



April 8, 2020

Via Electronic Submission

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: OTC Markets Group Inc. Comments to the Publication or Submission of Quotations Without Specified Information (File Number S7-14-19)

OTC Markets Group¹ is pleased to submit this comment letter 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 (the "Proposal").

In our previous comments to the Proposal, submitted on November 25, 2019² and December 30, 2019,³ we provided comprehensive, policy based recommendations related to the Commission's proposed amendments to Rule 15c2-11 under the Exchange Act of 1934 (the "Rule") contained in the Proposal.

In an effort to provide concrete solutions in line with our prior comment letters, a redlined version of the revised Rule, marked with our proposed changes, is enclosed herewith as Exhibit A. **The purpose of this letter is to provide a companion summary and explanation of our proposed revisions to the Proposal as detailed in Exhibit A.** Notably, our changes would (i) simplify the requirements for initial and ongoing quotations, (ii) impose additional disclosure obligations on shell companies, and (iii) add an exemption where quotations are only distributed to intuitional, professional or other "Expert" investors.

Our proposed changes organize the Rule into three core paragraphs: (a), (b) and (f), based on the public availability of current information:⁴

¹ [OTC Markets Group Inc.](#) operates the OTCQX® Best Market, the OTCQB® Venture Market and the Pink® Open Market for 10,000 U.S. and global securities. Through OTC Link® ATS and OTC Link ECN, we connect a diverse network of broker-dealers that provide liquidity and execution services. We enable investors to easily trade through the broker of their choice and empower companies to improve the quality of information available for investors. OTC Link ATS and OTC Link ECN are SEC regulated ATSs, operated by OTC Link LLC, member FINRA/SIPC.

² OTC Markets Group Inc., Comment to File No. S7-14-19 (Nov. 25, 2019), available at: <https://www.sec.gov/comments/s7-14-19/s71419-6471877-199389.pdf>.

³ OTC Markets Group Inc., Comment to File No. S7-14-19 (Dec. 30, 2019) ("OTCM December Comments"), available at: <https://www.sec.gov/comments/s7-14-19/s71419-6590623-202249.pdf>.

⁴ Note that this letter discusses changes to other sections of the Rule marked in Exhibit A, for example, paragraphs (d) and (e) concerning the Rule's recordkeeping requirements and definitions.

- (a) **Review Requirements**: Paragraph (a) permits broker-dealers, qualified interdealer quotation systems (“IDQS”), and national securities associations (“NSA”) to publish or make known to others quotations in certain securities, provided that the Rule’s information, recordkeeping and other requirements are met. Paragraph (a) also defines when a broker-dealer may rely on the determinations of a qualified IDQS or NSA in publishing quotations under the Rule.
- (b) **Information Requirements**: Paragraph (b) outlines the information that issuers must make current and publicly available under the Rule, for review by the broker-dealer, qualified IDQS or NSA, as applicable, under paragraph (a). This bulk of this paragraph remains largely unchanged from the Proposal. However, it has been modified to include additional disclosure requirements for shell companies.
- (f) **Exceptions to the Information Requirements**: Paragraph (f) sets forth the limited exceptions to the information requirements in paragraph (b), where a broker-dealer may publish quotations in securities of issuers that do not make current information publicly available under paragraph (b). **This includes an “Expert Market” exemption that would allow quote submission and publication in a qualified IDQS, provided that those quotes are “made known,” i.e., distributed for viewing, only to specified investors, including Qualified Institutional Buyers (“QIBs”), accredited investors, registered entities (broker-dealers, investment companies and advisors) and banks.**

This structure collapses the Rule’s distinction between the initial commencement of quotations and the complex piggyback exemption for ongoing quotations, effectively eliminating the 30 day exclusivity period and the frequency of quotation requirement and creating one simple baseline rule: **paragraph (b) information must be current and publicly available in order for broker-dealers to publish quotations in OTC securities, unless a paragraph (f) exemption is met.**

Paragraph (a) – Review Requirements

Our proposed changes are designed to modernize the Rule in accordance with information available in today’s public markets. Paragraph (f)(7) of the Proposal, as currently written, operates as a limited exemption that would allow broker-dealers to rely on the determination of a qualified IDQS – but only for 30 days following the initial quotation. While the Proposal acknowledges that paragraph (f)(7) would “reduce burdens on broker-dealers while maintaining an appropriate level of investor protection,” it provides no reasoning as to why brokers should be prohibited from relying on qualified IDQS determinations beyond the initial 30-day period. Further complicating the Proposal, paragraph (f)(8)(ii) permits quotations submitted in reliance on a determination made under paragraph (f)(7) and other exemptions.

Our proposed revisions set forth in Exhibit A move paragraphs (f)(7) and (f)(8) to paragraph (a) of the Rule (Review Requirements) and eliminate the piggyback exemption (paragraph (f)(3)), including the 30-day window and the frequency of quotation requirement. This structure organizes and simplifies the functions of the Rule. Paragraph (a) outlines the circumstances under which a broker-dealer is permitted to publish quotations and when it may rely on the determinations of third parties, and paragraph (f) clearly lists the types of securities and circumstances that are exempt from the information requirements of paragraph (b).

Under this structure, there is no longer a need to distinguish between initial versus ongoing quoting requirements. The piggyback exemption requirements in paragraph (f)(3) were designed as a substitute where current information was not available.⁵ The Proposal's general requirement that current information be available for a quoted market (both initially, and ongoing) obviates the need for the frequency of quotation or pricing requirements.⁶ **Simply put, if the current information requirements are met, any broker should be permitted to submit a quotation at any time, whether in reliance on the determinations of a qualified IDQS or NSA, or after its own review of the company information and approval by an NSA consistent with the current Form 211 process.** This is in line with OTC Markets Group's automated processes for determining whether an issuer is current in its reporting requirements. These "determinations" do not reflect a static point in time, and are not made on an intermittent basis, but are published on a real-time, ongoing basis.

Exhibit A also eliminates the three-business day window and replaces it with a requirement that the information requirements (or exemptions therefrom) are met "at the time the quotation is submitted". In today's automated trading environment, there is no longer any need for a three-day period between the publication of issuer information and the publication of a quotation.⁷

The Rule's restrictions on companies subject to a trading suspension have also been moved from paragraph (f)(3) (the piggyback exemption) to paragraph (a), further clarifying that quotations are not permitted in securities recently subject to a trading suspension.⁸

The changes to paragraph (a) also incorporate our proposed modernized review standard,⁹ where the reviewing party is responsible for confirming that the paragraph (b) information is complete in all material respects and from a reliable source.

⁵ See Initiation or Resumption of Quotations Without Specified Information, Exchange Act Release No. 21470 (Nov. 8, 1984), 49 FR 45117 at 45121 (Nov. 15, 1984) (the historical basis for the piggyback provision is that "regular and continual priced quotations are an appropriate substitute for information about the issuer which would otherwise be relevant in establishing a quotation").

⁶ While we previously advocated for retaining one-sided priced bids and a four-day frequency of quotation requirement under the piggyback exemption (See OTCM December Comments, pgs. 14-15, 18), the simplified structure we propose herein eliminates the need for those considerations.

⁷ According to the Proposal, the three day window is designed to (i) "help ensure that there are a limited number of days between the information review conducted by the qualified IDQS and the first quotation by a broker-dealer", (ii) "provide certainty to a qualified IDQS regarding the timing of its obligation to review additional current reports, such as Forms 8-K and Forms 1-U", and (iii) "encourage the commencement of a quoted market close in time following a qualified IDQS's information review". See Proposal, pgs. 96-97.

⁸ The Commission should also implement a more streamlined process to handle trading suspensions, including responding quickly to industry referrals and developing a pathway for the security to become quoted again after the suspension is lifted. Prompt suspensions followed by a "rehabilitation" period would allow the Commission to stop fraudulent promotions before they become profitable, while providing a path back to the public markets where appropriate. The Commission could utilize faster-moving industry compliance designations (such as our "Caveat Emptor" designation) to help them make quicker suspension decisions.

⁹ See OTCM December Comments, pgs. 3-5.

Paragraph (b) – Required Information

As discussed in our prior comments,¹⁰ the Rule’s regulation of shell companies should focus on insider and affiliates selling shares into the market. We are concerned that a heavy-handed approach to banning public quoting in all companies that display shell characteristics will harm venture markets and small company capital formation. The Proposal’s broadly-written definition would capture many venture-stage companies and investment vehicles that rely on the OTC market to provide liquidity and grow their operations (such as those holding solely cash and/or securities, liquidations and SPACs), causing firms to cease making markets in these companies. The harm will also be borne by investors in these companies, who will see secondary market liquidity for their holdings disappear. We instead propose to require additional disclosure from shells regarding their operations and insider and affiliate activities. Other restrictions on insider and affiliate transactions are best addressed outside the scope of the Rule, as further discussed below.

A new paragraph (b)(6) has been added to outline the additional informational requirements for companies that fall within the “shell company” definition (see below description of our proposed changes to the paragraph (e)(8) definition of “shell company”).

Under the proposed revisions, shell companies would be subject to the same information requirements as any other company under paragraphs (b)(1) through (b)(5), as applicable, *plus* the following additional disclosure requirements, further detailed in Exhibit A:

- (i) Insider and affiliate holdings and transactions
- (ii) Identification of at least two outside directors¹¹
- (iii) Change in control events¹²

¹⁰ OTCM December Comments, pgs. 15-18.

¹¹ Outside directors provide additional oversight to further mitigate the risk of fraudulent insider transactions.

¹² The Commission may also want to include a change in control definition under paragraph (e) to facilitate compliance with this disclosure obligation. For example, the OTC Markets Group Alternative Reporting Standard defines “Change in Control” as any event resulting in:

- (i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becoming the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities;
- (ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets;
- (iii) A change in the composition of the Board occurring within a two (2)-year period, as a result of which fewer than a majority of the directors are directors immediately prior to such change; or
- (iv) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or

(iv) A description of affiliated entities (incl. subsidiaries, parent companies)

This additional disclosure would be publicly available and, as such, would provide investors with the information necessary to identify the types of higher risk transactions and activities associated with shell companies. These requirements would apply to all companies that meet the “shell” definition, including those that have undergone a reverse takeover or business change, such that they would be required to disclose changes in corporate structure and control persons, as well as insider and affiliate transactions.

In the context of reverse mergers in particular, the Proposal notes that “[v]ery often, when the shell company is not a reporting company, there is no or limited publicly available information about the post-merger company”, including disclosure of change in control events.¹³ Our proposed additional requirements would ensure that non-reporting, “catch all” shell companies disclose this type of information.

The changes proposed in Exhibit A also eliminate the three-business day window from the applicable paragraph (b) provisions, in line with our revisions to paragraph (a).¹⁴

Paragraph (c) – Supplemental Information

Paragraph (c)(1) has been modified such that information concerning the person submitting the quotation, and their relationship to the issuer, only be required to the extent that it has come to the knowledge or possession of the broker-dealer or qualified IDQS. As stated in our prior comments,¹⁵ information concerning the identity of the retail end-customer is not required to be publicly disclosed – either by the issuer, its transfer agent, or the retail brokerage firm receiving the order. Therefore, it is difficult, if not impossible, for a quoting market maker that receives orders from correspondent brokers, or the qualified IDQS displaying the quotation, to have this information in its records on a transaction-by-transaction basis.

While we agree with the Proposal’s goals to restrict insider and affiliate transactions, this activity can be more effectively dealt with outside the scope of the Rule by imposing additional disclosure obligations on issuers; modernizing transfer agent requirements with respect to control and restricted shares; and enhancing ownership and transaction reporting by insiders, affiliates and other powerful market participants.

by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

¹³ Proposal, pg. 66.

¹⁴ In addition to these changes, we reiterate our suggestion that the Commission carefully consider the timeframes contained paragraph (b) to ensure that they are aligned with SEC disclosure rules and our current disclosure standards and include a “grace period” with respect to companies that no longer meet the Rule’s current information requirements. See OTCM December Comments, pg. 5, fn. 9.

¹⁵ OTCM December Comments, pgs. 11-13.

Paragraph (d) – Recordkeeping

Our proposed revisions detail minor changes to the recordkeeping requirements in paragraph (d), including (i) clarifying that separate preservation of paragraph (b) documents is not required if it is “publicly available” (i.e. “recordkeeping” should be satisfied if the information is hosted or stored on a publicly available website, as defined under paragraph (e)(4)), and (ii) deleting duplicative language at the end of paragraph (d) concerning information available on EDGAR.

Paragraph (e) – Definitions

In line with our prior comments,¹⁶ we have revised paragraph (e)(8) to define “shell company” as a company that (i) discloses its shell status in paragraph (b) disclosure, or (ii) falls within defined financial metrics, including having less than \$100,000 in annual revenue, assets and gross profits and loss; and less than \$50,000 in research and development costs.

This “shell company” definition serves as a baseline threshold that is both easy for the reviewing broker-dealer or qualified IDQS to apply and difficult for high risk shells to avoid. The additional informational requirements under proposed paragraph (b)(6) create a pathway for legitimate startup and emerging growth companies that may fall within this definition to describe their operations and develop a public market.

Addressing the potential issues with certain shell companies by requiring additional disclosure from the issuer results in more information available to the marketplace. Our bright-line definition reduces the burdens imposed on reviewing broker-dealers and qualified IDQSs under the vague shell company definition in the Proposal.¹⁷

Paragraph (f) – Exceptions to the Information Requirements

The security of an issuer that does not meet the information requirements in paragraph (b) may still be quoted under a revised paragraph (f), which modifies the Proposal’s existing exemptions and adds new exemptions, including for an “Expert” market where quotations are made available only to qualified investors, registered entities and banks.

As discussed above, paragraph (f)(3) (the piggyback exemption) was removed and paragraphs (f)(7) and (f)(8) (permitting reliance on determinations of qualified IDQSs and NSAs) were incorporated into paragraph (a). Sub-paragraph headings were also added for clarity.

Paragraph (f)(1) – Exchange traded securities

A new exemption was added (paragraph (f)(1)(ii)), ensuring that investors in securities recently delisted from a national securities exchange can trade such securities on a qualified IDQS for a period of at least 90 days subsequent to delisting. After expiration of the 90-day period, the security could be eligible for continued quoting if the requirements of paragraph (b), or another paragraph (f) exemption, were met.

¹⁶ See OTCM December Comments, pg. 16.

¹⁷ See Proposal, pg. 68 (“The Commission is mindful that the proposal could increase burdens for broker-dealers in determining whether the issuer has become a shell company within the proposed definition.”)

Paragraph (f)(2) – Unsolicited customer indications of interest

In accordance with our proposed changes to the supplemental information requirements in paragraph (c)(2), discussed above, Paragraph (f)(2)(ii) was deleted to remove the restriction on unsolicited orders submitted on behalf of insiders and affiliates. **While we firmly believe that insiders and affiliates and employees should not be permitted to transact in securities of dark or “No Information” companies because of the inherent information asymmetries, market makers receiving orders from correspondent brokers are not equipped to make the distinction between affiliate and non-affiliate quotations.** Wholesale liquidity providers may be unable to process unsolicited orders in many securities if this obligation under paragraph (f)(2)(ii) were retained as currently written. As suggested in comments submitted by the market marking community,¹⁸ this information should be compelled from insiders, transfer agents, and/or the retail brokerage firms, rather than the market maker submitting the quotation.

Paragraph (f)(5) – Securities of issuers meeting trading volume and market capitalization standards

The exemption contained in paragraph (f)(5) was modified to replace the \$10 million in unaffiliated shareholders equity threshold with a minimum market capitalization test of \$150 million, a metric that is readily available and easier to calculate. In addition to the financial thresholds, we have also added a second prong to this exemption for securities of issuers included in the FTSE All-World Index.¹⁹

Further, we have deleted the current information requirement from this exemption. The Proposal acknowledges that these securities are “less susceptible to fraud and manipulation based on liquidity of the securities and size of the issuer,”²⁰ thus quotations in these securities should be exempt from the paragraph (b) information requirements. The modified paragraph (f)(5) would streamline quoting in large, international companies that maintain a secondary market in the U.S. but make current information available in their home jurisdictions.

¹⁸ See Canaccord Genuity, Comment to File No. S7-14-19 (Mar. 20, 2020), available at: <https://www.sec.gov/comments/s7-14-19/s71419-6984655-214633.pdf> at pg. 4 (“[W]hen determining whether the unsolicited customer order exception applies, market makers such as [Canaccord], that receive order flow from retail broker-dealers, have no means to determine whether quotations submitted are by or on behalf of company insiders. [...] The gatekeeping function of identifying insiders contemplated by the Proposed Amendments should be at the level of issuers (who know its insiders) and/or transfer agents (who are responsible for processing requests from selling shareholders to remove restrictive legends) and/or at the broker-dealers accepting the order from the ultimate customer (who are likely the custodians of the account and/or are receiving remuneration that is priced to include the conduct of KYC diligence.)”); See also Security Traders Association, Comment to File No. S7-14-19 (Jan. 23, 2020), available at: <https://www.sec.gov/comments/s7-14-19/s71419-6700895-206039.pdf> at pg. 3 (“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).”)

¹⁹ The SEC treats securities included in the FTSE World Index as having a “ready market” under the SEC’s net capital rule 15c3-1 for the purpose of margin treatment under the Federal Reserve System’s Regulation T. See The Federal Reserve Board: About the List of Foreign Margin Stocks (Jun. 21, 2016), available at: <https://www.federalreserve.gov/boarddocs/foreignmargin/about.htm>.

²⁰ Proposal, pg. 80.

Paragraph (f)(6) – Underwritten offerings

The paragraph (f)(6) exemption for underwritten offerings is redundant and has been removed from the revised structure, as any broker-dealer (including the underwriter) would be permitted to quote a security if the information and review requirements of paragraphs (a) and (b) are met.

Paragraph (f)(7) – Quotations made known only to qualified investors, registered entities and banks

Exhibit A adds a new exemption (paragraph (f)(7)) for quotations published or made known only to specified investors and entities, effectuating the “Expert Market” concept proposed in our prior comment letters.

Under the proposed paragraph (f)(7) exemption, brokers could publish quotations in “no information” securities in a qualified IDQS, provided the quotations were only made available to be viewed by specified “Expert” investors and entities, including QIBs, accredited investors, broker-dealers, investment companies, investment advisors and banks. **Each of these categories are tied to concrete, easily quantifiable thresholds used in regulations and across the financial industry.** In fact, as compared to general solicitation that is permitted in Rule 144A securities and private placements under the JOBS Act, this exemption is *more* protective of retail investors as it would not permit quotations in these securities to be made available to anyone other than the specified entities.²¹

Paragraph (f)(8) – Issuers emerging from bankruptcy

Exhibit A includes an additional exemption (paragraph (f)(8)) that would permit quotations in securities emerging from bankruptcy. This proposed exemption is based on the Commission’s 1999 proposal that would have allowed for the informational requirements of the Rule to be satisfied by (1) a disclosure statement approved by a bankruptcy court and (2) the issuer’s financial statements under paragraph (b)(xii).²²

²¹ In other contexts, the SEC has proposed methods for allowing retail investors to access riskier classes of securities. See Use of Derivatives by Registered Investment Companies and Business Development Companies, Exchange Act Release No. 34-87607 (Nov. 25, 2019), available at <https://www.sec.gov/rules/proposed/2019/34-87607.pdf>. While we do not agree with the sales practices rules proposed therein, the Commission may want to consider risk disclosures or alternative methodologies proposed in the Rule’s comment file that would allow institutional clients, funds and other sophisticated investors with whom the broker-dealer has a customer relationship to safely access “Expert” securities. See e.g. Charles Schwab & Co., Inc., Comment to File No. S7-24-25 (Mar. 24, 2020), available at: <https://www.sec.gov/comments/s7-24-15/s72415-6990682-214694.pdf> (advocating for the adoption of plain-English, pre-trade risk disclosure over the proposed account approval process for retail investors seeking to access Leveraged/Inverse Investment Vehicles).

²² See Publication or Submission of Quotations Without Specified Information, Exchange Act Release No. 41110 (Feb. 25, 1999), 64 FR 11126 (Mar. 8, 1999), available at: <https://www.sec.gov/rules/proposed/34-41110.htm#A20a> (“The [1998] Proposing Release contained amendments to permit broker-dealers that quote the securities of non-reporting companies emerging from bankruptcy to review the bankruptcy court-approved disclosure statement and issuer financial information required by the Rule from the date that the bankruptcy court confirms the reorganization plan.”). We are mindful that smaller companies can leverage bankruptcy proceedings to create “clean” shells. In reconsidering this exemption, the Commission may want to include additional restrictions to limit the availability of this exemption to larger companies (e.g. by imposing an asset test).

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This exemption would provide modified disclosure obligations for two years following the filing of the company's reorganization plan. If the issuer does not resume its full reporting requirements in accordance with paragraph (b) within two years, or otherwise meet another exemption under the Rule, it would no longer be eligible for to be quoted under this exemption.

Notwithstanding the changes proposed in Exhibit A, we support the retention of any exemptions or other provisions that would facilitate the access to capital markets and reduce the burden on broker-dealers, including with respect to underwritten offerings and securities of well-capitalized issuers.

Request for Extension of Time

In light of the ongoing COVID-19 pandemic, we request that the Commission consider extending the timeframe available for additional industry and Commission staff discussion on this issue prior to adopting final rulemaking related to the Proposal. In the event that any final rulemaking is adopted, we similarly request that the Commission consider extending final effective dates until current global and market conditions related to COVID-19 stabilize.

Please contact Dan Zinn, General Counsel (), or Cass Sanford, Associate General Counsel (), with any questions or to request additional information.

Very truly yours,



Daniel Zinn
General Counsel



Cass Sanford
Associate General Counsel

EXHIBIT A

(a) *Review Requirement.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for:

(1) A broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium, unless:

(i) Such broker or dealer has in its records the documents and information required by paragraph (b) of this section (“paragraph (b) information”); and

(ii) Such paragraph (b) information (excluding paragraphs (b)(5)(xiv) through (xvi)) is current and publicly available; and

(iii) Based upon a review of the paragraph (b) information, together with any other documents and information required by paragraph (c) of this section, such broker or dealer has a reasonable basis under the circumstances for believing that:

(A) The paragraph (b) information is accurate-complete in all material respects; and

(B) The sources of the paragraph (b) information are reliable; or

(iv) The quotation medium is a qualified interdealer quotation system or registered national securities association that;

(A) Complies with the requirements of paragraphs (a) through (c) of this section; and

(B) Has reasonably designed written policies and procedures to determine whether documents and information required by paragraph (b) are current and publicly available and that the requirements of an exception under paragraph (f) of this section are met; and

(C) At the time the quotation is submitted, makes a publicly available determination that paragraph (b) information is current and publicly available or the requirements of an exception under paragraph (f) of this section are met; or

(2) A qualified interdealer quotation system to make known to others the quotation of a broker or dealer that is published or submitted pursuant to paragraph (a)(1)(iv) ~~(7)~~ of this section, unless:

(i) Such qualified interdealer quotation system has in its records paragraph (b) information (excluding paragraphs (b)(5)(xiv) through (xvi) except where the qualified interdealer quotation system has knowledge or possession of this information);

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(ii) Such paragraph (b) information (excluding paragraphs (b)(5)(xiv) through (xvi)) is current and publicly available; and

(iii) Based upon a review of the paragraph (b) information (excluding paragraphs (b)(5)(xiv) through (xvi) except where the qualified interdealer quotation system has knowledge or possession of this information), together with any other documents and information required by paragraph (c) of this section, such qualified interdealer quotation system has a reasonable basis under the circumstances for believing that:

(A) The paragraph (b) information is ~~accurate~~ complete in all material respects; and

(B) The sources of the paragraph (b) information are reliable.

Provided, however, this Paragraph (a) shall not permit any broker or dealer to publish any quotation or, directly or indirectly, to submit any such quotation for publication, concerning a security if the issuer of such security was the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act until 60 calendar days after the expiration of such order.

(b) *Required Information.* Required paragraph (b) information:

(1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F-6, that became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided*, That such registration statement has not thereafter been the subject of a stop order that is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A under the Securities Act of 1933 for an issuer that has filed a notification under Regulation A and was authorized to commence the offering less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided*, That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order that is still in effect when the quotation is submitted; or

(3) A copy of the:

(i) Issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act, together with any periodic and current reports that have been filed thereafter under the Act by the issuer, ~~except for current reports filed during the three business days prior to the publication or submission of the quotation~~; *Provided, however*, That

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(A) Until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F-6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act, and

(B) The broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in paragraph (b)(3)(i);

(ii) Issuer's most recent annual report filed pursuant to Regulation A (§§ 230.251 through 230.263 of this chapter), together with any periodic and current reports filed thereafter under Regulation A by the issuer, ~~except for current reports filed during the three business days prior to the publication or submission of the quotation~~; *Provided, however,* That

(A) Until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the offering circular filed by the issuer under Regulation A, that was qualified within the prior 16 months, together with any periodic and current reports filed thereafter under Regulation A, and

(B) The broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in paragraph (b)(3)(ii);

(iii) Annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act), together with any periodic and current reports filed thereafter under the Act by the issuer, ~~except for current reports filed during the three business days prior to the publication or submission of the quotation~~; *Provided, however,* That

(A) Until such issuer has filed its first such annual statement, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F-6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act, that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act, and

(B) The broker, dealer or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in paragraph (b)(3)(iii); or

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(iv) Annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer of a security that falls within the provisions of section 12(g)(2)(G) of the Act); *Provided, however*, That the broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing (in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof) the annual statement referred to in section 12(g)(2)(G)(i) of the Act; or

(4) A copy of the information that, since the beginning of its last fiscal year, the issuer has published pursuant to § 240.12g3-2(b), which the broker or dealer must make available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain the information electronically; or

(5) The following information, which must be made publicly available (excluding paragraphs (b)(5)(xiv) through (xvi) of this paragraph) and be current as of a date within 12 months prior to the publication or submission of the quotation, unless otherwise specified:

- (i) The name of the issuer and its predecessor (if any);
- (ii) The address of the issuer's principal executive offices;
- (iii) The state of incorporation or registration;
- (iv) The title and class of the security;
- (v) The par or stated value of the security;
- (vi) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;
- (vii) The name and address of the transfer agent;
- (viii) A description of the issuer's business;
- (ix) A description of products or services offered by the issuer;
- (x) A description and extent of the issuer's facilities;
- (xi) The name of the chief executive officer, members of the board of directors, and officers, as well as any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer;
- (xii) The issuer's most recent balance sheet (as of a date less than 16 months before the publication or submission of the quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most

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recent balance sheet); *Provided, however*, That if the balance sheet is not as of a date less than six months before the publication or submission of the quotation, the balance sheet must be accompanied with profit and loss and retained earnings statements for the period from the date of such balance sheet to a date that is less than six months before the publication or submission of the quotation;

(xiii) Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence;

(xiv) Whether the broker or dealer or any associated person of the broker or dealer is affiliated, directly or indirectly, with the issuer;

(xv) Whether the quotation is being published or submitted on behalf of any other broker or dealer and, if so, the name of such broker or dealer; and

(xvi) Whether the quotation is being submitted or published, directly or indirectly, by or on behalf of the issuer or persons identified in paragraph (b)(5)(xi) and, if so, the name of such person and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(6) With respect to shell companies, a copy of the information specified in paragraphs (b)(1) through (b)(5), as applicable, and the following additional information, which must be made publicly available and be current as of a date within 12 months prior to the publication or submission of the quotation, unless otherwise specified:

(i) The number and class of the issuer's securities beneficially owned by each of the persons listed in paragraph (b)(5)(xi) and a description of any events resulting in the change of beneficial ownership;

(ii) The name of at least two (2) outside directors of the issuer of the securities;

(iii) Whether the issuer has undergone a change in control within the past two (2) fiscal years; and

(iv) The names and addresses of any parent, subsidiary, or affiliate of the issuer, and its business purpose, its method of operation, its ownership, and whether it is included in the issuers' financial statements.

The broker or dealer must make information required by ~~this~~ these paragraphs (b)(5) and (b)(6) available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain publicly available information electronically. If such information is made available to others upon request pursuant to this paragraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is accurate, but shall constitute a representation by such broker or dealer that the information is current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources that the

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broker or dealer has a reasonable basis for believing are reliable. Paragraph (b)(5) shall apply to any security of an issuer that is not included in paragraphs (b)(1) through (b)(4) of this section. Paragraph (b)(5) shall apply to any security of an issuer if information described in paragraphs (b)(1) through (b)(4) is not current.

(c) *Supplemental Information.* With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation, or any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section, shall have in its records the following documents and information:

(1) Records related to the submission or publication of such quotation that comes to the knowledge or possession of the broker, dealer, or qualified interdealer quotation system before the publication or submission of the quotation, including the identity of the person or persons for whom the quotation is being published or submitted, whether such person or persons is the issuer, chief executive officer, any members of the board of directors, officers, or any person, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of equity security of the issuer, and any information regarding the transactions provided to the broker, dealer or qualified interdealer quotation system by such person or persons;

(2) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act concerning any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation or a copy of the public release issued by the Commission announcing such trading suspension order; and

(3) A copy or a written record of any other material information (including adverse information) regarding the issuer that comes to the knowledge or possession of the broker, dealer, or qualified interdealer quotation system before the publication or submission of the quotation.

(d) *Recordkeeping.*

(1) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information required under paragraphs (a), (b), and (c) of this section:

(i) Any broker or dealer publishing or submitting a quotation pursuant to paragraph (a)(1) of this section concerning a security; or

(ii) Any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section concerning a security;

Provided, however, That paragraph (b) information is not required to be preserved if it is available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System*

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(“EDGAR”) or publicly available and the broker-dealer or qualified interdealer quotation system documents the paragraph (b) information that it reviewed.

(2) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that demonstrate that the requirements for an exception under paragraphs ~~(f)(2), (f)(3), (f)(5), (f)(6), (f)(7), and (f)(8)~~ of this section are met:

(i) Any qualified interdealer quotation system or registered national securities association that makes the publicly available determinations described in paragraph ~~(a)(f)(8)~~ of this section; and

(ii) Any broker or dealer publishing or submitting a quotation pursuant to paragraph ~~(f)(a)(1)(iv)~~ of this section; *Provided, however,* That any broker or dealer that relies on a determination described in paragraphs ~~(f)(7) or (f)(8)(a)(1)(iv)~~ of this section is required to preserve only a record of the exception upon which the broker or dealer is relying and the name of the qualified interdealer quotation system or registered national securities association that determined that the requirements of that exception are met.

~~*Provided, further,* That paragraph (b) information is not required to be preserved if it is available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (“EDGAR”).~~

(e) *Definitions.* For purposes of this section:

(1) *Current* shall mean filed, published, or disclosed in accordance with the time frames identified in each paragraphs (b)(1) through (b)~~(65)~~ of this section.

(2) *Interdealer quotation system* shall mean any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(3) *Issuer*, in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(4) *Publicly available* shall mean available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (“EDGAR”) or on the website of a qualified interdealer quotation system, a registered national securities association, the issuer, or a registered broker or dealer; *Provided, however,* That *publicly available* shall not mean where access to paragraph (b) information is restricted by user name, password, fees, or other restraints.

(5) *Qualified interdealer quotation system* shall mean any interdealer quotation system that meets the definition of an “alternative trading system” under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an “exchange” under Rule 3a1-1(a)(2) of the Act.

(6) Except as otherwise specified in this rule, *quotation* shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or

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dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that wishes to advertise its general interest in buying or selling a particular security.

(7) *Quotation medium* shall mean any “interdealer quotation system” or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(8) *Shell company* shall mean any issuer, other than a business combination related shell company, as defined in § 230.405 of this chapter, or an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that ~~has~~

~~(i) No or nominal operations; and~~

~~(ii) Either:~~

~~(A) No or nominal assets;~~

~~(B) Assets consisting solely of cash and cash equivalents; or~~

~~(C) Assets consisting of any amount of cash and cash equivalents and nominal other assets.~~

(i) has disclosed its status as a shell company in the paragraph (b) information; or

(ii) meets the following criteria, based on paragraph (b) information:

(A) annual revenue less than \$100,000;

(B) total assets (not including cash and cash equivalents) less than \$100,000;

(C) annual gross profit or loss less than \$100,000; and

(D) annual research and development costs less than \$50,000.

(f) *Exceptions.* Except as provided in paragraph (d)(2) of this section, where paragraph (b) information is not current and publicly available, the provisions of this section shall not apply to

(1) *Exchange traded securities.* The publication or submission of a quotation concerning a security:

(i) that is admitted to trading on a national securities exchange and that is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted; or

(ii) that was delisted from trading on a national securities exchange and that is subsequently traded on an qualified interdealer quotation system; *provided,*

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however, that this paragraph (f)(1)(ii) shall not apply to a quotation concerning a security after the first ninety (90) days following the delisting of the security from such exchange.

(2) Unsolicited customer indications of interest. The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's unsolicited indication of interest; *Provided, however,* That this paragraph (f)(2) shall not apply to a quotation: ~~(i)~~ Consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest; ~~or~~

~~(ii) Published or submitted, directly or indirectly, by or on behalf of the chief executive officer, members of the board of directors, officers, or any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer, unless paragraph (b) information is current and publicly available.~~

~~(3)(i) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation concerning a security that has been the subject of both bid and ask quotations (exclusive of any identified customer interests) in such a system at specified prices within the previous 30 calendar days, with no more than four business days in succession without such a quotation;~~

~~(ii) The publication or submission, in an interdealer quotation system that does not so identify any such unsolicited customer indications of interest, of a quotation concerning a security that has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices within the previous 30 calendar days, with no more than four business days in succession without such a quotation; or~~

~~(iii) A dealer acting in the capacity of market maker, as defined in section 3(a)(38) of the Act, that has published or submitted a quotation concerning a security in an interdealer quotation system and such quotation has qualified for an exception provided in this paragraph (f)(3), may continue to publish or submit quotations for such security in the interdealer quotation system without compliance with this section, unless and until such dealer ceases to submit or publish a quotation or ceases to act in the capacity of market maker concerning such security;~~

Provided, however, That this paragraph (f)(3) shall not apply to the security of an issuer that is a shell company or that was the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act until 60 calendar days after the expiration of such order; and that this paragraph (f)(3) shall apply to a publication or submission of a quotation concerning a security of an issuer included in paragraph (b)(5) of this section only where the information required by paragraph (b)(5) (excluding paragraphs (b)(5)(xiv) through (xvi)) is current and has

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~~been made publicly available within six months before the date of publication or submission of such quotation.~~

(4) Municipal securities. The publication or submission of a quotation concerning a municipal security.

(5) Securities of issuers meeting trading volume and market capitalization standards. The publication or submission of a quotation concerning:

(i) A security of an issuer that is included in the FTSE All-World Index; or

(ii) A security that meets the following criteria:

~~(i)(A)~~ A security with a worldwide average daily trading volume value of at least \$100,000 during the 60 calendar days immediately before the publication of the quotation of such security; and

~~(ii)(B)~~ The issuer of such security has at least \$50 million in total assets and \$~~10~~150 million in ~~unaffiliated shareholders' equity~~market capitalization as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year.;

~~(6) The publication or submission of a quotation concerning a security by a broker or dealer that is named as an underwriter in a registration statement for an offering of that class of security referenced in paragraph (b)(1) of this section or in an offering circular for an offering of that class of security referenced in paragraph (b)(2) of this section; Provided, however, That this paragraph (f)(6) shall apply only to the publication or submission of a quotation concerning such security within the time frames identified in paragraphs (b)(1) or (b)(2) of this section.~~

~~(7) The publication or submission of a quotation by a broker or dealer, in a qualified interdealer quotation system, concerning a security where such qualified interdealer quotation system complies with the requirements of paragraphs (a) through (c) of this section and also makes a publicly available determination of such compliance, and a broker or dealer publishes or submits a quotation in reliance on this exception within three business days after such publicly available determination; Provided, however, That this paragraph (f)(7) shall not apply to a quotation concerning a security:~~

~~(i) If the issuer of such security is a shell company; or~~

~~(ii) After the first 30 calendar days of publication or submission of such quotation by a broker or dealer in reliance on this paragraph (f)(7).~~

~~(8) The publication or submission of a quotation by a broker or dealer that relies on publicly available determinations by a qualified interdealer quotation system or registered national securities association that:~~

~~(i) Paragraph (b) information is current and publicly available;~~

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~~(ii) A broker or dealer may rely on an exception contained in paragraph (f)(1), (f)(3)(i), (f)(3)(ii), (f)(4), (f)(5), or (f)(7) of this section;~~

~~(iii) The qualified interdealer quotation system or registered national securities association has reasonably designed written policies and procedures to determine whether proposed paragraph (b) information is current and publicly available and that the requirements of an exception under paragraph (f) of this section are met.~~

(7) Quotations made known only to qualified investors, registered entities and banks. The publication or submission of a quotation by a broker or dealer in a qualified interdealer quotation system; *provided, however*, that such quotation is made known only to the following:

(i) Qualified institutional buyers, as defined in section 144A(a)(1) of the Securities Act of 1933;

(ii) Accredited investors, as defined in Section 230.501(a) of the Securities Act of 1933;

(iii) Brokers or dealers registered pursuant to Section 15 of the Act;

(iv) Investment companies registered under the Investment Company Act of 1940;

(v) Investment advisers registered under the Investment Advisers Act of 1940; or

(vi) Banks, bank holding companies, savings associations, depository institutions or foreign banks, as defined under Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(8) Issuers emerging from bankruptcy. The publication or submission of a quotation concerning an issuer that has emerged from reorganization pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 et seq.), *Provided, however*, that this paragraph (f)(8) shall not apply unless:

(i) The issuer's reorganization plan pursuant to 11 U.S.C. 1129 has been in effect for less than two (2) years; and

(ii) The following information is current and publicly available:

(A) The issuer's court-approved disclosure statement filed under 11 U.S.C. 1125; and

(B) The financial information described in paragraph (b)(5)(xii) from the date of the entry of the bankruptcy court order confirming the issuer's reorganization plan pursuant to 11 U.S.C. 1129.

(g) Exemptive Authority. Upon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any

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class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.