricting the piggyback exemption are already being accomplished through other regulator changes, and as a result the negative impact from the proposed changes would far outweigh any benefits. We would like to note that the most significant change has been the recent enforcement actions concerning



Suspicious Activity Reports (SARs), which have resulted in severe restrictions in the types of securities that deposited into brokerage accounts and sold into the market.

Underwriting Exemption

As noted in answers to the questions asked in the Release, we support the creation of the Underwriting Exemption. We believe it should be broadened to include subscription rights, units, and warrants, as we believe this will further enhance the capital formation process. Additionally, we believe it should be broadened to allow other market makers beside the underwriter to make markets in the included securities, as this will improve market liquidity and the capital formation process.

IDQS / ATS Exceptions

We support the Commission's efforts to broaden the number and types of entities that can conduct the information review and make a determination as to an issuer's qualification. We believe that this will ultimately create competition that will improve the overall process.

Additionally, in order to increase competition among broker/dealers that make markets and submit 15c2-11 disclosure packages, we believe that broker/dealers should be able to charge a fee for review of and filing of a 15c2-11 on behalf of an issuer. It is our belief that a qualified IDQS or ATS will ultimately charge some form of a fee for this service, and that market makers should be allowed to do the same. It is our belief that competition will limit the level of fee that a broker/dealer will be able to charge. Additionally, we believe the FINRA exam process will limit any potential abuses related to charging of a fee to file a 15c2-11.

Intended Objectives

We would like to take this opportunity to comment on the intended objectives of the Commission stated within the release. In general we support all of the objectives as stated by the Commission, as we believe improving the availability of information, and the efficiency of markets is and should be a key goal of any regulatory changes.

We believe that it is important that the integrity of the OTC market is maintained. However we disagree with the idea that limiting the ability to publish quotes is the best method of preserving this integrity. We are deeply concerned that this will dramatically increase risk associated with OTC securities. Furthermore, we see several scenarios where bad actors devise methods of getting around the proposed changes, and due to the reduction in the number of securities traded on the OTC market, they have a better chance of selling shares to unsuspecting investors. We believe the best path for improving the integrity of the OTC market is through increased information availability, investor education, enforcement of existing regulations, and allowing a security that is tradable to remain trading until such time as the market determines it is no longer worth trading. We believe that this is what will encourage investors to participate in the capital formation process, and improve the ability of companies to raise capital.



Starting with the JOBS act, there have been several very significant regulator changes that effect the OTC market. The ability of reporting issuers to raise capital through the Regulation A process, and other regulatory changes is resulting in significant changes to the OTC market. We are of the opinion that the proposed changes to Rule 15c2-11 do not fully take these changes into account. As a result, we are concerned that the proposed changes, while well intentioned, will dramatically set back recent efforts to improve the capital formation process. While it would be nice if every public company traded on a national stock exchange, the fact is that has never been the status of our public markets, and there probably never be a situation where only exchange listed securities are the only ones to trade. There is a process through Regulation A and Registered offerings where tradable shares are created as a means of providing investor liquidity, and market for those shares should be available.

Combatting Pump & Dump Schemes

We do not believe that the proposed changes will be effective in combatting pump & dump schemes. We believe that they will have an extremely detrimental impact on the market, and capital formation without the intended effect of reducing fraud. Of the pump & dump schemes that we are aware⁸ of, or have knowledge on their workings⁹, none of them would have been prevented by the proposed changes to Rule 15c2-11. The bad actors who perpetrate these schemes will find ways to work around the new rules and continue with their illegal activities.

It is our belief that there have been significant changes¹⁰ to the OTC market in the last couple of years that are already having a great impact in combatting pump & dump schemes. These changes are primarily centered around the ability of shareholders to deposit shares of OTC securities into their brokerage accounts. It is our understanding that it is now virtually impossible to deposit OTC securities below \$5.00 per share in price. In a recent FBI sting operation, the shareholders attempting to dump their shares were ensnared by an FBI agent who promised he could deposit their shares into his overseas account because the bad actors could not find a domestic broker/dealer willing to accept their shares. Yet, it is doubtful that the proposed changes to Rule 15c2-11 would have stopped these individuals from their attempted scheme.

⁸ Coral Capital Partners publishes a blog on administrative actions and litigation undertaken by the SEC in combatting securities fraud. As a result we review a significant number of these actions every year.

⁹ Coral Capital Partners spent several years litigating against Sun River Energy, Inc. which was attempting to manipulate the market for its securities in order to maintain an artificially high price so that only company management could sell their shares into the market. The proposed changes to Rule 15c2-11 would not have caught or stopped their activity.

¹⁰ These changes have primarily occurred through regulator actions against clearing firms such as COR Securities, and Merrill Lynch regarding the filing of Suspicious Activity Reports (SARS) and the acceptance of low priced OTC Securities.



It is our belief that one of the biggest threats to investors who trade, or invest in OTC securities are the toxic funding agreements¹¹ that companies desperate for capital enter into. In order for a company to enter into a toxic funding agreement and pay back the money owed, trading volume must be generated in order for there to be buyers for the shares created by the debt conversion. As part of our consulting services, we have looked at numerous companies that started out with approximately 25 million shares issued and outstanding, and through the debt conversions associated with a toxic funding agreements saw their number of shares issued and outstanding balloon to several billion shares. Even though the share price of these companies eventually declines, there is still a form of pump going on in order for the toxic lenders to dump the shares they receive from converting their debt to equity. It is our opinion that this is a greater threat to the market than the classic pump & dump, and nothing in the proposed changes to Rule 15c2-11 does anything to combat this issue. **We are of the opinion that the best way to combat the toxic funding epidemic is to make it easier for broker/dealers to raise capital for companies.**

Anticipated Consequences

Loss of Market Makers

It is our belief that the proposed changes to Rule 15c2-11 will result in a dramatic reduction in the number of firms that make markets in OTC securities. There are currently eight-nine (89) broker/dealers that act as market makers for OTC securities. The proposed changes will dramatically increase the cost associated with making a market in all OTC securities, while at the same time reduce the number of investors and other parties that are able to trade these securities. This will naturally reduce the number of firms that are willing to make markets in OTC securities, as increasing costs and competition¹² reduce the profitability of being a market maker. This will reduce the number of market makers.

The Release states that approximately 39 market makers filed 15c2-11 applications during the relevant time period. Our research indicates that there were only four (4) firms filing applications for domestic companies on a regular basis; and three (3) of those firms have ceased filing 15c2-11 applications, leaving only one (1) broker/dealer filing applications for domestic companies. If that broker/dealer were to cease filing applications for domestic corporations, there would not be any broker/dealer in a position to facilitate new domestic companies, or those who have undergone any form of a merger, in joining the list of publicly traded companies on the OTC market¹³. The remaining broker/dealers that file 15c2-11 applications appear to be primarily doing so for foreign listed securities.

¹¹ For a definition of Toxic Funding, please see: <http://coralcapital.com/toxic-financing-explained/>

¹² It is our opinion that reducing the number of OTC securities to trade will increase the competition among market makers for trading shares of the remaining OTC companies. This will have a negative impact on their profitability.

¹³ It should be noted that a major portion of how the SEC envisions the OTC market functioning following the adoption of the proposed rule changes is based upon there being a sufficient number of market makers that facilitate



It is our belief that the proposed changes to Rule 15c2-11 have a strong probability of dramatically reducing the number of broker/dealers who make markets in OTC securities, in the process dramatically reducing the number of domestic companies trading on the OTC market, and essentially turning the OTC market into primarily a market for foreign companies.

We believe that any proposed reform to the 15c2-11 process should look at ways to increase the number of firms that make markets in OTC securities, eases the path for domestic companies to trade on the OTC market, and increases liquidity in OTC securities.

Damage to Capital Formation

We believe that the proposed changes to Rule 15c2-11 will dramatically damage the capital formation process for small companies. It is well understood that all smart investors have a reasonable understanding on how they will get their money back from an investment that they make. This can be accomplished through a variety of means including dividends, sale of the company including a merger or acquisition, as well as the public markets. The proposed changes to Rule 15c2-11 will dramatically alter these possibilities and thus increase the risk of investing in companies that trade on the OTC market. This by its very nature will hurt capital formation. This will happen for a variety of reasons.

The proposed changes to Rule 15c2-11 contain many provisions that would quickly downgrade many companies to the Grey Market, and subject all companies to the ongoing risk of being downgraded to the Grey Market for a variety of reasons. For any company that has ever been downgraded to the Grey Market, the process of recovering to full OTC market trading is a very time consuming and expensive process. The cost associated with this process can easily exceed a \$100,000 and the time required can easily stretch to two (2) years. Many small companies cannot survive this process. As a result, very few private or public investors, if any, will be willing to invest in Grey Market companies. While a goal of the proposed changes may be to keep public investors out Grey Market companies, it would also keep private investors from investing money into these companies so they could regain their listing.

Investors will be reluctant to invest in the shares of companies that trade on the OTC market if there is a possibility that a company could be downgraded to the Grey Market by falling two (2) quarters behind in its public disclosure requirements. This will impact those who would purchase the shares of these companies in the open market through their brokerage accounts, as well as those who would invest privately in these companies. Instead of having a reasonable expectation¹⁴ of when they would be able to sell their shares and recover their money, they face the possibility of

the filing of 15c2-11 applications. This seems to be at odds with current market trends.

¹⁴ For those who acquire shares in the open market, they can always place sell orders and look to liquidate, which may take a while with thinly traded securities. For private investors there is an expectation of being able to sell pursuant to an exemption from registration such as Rule 144 or 4(a)(1) with holding periods of six months and 1 year respectively.



indefinite holding periods and never getting their money back. This will result in lower valuation multiples for companies trading on the OTC market, and not only hurt the terms at which private investors are willing to invest, it will also reduce the number of private investors willing to invest in these companies.

The proposed changes will hurt the ability of companies that have fallen behind in their public disclosure to catch up and become current in their public disclosure. Once a company were to become late in its disclosure requirements, access to additional capital would disappear. No rational investor would want to accept the risk of the company being downgraded to the Grey Market and their not being able to recover their investment.

Up Listing to Exchanges

Every month companies approved for listing on a major US stock exchange from the OTC market. These companies are viewed as having “graduated” to an exchange listing. The benefits of listing on a stock exchange are numerous and significant, including an easier ability to raise capital. The proposed changes to Rule 15c2-11 will reduce the number of companies able to graduate their listing to a stock exchange. This will hurt the overall capital formation process, and will occur for a couple of reasons.

We believe that the proposed changes to Rule 15c2-11 will hurt the valuation multiples for OTC securities. This will result in lower share prices, and lower trading volumes for OTC companies, and thus make it substantially more difficult to meet the listing standards of the various stock exchanges.

In some instances, companies that are seeking to graduate to an exchange listing raise additional capital in order to meet the listing qualifications. They may raise this capital privately, or through a public offering. There may be instances where they seek a conditional approval subject to the completion of a capital raise. We believe for reasons discussed previously, the proposed changes to Rule 15c2-11 will hurt the ability of OTC companies to raise capital and thus significantly reduce the number of companies able to graduate to an exchange listing.

It is beneficial to the US economy, and stock market investors for companies to graduate to an exchange listing where they have an easier ability to raise capital for growth and expansion. Our securities regulations are designed to encourage this growth path of small companies. We do not believe that these proposed changes are consistent with those goals. Whereas some of the proposed changes may be beneficial, we believe that they come with a heavy price and could be accomplished more effectively by other means.

In the Alternative

We are firm believers in the US capital markets. We believe that they are the best in the world, especially in terms of liquidity, transparency, and investor protection. We also believe that the access to capital has allowed the US economy to be the best, largest, and most successful in



the world. It is an undisputed fact that the greatest product innovation and jobs growth comes from small companies that are able to grow into larger companies. Accessing capital and the public markets is a key and integral part of this growth path. While clearly not a path taken by every company that has grown from small to big, we recognize that many successful companies have completed reverse mergers in order to become public, and then access the capital markets.

It is our belief that a majority of the problems associated with Reverse Mergers are a result of the reverse merger process somewhat being frowned upon. This has the effect of allowing unscrupulous parties to seem legitimate when they are not. One of the biggest source of problems with reverse mergers is the quality of the public company being merged into. We would like to propose a solution to this problem that improves transparency and cleans up the problems concerning shell companies.

Our proposal is to create an exemption for shell companies that allows for full disclosure of shell company status without any penalty; and allows for a period of time to become fully reporting and seek a merger.

Questions in the Proposal

Our format for providing responses to questions contained within the Release is to provide the text of the question and our response to that question below. In order to aid in reading our responses, we provided them in **Blue Text**.

Proposed Amendments to Information Review Requirement

Require Current & Publicly Available Information

Q1. *Should the proposed Rule allow other entities besides a broker/dealer or qualified IDQS to comply with the information review requirement ? Why or why not ?*

Reply to Question # 1: We believe that as part of the process of modernizing Rule 15c2-11 entities other than a broker/dealer or a qualified IDQS should be able to comply with the information review requirement.

Q2. *Should proposed paragraph (b) information meet the definition of “publicly available” if, for example, access to such information requires payment of a fee or registration and provision of customer data to be allowed access to such information? Are there any other potential barriers to accessibility that the Commission should address? If so, what are they and how should the Commission address them in this rulemaking?*

Reply to Question # 2: We believe that the term publicly available should refer to information that may be received without charge via. the internet or upon request via. email. We do not believe that it is appropriate to require a member of the public to pay a fee to receive publicly available information unless a hard copy is being requested.



General

Q3. *Should the requirement to obtain current reports filed by a reporting issuer be less than, or more than, the three days as proposed in proposed paragraph (b)(3)? Why or why not? What would be the appropriate number of days for a broker-dealer or qualified IDQS to obtain current reports in advance of publishing or submitting a quotation or submitting paragraph (b)(3) information to a registered national securities association? Should the requirement to obtain current reports include reports furnished to, rather than solely filed with, the Commission?*

Reply to Question # 3: We believe that a broker/dealer should be able to publish quotes the same day it receives current information on a security, or is aware that information is available such as through OTC Markets or the Edgar system. We do not see a valid reason why a broker/dealer should need to wait three (3) days to publish quotes.

Q5. *Are there any data privacy concerns the Commission should address with regard to issuers' proposed paragraph (b) information being made publicly available by someone other than the issuer? Please give examples of any concerns and how the Commission might address them in this rulemaking.*

Reply to Question # 5: It is our belief that the paragraph 5 information should be available to the public upon request. However, we realize that information contained within the shareholder list is generally contains personal information that should remain private.

Q6. *Are there any circumstances where proposed paragraph (b) information is unnecessary for an investor to be able to make an informed investment decision? What are they?*

Reply to Question # 6: Yes, there are circumstances where paragraph (b) information is unnecessary. For example, an investor who is already a shareholder may not need access to, or care about the information in paragraph (b) if the price has risen and they are considering selling the shares they own in order to realize a profit. Additionally, traders who are short term focused or speculators¹⁵ may not care about paragraph (b) information.

Q8. *A person may violate the antifraud provisions of the securities laws by knowingly or recklessly disseminating, publishing, or republishing false or misleading information. This may include publicly available information (such as proposed paragraph (b) information), if the person knew, or was reckless in not knowing, that the information was materially false or misleading and nevertheless used that information to establish or maintain a quoted market for a security. Are there other alternatives, or additional or different approaches, that the Commission should adopt as a means reasonably designed to prevent persons from knowingly or recklessly using false*

¹⁵ It should be noted that short term traders and speculators have the same legal rights to participate in the market as longer term investors, and just because their time horizon is shorter, or they utilize different methods for evaluating a security, they should not be treated as second class shareholders.



information published or provided by another person to establish a quoted market for an OTC security? Commenters are invited to comment regarding any additional actions the Commission could take to further preserve the integrity of the OTC market.

Reply to Question # 8: By its very nature this is a difficult area to police, as it essentially involves deterring and detecting lies. We believe the best approach is through a combination of public education on understanding how the markets operate as well as education on the penalties for spreading false information.

Q9. *Should proposed paragraph (b)(5) also require the ticker symbol of the security being quoted?*

Reply to Question # 9: Yes, and the CUSIP #.

Q10. *Currently, paragraph (a)(5)(ii) requires the address of the issuer's principal executive offices. Should proposed subparagraph (b)(5)(ii) also require the address of the issuer's principal place of business if that address differs from the address of the issuer's principal executive offices?*

Reply to Question # 10: Yes

Q11. *Should proposed subparagraph (b)(5)(xi) require additional information to help accurately identify individuals listed in proposed subparagraph (b)(5)(xi), such as job title? Why or why not?*

Reply to Question # 11: Yes. It provides a better understanding of the roles of the people involved in the company.

Q17. *Are there ways to reduce the administrative burdens associated with the proposed Rule? In particular, are there changes to proposed paragraph (b)(5)(xii) that would ease compliance with the proposed Rule without minimizing investor protection? If so, please explain.*

Reply to Question # 17: We believe that the regulatory burden associated with the proposed changes to the Rule have been grossly understated. It is our belief that the proposed Rule changes will result in a crushing regulatory burden that will have a dramatically negative impact on the number of market makers making markets in OTC securities, resulting in a significant reduction in the number of market makers. Additionally, we believe the proposed changes to the Rule will have a dramatically negative impact on the issuers of OTC securities.

Q18. *Are there more streamlined requirements that could be used in the proposed Rule? In particular, could the financial statement requirements in proposed paragraph (b)(5)(xii) be simplified while remaining consistent with the Rule's objective? Should the timing requirements associated with the financial statements included in proposed paragraph (b)(5)(xii) be simplified*



(e.g., all financial statements must be “as of” a date within 12 calendar months before the publication or submission of a broker-dealer’s quotation)? If so, please explain.

Reply to Question # 18: We believe that a more streamlined and more market based¹⁶ approach to the proposed Rule would be as follows: A) Allow OTC Markets to determine if an Issuer is supplying current information, and B) Leave the current Piggy Back Exemption unchanged, and C) have a date as of within 12 calendar months.

Q19. *How, and to what extent, would these proposed amendments affect liquidity, transparency, and capital formation, particularly for small issuers?*

Reply to Question # 19: It is our belief that the proposed Rules will crush capital formation and liquidity for small issuers. It is our belief that the current SEC reporting requirements, and the alternative reporting disclosure provided by OTC Markets is very successful in providing transparency. It is our belief that the management of OTC Markets has been successful in adapting their system to reflect the changing requirements for appropriate public disclosure, and that they will continue to be successful in adding additional disclosure items¹⁷ to address the needs of OTC securities holders.

Supplemental Information for IDQS

Q21. *Currently, paragraph (b)(3) of the Rule requires that a broker-dealer submitting or publishing a quotation have in its records documents and information regarding material information (including adverse information) regarding the issuer which comes to the broker dealer’s knowledge or possession before the initial publication or submission of the quotation. We seek comment concerning the type of such information that most often falls within this existing paragraph and frequency of such occurrences.*

Reply to Question # 21: We are not even sure that this is still relevant given the current market structure. It is our opinion that as market making has become separated from retail brokerage this has lost its relevance.

Q22. *Should proposed paragraph (c) require that a broker-dealer or qualified IDQS, affirmatively seek additional information about the issuer? Please explain. Should proposed paragraph (c)(3) use the terms “actual knowledge” or “physical possession” instead of the terms “knowledge or possession”? Please explain.*

¹⁶ With respects to the use of the term “market based approach” in this context we are referring to allowing competition among various information disclosure services such as OTC Markets, Inc., as well as other potential competitors to OTC Markets, to determine if an Issuer has current information.

¹⁷ Fore Example: OTC Markets as part of its current information disclosure for alternative reporting issuers could add a “Toxic Funding” certification and provide investors with a “Toxic Funding” warning on issuers it identifies as having toxic fundings or those that do not provide the proper certification.



Reply to Question # 22: No, an over aggressive interpretation of the Rule would effectively turn broker/dealers into a combination of due diligence firms and private investigative agencies; something that we believe they are ill suited for.

Proposed Amendments to the Piggyback Exception

Current and Publicly Available Information for Catch-all issuers

Q23. *Certain issuers choose not to have reporting obligations for business purposes. The proposal, however, would require proposed paragraph (b)(5) information from a catch-all issuer, excluding subparagraphs (b)(5)(xiv) through (xvi), to be current and made publicly available within six months before the date of publication or submission of the broker-dealers' quotation in order for broker-dealers to rely on the piggyback exception to publish or submit quotations for the security of a catch-all issuer. Is six months the appropriate time frame within which a market participant must have published proposed paragraph (b)(5) information, excluding subparagraphs (b)(5)(xiv) through (xvi)? If so, why? If six months is too short or too long of a time frame, what should the time frame be and why? What are the potential costs and benefits to small issuers of this requirement? For reporting issuers that are delinquent in their reporting obligations (and are treated as catch-all issuers), should the piggyback exception require a shorter time frame, such as four months, for current information? Are there alternative methods that could be used that would protect investors while minimizing costs to issuers and broker-dealers?*

Reply to Question # 23: We do not believe that the six (6) month time frame is an appropriate requirement. We believe that this places an undue burden on small issuers, and will create a compliance burden on market makers. Furthermore we believe that it will negatively impact the ability of small issuers to raise capital.

We believe that a two (2) year time frame is more appropriate, and consistent with current SEC practices. We would like point out that the two (2) year time frame is the length of time that the SEC allows a company to be delinquent in its reporting requirements before it initiates a trading suspension pursuant to Section 12(k) of the Securities Exchange Act of 1934. Additionally, having assisted several companies in regaining their status as "current" in their SEC reporting, we recognize that this can be a difficult process that is usually slow to get started. It is in the best interest of issuers, their shareholders, and investors to provide these companies with a path to rehabilitation, and not rush to destroy the market for their securities the 1st chance possible.

Q24. *Would the six month time frame place an undue burden on small issuers? Would the six month time frame discourage small issuers from raising capital in the public markets? What are the potential costs and benefits to small issuers of this six month time frame? What alternative methods could be used to encourage quoted public markets for securities of start-ups while also distinguishing them from entities that are potential vehicles for fraudulent activity?*

Reply to Question # 24: We believe that the six month time frame would place an undue burden on small issuers and would be extremely detrimental to the capital raising process. We see



no benefit to small issuers from the six month time frame, only downside. We do not believe any prudent or rational investor would invest in any OTC issuer if there was the possibility of a loss of the market for the issuer's securities if the issuer became delinquent in its financial reporting.

In order to improve the capital raising process for small issuers and start ups, we believe one of the most important areas that is in need of modernization is the definition of a "penny stock." The currently accepted definition of a penny stock is any security that is priced below \$5.00 per share. This is essentially a very narrow definition that looks at the price of a security and none of the underlying fundamentals of the business. The failings of this definition can best be demonstrated by the fact that following the financial crisis, in May of 2011 the shares of Citigroup were trading below \$5.00 per share, and technically classified as a penny stock, and the next day following a 1 for 10 reverse-split of its shares, Citigroup was no longer a penny stock, yet nothing changed with its financials or business fundamentals. The definition of a penny stock, and the rules applicable to penny stocks needs to be updated to reflect the changes in technology and our modern capital formation rules and goals. It is our belief that this would be the single biggest improvement to the capital formation process for small companies.

Q25. Are there alternatives to limiting reliance on the piggyback exception to publish or submit quotations for securities of catch-all issuers when information is no longer made publicly available or current that would benefit investors of quoted OTC securities? If so, what are they?

Reply to Question # 25: We believe that there should not be any limitations on the reliance of broker/dealers for the piggyback exemption. We believe that the best path is to provide potential shareholders with disclosure of the non-current status of the issuer.

Q26. Should the piggyback exception not apply to publications or submissions of quotations for securities of issuers that have declared bankruptcy, filed for corporate dissolution, or otherwise taken steps to wind down their business? Why or why not?

Reply to Question # 26: We believe that the piggyback exemption should be available to issuers that have filed for bankruptcy, corporate dissolution, or otherwise taken steps to wind down their business. It is our belief that there are special investor classes that understand the risks of these types of issuers. Furthermore we believe that there are groups of these investors that are skilled in the rehabilitation of these issuers. The rehabilitation of these companies ultimately benefits the shareholders of these companies.

Furthermore there are circumstances whereby different groups of investors and traders may need to close out various short and long positions for a variety of reasons including tax purposes and various account settlement issues.

Q27. Should the piggyback exception not apply to publications or submissions of quotations for securities of issuers that have undergone a re-organization, any major mergers and acquisitions, reverse mergers, or other significant restructuring that affects their business or management? Why or why not?



Reply to Question # 27: We believe that the piggyback exemption should remain for issuers that have undergone re-organization, any major merger and/or acquisition, as well as a reverse-merger or significant restructuring. The proposed changes to the Rule treat every issuer that undergoes one of the above mentioned activities as potentially being a criminal enterprise and in the process violates one of the principal foundations of our legal system that an individual or entity is innocent until proven guilty

It should be noted that there is nothing illegal about engaging in a reverse-merger. In fact the Wikipedia contains a page that lists many significant reverse-mergers that have resulted in major companies becoming publicly traded.

It should also be noted that an Issuer that has a class of securities registered with the SEC is required to file a form 8-K with the Commission detailing any material changes, and in the case of a reverse merger a form 8-K12(g), which is nearly identical to a Form 10 registration statement. As a result, companies that have undergone a reverse merger are already required to disclose a significant amount of information to the public. If the Commission believes that this disclosure is not adequate, then perhaps instead of eliminating the public market for such companies, it might want to consider increasing the required disclosure for reverse mergers.

We continue to believe that the best, and most efficient path to improving the reverse merger process is to create a bona fide path to legitimacy for OTC securities in a similar manner that has been accomplished Rule 419 and the SPAC process.

Q28. As proposed, a reporting issuer that is not current in its filing obligations would become subject to proposed paragraph (b)(5), and broker-dealers could continue to quote the issuer's security if the proposed paragraph (b)(5) information were current and made publicly available within six months of the date of the publication or submission of the quotation. Should broker-dealers be prohibited from relying on the piggyback exception to publish or submit quotations for the securities of delinquent reporting companies? Why or why not? Are there any circumstances that would make it difficult for a broker-dealer that relies on the piggyback exception to know the issuer's regulatory status and identify which provision of proposed paragraph (b) applies? Please explain.

Reply to Question # 28: We do not believe that broker/dealers should be prohibited from relying on the piggyback exemption for quoting delinquent reporting companies. We believe that the price discovery created by publishing a quote is a significant and important function of the market. Additionally, the loss of the ability to have a quoted market would significantly hinder the ability of an issuer to become current in its reporting obligations by reducing its access to the capital necessary to pay the expenses associated with regaining its current states.



Two Way Priced Quotations

Q31. *Should broker-dealers be permitted to rely on the piggyback exception if only a priced bid or a priced ask (i.e., only a one-sided quotation) is published? Why or why not?*

Reply to Question # 31: We believe that a broker/dealer should be able to rely on the piggyback exemption if only a bid or ask is quoted. It is our belief that the ability of a second or more broker/dealer to enter the market will aid in price discovery and market development.

Shell Companies

Q32. *Should broker-dealers be prohibited from relying on the piggyback exception to publish or submit quotations for securities of shell companies? Why or why not?*

Reply to Question # 32: We do not believe that broker/dealers should be prohibited from relying in the piggyback exemption when submitting quotes for shell companies. We do not believe that the majority of market makers are well suited to make a determination of whether a company is a shell company or not. We believe that this would create an unrealistic burden on broker/dealers that make markets.

Additionally, it is our belief that the elimination of the ability of a broker/dealer to rely upon the piggyback exemption for shell companies would ultimately be detrimental to the capital formation process.

Q33. *Are there specific types of shell companies that participate in reverse mergers and act as the surviving company such that broker-dealers should be able to rely on the piggyback exception to publish or submit quotations for securities of these shell companies? If so, how should the Commission define such shell companies?*

Reply to Question # 33: Yes, we believe that a broker/dealer should be able to rely on the piggyback exemption for any company that has self identified as a shell company. This would include companies that have an ongoing reporting obligation with the SEC, as well as any that provide information to the public via. an alternative reporting method. We would also include companies that are delinquent in their disclosure requirements if they have self identified as a shell company.

Q34. *How, and to what extent, would these proposed amendments affect liquidity, transparency, and capital formation, particularly for small issuers?*

Reply to Question # 34: We believe that the proposed amendments would be very detrimental the capital formation process and market liquidity. The reduction or elimination in the availability of the piggyback exemption will discourage investors from investing in OTC securities as well as private companies.



Additionally, it should be noted that one of the reasons why the reverse merger process continues to be as popular as it is, is a result in that there are extremely few broker/dealers engaged in the process of underwriting initial public offerings (IPOs) for small companies. As part of our activities we review the registration statements and Reg A offerings filed with the SEC. Our database covers nearly 1,000 such filings. There are only a small number of broker/dealers that are willing and capable of underwriting an initial public offering (IPO) for a small companies. Not only is the IPO process extremely expensive and time consuming for small companies, there are simply not enough broker/dealers activity in the IPO process to service the demand of companies that wish to be publicly traded. As a result, the reverse merger process remains an economical and attractive alternative for companies seeking to become publicly traded and gain greater access to the capital markets.

***Q35.** Please describe alternative approaches, as well as their costs and benefits, to address the problems that may arise in the context of Rule 15c2-11 concerning mergers and acquisitions between shell companies and private operating companies.*

Reply to Question # 35: It is our belief that the expense associated with an initial public offering (IPO) including the road show would be a minimum of \$500,000 for a small company. We believe that this is significantly greater than the expense associated with a reverse merger.

***Q36.** Is the proposed definition of “shell company” appropriate? Please explain why or why not. Should a definition of “shell company” that is different from the one that is being proposed today be used? If so, please explain and provide examples.*

Reply to Question # 36: We do not believe the proposed definition of a shell company is appropriate. We believe that it is too vague and overly inclusive.

General Request for Comment Regarding the Piggyback Exception

***Q45.** Should proposed paragraph (f)(3) permit a grace period during which a security could continue to be quoted in reliance on proposed paragraph (f)(3) for a certain number of days following the expiration of such six-month period? What is the appropriate length of such a grace period? For example, is 15 days an appropriate grace period, or should such period be longer or shorter? Please explain. If the piggyback exception were to permit such a grace period, should proposed paragraph (f)(3) also include in the proviso, for example, that “proposed paragraph (f)(3) shall not apply to the publication or submission of a quotation concerning a security of an issuer included in proposed paragraph (b)(5) unless such quotation for such security is published or submitted in an IDQS that specifically identifies quotations concerning any security of an issuer for which proposed paragraph (b)(5) has not been made publicly available within six months before the date of publication or submission of such quotation”? Should such notice be in the form of a special “tag” on the quotation, similar to how unsolicited indications of interest are designated? Alternatively, should a notice be continuously and prominently posted on the IDQS’s website throughout the grace period? Please explain.*



Reply to Question # 45: We believe that the six month period is too short given the nature of OTC Securities. Given the significant challenges facing small issuers, we believe that the six month period should be 24 months, which is line with the SEC's current policy regarding trading suspensions pursuant to section 12(k) of the Exchange Act of 1934. If there was to be a grace period implemented, then we believe it should be a minimum of 90 days.

Q49. *Is there a certain price threshold below which the piggyback exception should not apply? Why or why not? Commenters are requested to please provide any data they might have. If so, how should such a price threshold be measured? For example, should the threshold amount apply to the 30-day weighted average price of the security if the security is priced below a certain amount for more than 12 months?*

Reply to Question # 49: In general we are opposed to a price thresholds as we believe they interfere with the normal functioning of a market.

Asset Test

Q68. *If a quoted OTC security ceases to meet the requirements of either of the proposed ADTV test or the assets test, and if a broker-dealer may not rely on the piggyback exception, should the proposed exception continue for a period of time, such as 10 business days, to allow for a broker-dealer to review the required issuer information?*

Reply to Question # 68: We believe that the 10 day period is too short. We recommend a 30 day period to review the required issuer information.

Underwritten Offerings

Q83. *Are the liability standards and professional obligations of underwriters in registered and Regulation A offerings a sufficient basis for providing the proposed exception? Please explain.*

Response to Question # 83: We believe that those liability standards and professional obligations are a sufficient basis for provide the proposed exception.

Q84. *An underwriter in a Regulation A offering is subject to a different liability standard than an underwriter in an offering registered under the Securities Act (i.e., Section 12(a)(2) applies for a Regulation A offering, while Section 11 imposes strict liability in a registered offering). In view of the different liability standards, the Commission seeks comment on whether it is appropriate to provide this exception in connection with securities issued in Regulation A offerings.*

Response to Question # 84: We believe that it is appropriate to provide this exception in connection with securities issued in a Regulation A offering as this helps harmonize securities regulations and facilitate the capital raising process for small issuers.



***Q86.** Are there other categories of issuers or potentially other categories of securities, not otherwise discussed in this release, that are unlikely to be involved in fraud in the OTC market for which publications or submissions of quotations of their securities also should be excepted from the Rule’s provisions? Please explain.*

Response to Question # 86: We believe that this exception should be extended to Subscription Rights, warrants, and units consisting of common and warrants. This would greatly facilitate the capital raising process. Our current experience is that there is an increasing use of “Rights Offerings” to facilitate capital raises for small issuers. The extension of the is exception to units and warrants would improve market liquidity and help facilitate the capital raising process.

***Q87.** Are there publications or submissions of quotations for other securities (e.g., debt securities, non-participatory preferred stock, or investment grade asset-backed securities) that have characteristics similar to those of the securities set forth above that should also be excepted from the Rule’s provisions? If so, please explain.*

Response to Question # 87: Yes, Subscription Rights, Units and Warrants, please see our response to Question # 86.

Qualified IDQS Complies with the Information Review Requirement

***Q89.** How, and to what extent, would the limitation of the proposed exception regarding shell companies appropriately (or unduly) limit the application of the exception? Should broker-dealers also be permitted under the exception to rely on qualified IDQs to comply with the Rule’s requirements when publishing or submitting quotations for securities of shell companies? Please explain.*

Reply to Question # 89: Yes. We do not believe that the Rule should discriminate between operating and non-operating companies. We believe that such discrimination would impose an unfair regulatory burden on market/makers, and subject them to unnecessary penalties over technical violations that have no material impact on the market for thinly traded securities.

***Q90.** Should broker-dealers also be permitted under the exception to rely on qualified IDQs to comply with the Rule’s requirements when publishing or submitting quotations for securities of blank check companies? If so, what would be an appropriate definition for “blank check company” in this circumstance? Please explain.*

Reply to Question # 90: Yes. We do not believe that the Rule should discriminate between operating and non-operating companies. We believe that such discrimination would impose an unfair regulatory burden on market/makers, and subject them to unnecessary penalties over technical violations that have no material impact on the market for thinly traded securities.



Q92. Should broker-dealers be able to rely upon any entities other than qualified IDQSs to perform the Rule's information review requirement? Please explain.

Reply to Question # 92: Yes, we believe this idea merits further study and comment.

Q94. Should the Commission place additional limitations on the proposed exception's availability, such as prohibiting application of the proposed exception to quotations for a security that is a penny stock? If so, please explain why such limitation would be appropriate.

Reply to Question # 94: We do not believe that this would be appropriate. Additionally, it is our strongly held belief that the definition of penny stock is out of date, and in desperate need of modernization. As a result this would adversely impact market liquidity and hurt the capital formation process.

Q95. Please discuss potential benefits or disadvantages to investors or other market participants if a qualified IDQS undertakes to perform the information review requirement. Please discuss whether and how any such benefits or disadvantages change if one qualified IDQS undertakes such action or if multiple qualified IDQSs undertake such action. Would having a regulated third party conduct the required review increase the number of OTC securities that could be quoted in the OTC market? In what way, if any, would this benefit investors, particularly retail investors? Please explain.

Reply to Question # 95: We believe that having a qualified IDQS undertake the review process would modernize the process and make it more efficient.

Proposed New Exception for Relying on Determinations by a Qualified IDQS or a Registered National Securities Association

Q96. Should a broker-dealer's reliance be limited to a determination by a registered national securities association and not a qualified IDQS? Why or why not? Should a broker dealer's reliance be limited to a determination by a qualified IDQS and not a registered national securities association? Why or why not?

Reply to Question # 96: We do not believe that a broker/dealers reliance should be limited to either a national securities association or a qualified IDQS. We believe that a broker/dealer should be able to rely on both type of entities. This would create competition between a national securities association and the qualified IDSQ. It is our belief that competition invariably improves the quality of any product, and thus would improve the quality of the review process.

Q98. Should proposed paragraph (f)(8) be expanded to allow broker-dealers to rely on publicly available determinations by entities other than qualified IDQSs or registered national securities associations? If so, what entities should be added to proposed paragraph (f)(8) and why?



Reply to Question # 98: Yes, This topic deserves further input and discussion. However, we believe that some form of due diligence or registered firm could further serve in this function.

Q100. *How, and to what extent, would the exception in proposed paragraph (f)(8) impact liquidity for quoted OTC securities?*

Reply to Question # 100: We believe that this would improve the liquidity for OTC market securities.

Conforming Rule Change and General Request for Comment

General Request for Comment

Q121. *Are there additional or different ways to amend the Rule that would help reduce fraud and manipulation in the OTC market? Please explain.*

Response to Question # 121: We believe that the proposed changes to Rule 15c2-11 are overly broad and not the appropriate point of attach in fraud deterrence. It is our belief that significant improvements to fraud prevention have already been enacted through restrictions placed on the depositing of low priced securities into brokerage accounts. Additionally, it is our belief that advancements in technology have vastly improved fraud detection abilities.

While we support the Commission's goals of reducing the amount of fraud, we believe that the proposed amendments will inflict far greater harm to the capital raising process and will outweigh any benefits received.

Q122. *Should the Rule be limited to only equity securities? Please explain.*

Response to Question # 122: No, we believe that the Rule should be all inclusive. We believe that warrants, units, subscription rights should be included as well. This will help improve market liquidity and improve the capital formation process.

Q123. *How might the proposal positively or negatively impact investor protection, the maintenance of a fair, orderly, and efficient OTC market, and capital formation?*

Response to Question # 123: We believe that the changes to the piggyback exception will increase market instability and the risk of investing in OTC securities. As a result, this will greatly harm the capital formation process.

Q125. *We seek commenters' views about the potential for changes to Rule 15c2-11 to help investors track quoted OTC issuers through corporate events such as reverse mergers and reorganizations. For example, should Rule 15c2-11's publicly available information requirement for a quoted OTC security issuer's name and its predecessor (if any) also require the public*



availability of such issuer's unique entity identifiers (if any)? What would the costs and benefits associated with such a requirement be? Please discuss whether such a requirement should be limited to certain types of issuers, e.g., catch-all issuers? Please quantify answers, to the extent possible.

Response to Question # 125: We believe that all the information concerning an issuer's 15c2-11 disclosure should be available upon request. This should include all past submissions to FINRA, and that FINRA should make this information available to the public in a searchable database similar to EDGAR.

Information Review Requirement

Q128. *In 1999, the Commission re-proposed amendments to Rule 15c2-11.¹⁷⁵ In response to comments that the Commission received regarding the 1998 Proposing Release expressing concerns about broker-dealers' review obligations, the Commission also included an Appendix in the 1999 Reproposing Release ("1999 Appendix") that provided guidance to broker-dealers on the scope of the review required by the Rule and provided examples of red flags that broker-dealers should look for when reviewing issuer information.¹⁷⁶ The 1999 Appendix, which was not adopted by the Commission, would have confirmed and supplemented earlier guidance on Rule 15c2-11 issues.¹⁷⁷ Should the Commission incorporate the 1999 Appendix as part of guidance included in any adopting release? If so, should the guidance from the 1999 Appendix be modified, updated or expanded? Are there additional examples of red flags that should be discussed in any such modified, updated or expanded guidance? Are there red flags that should be removed from the guidance? What current topics or issues would commenters like to see addressed in an updated or expanded version of the guidance on Rule 15c2-11? Should the Commission provide guidance on the proposed amendments to the Rule and if so, for which amendments to the Rule would guidance be most helpful?*

Response to Question # 128: As a matter of principal, we believe that any prior proposed guidance should be updated and submitted for comments prior to adoption.

Information Repositories

Q129. *Would access to proposed paragraph (b) information on an issuer's website provide sufficient access and notice to investors? What if the issuer does not maintain the information on its website for the requisite recordkeeping period?*

Response to Question # 129: In general we believe that having information available on a web site accessible by the public is beneficial. However, there are situations where an Issuer, or any company, may not want to have their financial information displayed for customers or competitors to view. As a result, we do not believe that it should be mandatory that this information is displayed on a public company's web site.



Q130. Would investors and other market participants benefit from having access to proposed paragraph (b) information solely through a centralized location, such as an information repository?

Response to Question 130: We believe that having this information available through one or more central locations is beneficial. We believe that this information should be made available to the public upon request, or provided to the public for free through an appropriate web site. Furthermore, we believe that it is very important that not only is “current information” publicly available, but past information is available to the public.

At the very least, an officer or director of a public company should have to all the prior 15c2-11 information on file with information repository¹⁸. Additionally, it is our belief that any prior information or documentation submitted to FINRA pursuant to FINRA Rule 6420 should be made available to the current management of an Issuer. This would greatly aid in the process of ensuring proper compliance with current information requirements.

Conclusion

We applaud the ongoing efforts of the Commission to modernize US securities rules and regulations. It is our belief that in many instances changes to technology and other rules and/or regulations creates an interconnected relationship where the process of updating prior proposed changes becomes more complex and complicated than initially realized. We believe portions of the proposed changes to Rule 15c2-11 have merit, and other areas will have dramatically different consequences than intended.

We very much appreciate the opportunity that has been given to provide comments from our prospective. Our hope is that they will provide a fresh prospective into certain areas and promote a conversation that leads to an overall improvement of the securities markets and capital formation process.

Thanks,

A handwritten signature in blue ink that reads "Erik S. Nelson". The signature is fluid and cursive, written over a light blue horizontal line.

Erik S. Nelson,
President

¹⁸ Specifically we believe that any and all 15c2-11 related information retained by FINRA should be available to the current management of an Issuer.