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Division of Trading and Markets
Securities and Exchange Commission
Rule-comments@sec.gov

RE: File Number S7-23-20

The Commission and OTC Markets are to be commended for looking at ways to minimize the unintended consequences of Amended Rule 15c2-11. The concept of granting an exemption that would facilitate the development of an Expert Market is a very positive step in the right direction and one that we advocated in our comments on the proposed rulemaking. While we are generally supportive of the proposed Conditional Exemption, we respectfully submit that it fails to address a number of issues that remain problematic and harmful to shareholders of legitimate issuers that choose not to comply with the Rule. Provided below are our questions and comments on the proposed Conditional Exemption.

- A. Consider hypothetically an existing shareholder in XYZ Corp. quoted only in the Expert Market. The shareholder is not accredited or sophisticated, and therefore is not entitled to Expert Market information. What information can a broker-dealer with access to market information provide the shareholder, if the shareholder is thinking of selling?

In our view, a person or firm possessing Expert Market information should be able to share best bid, best offer and last trade information with someone who represents that he or she is a shareholder, provided (1) the information can only be used to sell and not buy, (2) the information is only on the single security, (3) the information is not given to that person more often than once in a calendar month and (4) the person or firm possessing the information keeps a record of (a) the name of the shareholder, (b) the date, (c) the name of the security, and (d) the information provided.

- B. We anticipate it will take time for the Expert Market to develop a reputation for reliability among investors. We would expect initial bids in the Expert Market to be far below the bids on the same stock before it goes off the current OTC market. Spreads between bid and ask are likely to be wide.

The current OTC marketplace has developed such a good reputation that some issuers voluntarily cease to be reporting companies. They have confidence in the acceptability of the OTC marketplace to their shareholders and potential investors.

As confidence in the Expert Market develops, we would hope that spreads between bid and ask would narrow, and prices would get closer to the intrinsic value of the enterprise. But there should definitely not be a sunset provision. This could prevent the Expert Market from achieving its potential.

Until the Expert Market is proved viable, the Commission shouldn't rely on it alone as the complete protection for existing investors in OTC stocks. There are broad categories of OTC stocks such as companies with over \$20 million in tangible equity, and companies with small, but long-established, businesses that pose no risk of fraud that should be considered for exemption from the Amended Rule. Other broad categories of issuers that pose almost no risk of fraud are companies where there has been no change of control in the past three years, no change in the principal business activity, and the share price is \$10.00 or greater. Another broad category is community banks. There may be risk of community banks making bad loans, but there is almost no risk of securities fraud.

- C. Other Categories of Securities. References are made to grey market securities, but it is not clear how a security that is already in the grey market can graduate to the Expert Market. We believe that allowing grey market securities into the Expert Market would be positive for the holders of such securities and would help to ensure the success of the Expert Market. Competing bids and offers in an Expert Market, together with a record of past trades, would all be of benefit to holders and potential buyers of gray market securities and would help to prevent fraud.
- D. To provide for the viability of the Expert Market, the proposed list of Qualified Experts shouldn't be any narrower. But should it be any broader? What about registered investment advisors, or certified public accountants? Registered Investment Advisors, Certified Public Accountants and even Stockbrokers investing for their personal accounts should be knowledgeable enough to qualify for the Expert Market and shouldn't need to be excluded for their own protection.
- E. The Release seems to assume all buyers in the Expert Market will be individuals. However, we may be mistaken if corporations and trusts with over \$5 million in net assets (or some similar standard) are considered accredited. In our view, an issuer, even if it is not accredited, should be able to buy its own shares in the Expert Market, but should not be able to sell.
- F. The Release refers to the possibility of removing a security from the Expert Market as "defunct" because of failure to respond to inquiries. This concerns us as to how it might apply to unusual entities such as oil royalty trusts, coal royalty trusts and music royalty trusts. Many of these have no full-time office, no published email address and no published phone number. Some have a large bank or accounting firm as disbursing agent but are difficult to find and contact.

In our view, entities making one or more cash distributions or mailings per year should not be treated as defunct.

- G. Currently, in the OTC market there are occasional tender offers for shares by entities other than the issuer at prices substantially below the current bid ("mini-tender offers"). The offer is distributed through broker-dealers to beneficial owners of street name shares. The promoters are relying on the shareholders' lack of knowledge of current prices. This could happen in the Expert Market.

Under such circumstances, it would be in the public interest for OTC Markets to be able to grant special permission to the issuer to disclose to its shareholders recent bids and/or trades in the Expert Market.

CONCLUSIONS

At present, it is not known how active quotations in the Expert Market are likely to be, especially at the beginning. It will take time for this market to develop a following. As this market gets more established, we think volume will vary greatly from issuer to issuer, just like in the overall OTC market.

We don't believe the existence of an Expert Market will have any significant impact on incentives for issuers to provide public information. The issuers will sort themselves. Most issuers, and their shareholders, value having a quoted market and will comply with the Amended Rule once they know about it. Others prefer to be thought of as "private companies." Included in the latter group are some of the companies that require non-disclosure agreements to get financial information.

One major benefit of the proposed Expert Market, which we believe is in the public's interest, is that it is a market that issuers have no control over. An issuer with unscrupulous controlling shareholders, Directors and/or management seeking to acquire the interests of minority shareholders at prices below fair value cannot prevent its securities from being quoted simply by making the required information difficult to obtain or refusing to provide the information.

We appreciate the Commission's work to grant a Conditional Exemption that would allow for an Expert Market. However we urge the Commission to make changes to address the items addressed above so that the Expert Market will actually achieve its intended purpose.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Mitchell".

James E. Mitchell
General Partner