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February 26, 2020

Vanessa Countryman, Secretary
United States Securities and Exchange Commission
100 F street, NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

Global Trading Systems (GTS) is a New York-based automated market maker, financial technology firm and wholesale market maker currently making markets in virtually all National Market System ("NMS") and Over-the-Counter ("OTC") equity securities. We provide market making services both on exchanges and directly to over 60 U.S. broker-dealer clients. Collectively, the traders on our OTC trading desk have over 346 years of experience trading OTC equity securities.

GTS welcomes the opportunity to offer our comments to the Securities and Exchange Commission ("Commission") on the recent rule proposal which seeks to enhance the market structure for OTC equity securities by proposing amendments to 17 CFR 240.15c2-11.

The Commission stated in the proposing release that the proposed amendments:

"are intended to modernize the Rule and in so doing better protect retail investors from incidents of fraud and manipulation in OTC securities, particularly securities of issuers for which there is no or limited publicly available information, and facilitate more efficient trading in certain more widely followed OTC securities."

GTS fully supports the objectives of the Commission to protect retail investors from fraud and manipulation and to enhance trading in OTC securities. However, the proposed rule amendments will have unintended material, adverse effects on the OTC equity market and will not achieve the Commission's stated goal of reducing fraud.

The OTC Marketplace

In order to properly regulate the OTC marketplace, it is important to have a thorough understanding of its macro- and micro-structure, and the key role it plays in the capital formation process. The current OTC equity market is a competitive dealer market where non-listed securities are quoted, with numerous dealers participating and representing customer interests. The breadth of securities that trade OTC is more extensive than perhaps any other organized equity securities marketplace. The investors that buy and sell OTC equity securities are as diverse as the securities that trade on the OTC market. In our experience, investors in OTC securities are not just retail investors but run the gamut from self-directed individual investors to hedge funds, pension funds, and Registered Investment Advisors. Thus, the experience-level and sophistication of investors in the OTC marketplace many times exceeds that of other more traditional marketplaces. This is further evidenced by the range of comment letters submitted on this proposal.

As many commenters have pointed out, the OTC market is full of high-quality companies whose financials may or may not be easily obtained. Examples include:

- Fannie Mae (FNMA) and Freddie Mac (FMCC) are perhaps the two highest profile companies whose shares trade OTC. Although the companies' financials are publicly available, the actual value of the companies to shareholders is an unknown because the companies have been in Government conservatorship for over a decade.
- Hanover Foods Corp. (HNFS, HNFSB), founded in 1924, is a company whose products are well-known in grocery stores on the East Coast and that reliably pays dividends to shareholders. Even though the company's financials are hard to come by, the difficulty in tracking down that information should not preclude or impede upon an established marketplace from continuing to serve buyers and sellers.
- Decker Manufacturing Company (DMFG) was founded in 1878 and today is a major supplier of American-made agricultural and equine products. However, its financial information also is difficult to obtain.
- Massachusetts Electric Company (MSSEL), a company founded in 1887 with over \$2 billion in current revenue. The company issued preferred shares in 1953 and has paid \$1.11/share quarterly dividends on those preferred shares going back decades.
- Kopp Glass, Inc. (KOGL), has been manufacturing high-performance glass for mission critical applications since 1926. Once again, this company does not make its financial information available publicly. Nevertheless, although its shares are infrequently traded, the company has a strong following in the OTC market.
- North State Telecom (NORSA, NORSB) another example of a company with difficult, if not impossible, to obtain financials. These stocks have traded OTC in the \$50-\$65 range over the last few years. Should investors not have access to an active marketplace in these shares? Lumos Networks recently agreed to acquire NORSA, NORSB for \$80/share in cash! That's over a 30% return versus where NORSA and NORSB were trading OTC before the announcement.
- The Tile Shop (TTSH) recently disclosed that it has filed a Form 15 with the SEC to deregister its stock. Consequently, the company is no longer required to publicly disclose corporate

information after the deregistration becomes effective. Should investors be deprived of an active marketplace because of this?

- Hanger Inc. (HNGR), Tangoe Inc. (TNGO) (since acquired), Super Micro Computer (SMCI), MiMedx Group Inc. (MDXG) are examples of companies whose financials became deficient due to a need to restate. Some of these remain trading OTC while others have gotten their financials back in order and re-listed back on Exchanges. Again, depriving investors of a continuous market due to a lack of financials seems a mistake and would effectively deprive investors of an active marketplace in which they can decide to stick with a company going through turmoil or close an investment. Having a continuous active marketplace enables investors the ability to make their investment decision and execute upon it in an efficient and effective manner.

Although information about a company may be hard to come by, investors should not be deprived of opportunities to trade the stock with market makers. Such opportunities are likely to disappear if the Commission adopts the proposed amendments to the “piggyback” provisions of Rule 15c2-11. Further, this would impact the current system which provides a mechanism for enhanced price discovery through competitive market making, and without which would cause an immediate degradation on the overall quality of the marketplace.

Fraud and Manipulation

Rooting out fraud in a complex market is not a trivial exercise. As with any rule change, the cost vs. benefit analysis is a critical part of the rule assessment. Any rule change must balance the potential to deter fraud with any unintended harm that may be caused to the marketplace, investors, or underlying issuers.

The uniqueness and complexity of the OTC market make it difficult to draw a causal relationship between delinquent or unavailable company financial information and fraud. Fraud and manipulation are typically the result of bad actors intent on creating schemes to enrich themselves at the expense of unsuspecting investors. Identifying these fraudsters and freezing their money flows is far more impactful and will directly reduce fraud in the marketplace – whether in the OTC market or national exchanges.

The Commission already has powerful tools it can use if it believes that an issuer’s securities are the subject of fraud or manipulation. For example, Exchange Act Section 12(k)(1) authorizes the Commission to suspend trading in any security if “in its opinion the public interest and the protection of investors so require.”¹ The Commission already uses this authority extensively.²

The proposed amendments to Rule 15c2-11, specifically those that address the “catch all” issuers, are not likely to eliminate fraud or manipulation. Eliminating the actively quoted and public marketplace where investors can get published electronic quotes for “catch all” issuers will instead make it more difficult to value assets. Publishing a quote is not an enticement to trade. It is in fact information which

¹ The Commission issued more than 80 trading suspension orders in 2019 relating to approximately 100 issuers. <https://www.sec.gov/litigation/suspensions/suspensionsarchive/susparch2019.shtml>.

² <https://www.sec.gov/litigation/suspensions.shtml>.

investors can use to make better buying and selling decisions, determine best execution of their trades, as well as help value their holdings. Precluding or terminating quotations for “catch all” issuers will lead to unintended consequences including the reduction of transparency, distortion of price discovery, and general obfuscation of the marketplace, impacting brokers’ ability to provide and measure best execution.

As career criminal Willie Sutton once said, “I rob banks because that’s where the money is.” Capital markets will continue to be targeted and criminals will become more sophisticated in evolving their methods. Because of this, we fully agree and support the Commission’s efforts to root out fraud and vigorously pursue those individuals who perpetrate illicit acts. However, adding unnecessary friction can permanently damage the OTC marketplace, bona-fide issuers, and the ability of investors to participate in the OTC space.

Information

In the 1984 amendments to Rule 15c2-11, the Commission recognized that the existence of priced quotes reflects “independent supply and demand forces, thereby indicating that sufficient information about the issuer of the quotes security is reaching the marketplace,” and provided the basis for the “piggyback” exception in the rule.³

The principles behind these amendments continue to ring true today. While the Commission acknowledges and appears to accept the continuing validity of this policy rationale in the present proposing release,⁴ the Commission would undermine the ability of market makers to provide liquidity by piggybacking if information about the issuer were not “current” and “made publicly available within six months before the date of publication or submission of such quotation.”⁵ We respectfully suggest this requirement would have considerable negative consequences, and would effectively suspend trading in such securities even in the absence of any indication that the public interest or investor protection is endangered.

The piggyback exemption is vital to the efficient operation of the OTC marketplace. By allowing for continuity of liquidity provisioning and enabling more robust competition, the exemption significantly enhances the price discovery process. Making it more difficult or removing it altogether will undoubtedly add friction to the marketplace and lead to worse outcomes for investors and issuers. Reviewing the Rule’s exceptions is a healthy exercise but, as proposed, the modifications will be akin to the proverbial “throwing the baby out with the bathwater”.

³See Release 34-21470, 49 FR 45117, 45121 (November 15, 1984),
https://s3.amazonaws.com/archives.federalregister.gov/issue_slice/1984/11/15/45116-45123.pdf#page=2

⁴ Release 34-87115, 84 FR at 58222.

⁵ 84 FR at 58266 (proposed paragraph (f)(3)(ii) to Rule 15c2-11).

The Commission asks in Q6 of the proposal, *“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?”*

We believe the minimum information an investor needs is the following:

- Market data - bid price, ask price, last sale, volume, and historical trading data
- The number of shares outstanding
- The quality of basic disclosures about the company

Transparent quality, depth, and price of a security helps investors determine fair value and realistic prices where securities can be bought or sold.

The number of shares outstanding combined with the current market price provides investors with information about the total value of the company’s shares. And a large issuance of additional shares can be a “red flag” about dilution of share value.

Knowing the amount and type of disclosures a company makes about its business and assets ensures an investor enters into any transaction with “eyes wide open”.

Importantly, most of this information is readily accessible to investors. For example, (i) market data is typically available online and via any brokerage firm; (ii) the number of shares outstanding may not be as easily attainable as market data, but the information can be tracked down from other sources such as from the state in which a company is incorporated or directly from transfer agents; and (iii) in terms of disclosure, OTC Markets Group’s standards and designations in its system for company information is a great publicly available tool which provides investors with relevant data regarding the classification of companies’ disclosure status.⁶

Suggestions

Piggyback Expansion

Importantly, there is room to reduce the burden of Rule 15c2-11 by expanding the criteria for the types of securities which would be eligible for exemption from the rule, allowing market makers to quote immediately without diminishing investor protections.

For example,

- Additional classes of shares if the primary shares are listed on a U.S. securities exchange;
- Derivative securities such as warrants, rights, units, contingent value rights, preferred, and convertibles if the primary shares are listed on a U.S. securities exchange;

⁶ See OTC Markets, FAQs, <https://www.otcmartets.com/learn/faqs>.

- American Depositary Receipts and Ordinary Shares of foreign companies whose primary shares are listed on a foreign securities exchange;⁷
- New equity securities of companies that have emerged from bankruptcy; and
- When-issued securities of the types listed above.

Task Force

A key component to combatting fraud is the establishment of a task force, comprised of various industry participants assigned with addressing issues on a real-time basis. This construct would allow for a more rapid and effective response to potential issues. Such a task force would include members from brokerage and market making firms, transfer agents, DTC, FINRA, the SEC, Exchanges, and IDQS and ATS operators.

Transfer Agents

As noted above, our view is the promulgation of current and accurate information regarding an issuer's outstanding shares would be tremendously impactful in deterring fraud in the marketplace.

Accordingly, Transfer Agents should be required to disclose the outstanding share count for all companies they provide recordkeeping services for. The disclosure should be disseminated on a periodic basis. Any prospective increases in outstanding share count should be reported in advance, analogous to certain disclosures currently being provided by FINRA on the Daily List for Corporate Actions.

Broker Disclosure

Along the lines of the OTC Market disclosure standards, brokers should be required to inform their clients about the level of public disclosure a company makes.⁸ This requirement should apply to all broker-dealers and should be mandated on a pre-order entry basis.

This requirement will help to ensure that investors, retail and institutional, are explicitly informed about the quality of issuer information prior to making investment decisions. Rather than prohibiting a broker-dealer from publishing quotations if an issuer is delinquent in its reporting obligations but is not the subject of adverse SEC action, this disclosure would put the investor on notice that they should take the quality of issuer information into account in making investment decisions. This is consistent with the foundational principles of the federal securities laws -- i.e., disclosure and transparency. Regulators should be very wary of injecting their views as to whether an investor should buy/sell a security. Rather, ensuring full and accurate information is available to investors to allow them to make informed investment decisions is the cornerstone of our capital markets.

⁷ Perhaps listed on foreign markets meeting certain standards. See, e.g., Regulation S, Rule 901(b) (defining "Designated Offshore Securities Market").

⁸ See footnote 4 above.

Regulation SHO

As a registered market maker in thousands of stocks, we stand ready to provide continuous liquidity to broker dealer clients and non-client contra-parties. Our trading counterparties value and depend on our liquidity provisioning. In less liquid securities, however, our ability to meet liquidity demands when acting as a bona-fide market maker are made significantly more difficult by the close-out requirements of Rule 204 of Regulation SHO. The financial exposure posed by the existing T+5 closeout period is an impediment to efficient price discovery and continuous liquidity. As supported by the academic paper, "Squeezing the Shorts in Small Cap Stocks" by Roberto Ricco, Regulation SHO, as currently constituted, may in fact be more of a catalyst for manipulation of securities than the piggyback exemption is.⁹

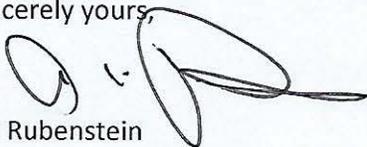
Conclusion

Thank you for providing the industry with the opportunity to comment on this rule proposal. We commend the Commission for its efforts to enhance OTC market structure and protect investors from fraud and manipulation.

As expressed, our principal concern with the proposed rule changes is that they are overly broad and sweeping in nature and will undoubtedly have unintended consequences which will have a negative impact on the marketplace and will not optimize the deterrence of fraudulent activity. As noted above, a better balance can be achieved by targeting specific segments of the market as well as engaging industry participants to take a more active role focused on addressing and remediating potential issues.

GTS would welcome the opportunity to discuss and elaborate on our comments with the Commission and the Staff.

Sincerely yours,



Ari Rubenstein

Co-Founder and Chief Executive Officer

⁹https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3484847