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January 23, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Release No. 34-87115; File No. S7-14- I9; Publication or Submission of Quotations Without Specified Information

Dear Ms. Countryman,

The Security Traders Association (“STA”)¹ appreciates the opportunity to provide comments in response to the Securities and Exchange Commission’s (“SEC”, or the “Commission”) Proposed Rule and Concept Release on the Publication or Submission of Quotations Without Specified Information (“Proposal”). The intended objectives of the proposed amendments are “to promote investor protection, preserve the integrity of the OTC market, and promote capital formation for issuers that provide current and publicly available information to their investors.”

STA is comprised of individuals who are involved in the trading of financial securities in the U.S and Canada (“CSTA”).² Our members represent companies with many of the business models in the financial services sector including, but not limited to, retail brokerage firms, agency only broker dealers, asset owners and managers and liquidity providers.

STA’s primary objective is to ensure that the U.S. securities markets are the most efficient and liquid in the world. As such, STA supports the Commission’s efforts and initiatives to address fraudulent activity and manipulation of over-the-counter (“OTC”) securities and to increase transparency and efficiency in these markets. Fraud and manipulation erode investor confidence, which is reflected by investors’ willingness to engage in the buying and selling of securities.

¹ STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, Dictum Meum Pactum – “My Word is My Bond.” For more information, visit <https://securitytraders.org/>.

² The Canadian Security Traders Association, Inc. is a professional trade organization that works to improve the ethics, business standards and working environment for members who are engaged in the buying, selling and trading of securities (mainly equities). The CSTA represents over 850 members nationwide, and is led by Governors from each of three distinct regions (Toronto, Montreal and Vancouver).



We commend the Commission for proposing amendments to modernize Rule 15c2-11. As the Commission notes in the Proposal, the OTC securities market has undergone significant changes since Rule 15c2-11 was last amended in 1991. At that time, quotes in the OTC marketplace were published daily and other disclosures were limited. The OTC market is now much more developed, with electronic, real-time quotes of OTC securities and disclosure of other information easily accessible to individual investors through the internet. For these reasons, STA agrees it is appropriate for the Commission to consider modernizing Rule 15c2-11. STA offers the following comments about certain aspects of the Proposal, including: (1) the increased burden that may be imposed on market makers; and (2) potential consequences for retail investors when securities are no longer eligible for public quoting.

Importance of OTC Securities and Markets

The OTC marketplace plays a vital role in the U.S. capital markets, providing an on-ramp, an off-ramp, or simply an alternative venue for securities that are not traded on an exchange. STA recognizes that there is not a one-size-fits-all market for equity securities, and certain securities of companies in different stages of growth (or decline), or for other reasons, may be better suited to trade OTC rather than on an exchange.

The OTC markets facilitate capital formation for some companies that may not be in an appropriate growth stage to justify the expenses and other requirements associated with listing on an exchange. The OTC markets provide a liquidity platform for these securities and a pathway or on-ramp for companies to grow and eventually move to the listed markets if they so choose. The OTC marketplace also serves as an off-ramp in instances when a company is delisted from, or chooses to leave, an exchange. It is important that shareholders of delisted companies continue to have an OTC marketplace that allows them to buy or sell shares of these companies while still providing price transparency and adequate disclosures. For comparison purposes, 57 OTC-traded companies on-ramped, or graduated to a listing exchange in 2019, while 117 off-ramped, or de-listed.³ It is our view that these figures represent a meaningful amount of securities and investors.

Piggyback Exception

At the SEC Roundtable on Regulatory Approaches to Combating Retail Fraud (“Roundtable”) panel discussion of Rule 15c2-11, SEC Chairman Jay Clayton noted the need to improve the piggyback exception, in particular for the cases of reverse mergers and shell companies, to combat the potential for fraud. STA agrees that modernization of the piggyback exception is needed. However, STA suggests some modification to the Proposal to promote efficiency and reduce burdens on market makers.

³ Based on data provided by OTC Markets Group Inc.



STA supports aspects of the Proposal that would remove some of the considerable burden placed on market makers, including allowing a qualified Interdealer Quotation Service (IDQS) to also fulfill the current information review requirement. STA further supports permitting a qualified IDQS to file Form 211 with FINRA or allowing broker-dealers to submit quotations in securities of issuers that the qualified IDQS has determined meet the information requirements, without any Form 211 filing at all.⁴

The Proposal adds a definition of a “shell company” and prohibits broker-dealers from relying on the piggyback exception to publish or submit quotes for securities of shell companies. STA agrees with the need to curtail abusive reverse mergers that can be facilitated by shell companies. Importantly, the Proposal states that it “should not prohibit reliance on the piggyback exception for quotations of startup companies or companies with a limited operating history.” However, the Proposal also explains that broker-dealers must “remain vigilant regarding whether they may rely on, or continue to rely on, the piggyback exception if the issuer of that security becomes a shell company.” STA questions whether this places an ambiguous burden on broker-dealers and may discourage them from making markets in securities of legitimate companies that are startups or facing other financial challenges. STA recommends that the Commission adopt a bright-line definition of shell companies that includes companies that self-identify as shells in their filings.

Another area of burden on market makers in the Proposal is the prohibition from displaying company insider quotes unless current information is publicly available. Such a prohibition would represent a challenging compliance obligation for market makers, who play a pivotal role in providing market liquidity but do not have a relationship with the end-customer (and potential insider).

STA is also concerned that the Proposal would immediately force many companies to the Grey market, where trades in OTC securities occur without quotations being published. STA supports the Commission’s goal of reducing retail investor fraud, but if securities without specified information (“No Information” securities) are no longer eligible for public quoting, the ability of retail investors to sell these securities will be impaired and result in an artificial decline in their value. STA is concerned this would negatively impact the investments of retail investors, even though the intended goal of the Proposal is to protect those investors. Thus, we agree and support recommendations by other commenters which would allow an “expert market” for securities no longer eligible for public quoting.⁵

⁴ See SIFMA Letter to File No. S7-14-19 (Dec. 23, 2019) at pg. 3 (“FINRA Rule 6432 should be amended to allow a broker-dealer to rely on the determination of a qualified IDQS to initiate quotations in a security without the filing of a separate Form 211 by the broker-dealer.”)

⁵ See OTC Markets Group Letter to File No. S7-14-19 (Dec. 30, 201) at pg. 10 (“[E]very investor should have the opportunity to liquidate their holdings at the best possible price. Expert market sales by retail investors should be limited to non-affiliate shareholders that trade through a regulated broker-dealer.”).



STA believes liquidity providers are critical to the marketplace, and that rules should encourage market maker activity along with protecting investors from fraud and manipulation. However, caution should be exercised when imposing overly broad compliance obligations on market makers outside their normal purview and scope of market making activity. It is STA's view that the Commission's goals would be better achieved with improved regulations of other participants who have the potential of fostering investor fraud, such as paid stock promoters and transfer agents. More specifically, Securities Act Section 17(b) should be amended to impose additional disclosure requirements on paid stock promoters and paid promotions should be prohibited where current information about the company is not available. Transfer agents should be required to disclose information on the issuance, ownership and transfer history of shares and broker-dealers should be able to rely on this information, allowing them to more easily identify and prevent illegal distributions.

Conclusion

STA commends the Commission for its efforts to modernize Rule 15c2-11. We encourage the Commission to improve the Proposal to reduce burdens of OTC securities market makers and to not discourage public quotation of No Information securities. STA appreciates the opportunity to comment on the Proposal and the Commission's consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "James Toes".

James Toes
President & CEO

A handwritten signature in black ink that reads "Chris Halverson".

Chris Halverson
Chairman of the Board

cc: Chairman Jay Clayton
Commissioner Hester M. Pierce
Commissioner Robert L. Jackson, Jr
Commissioner Elad L. Roisman
Commissioner Allison H. Lee