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January 24, 2011

VIA ELECTRONIC SUBMISSION

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-BX-2010-059; Release Nos. 34-63448 and 34-63597

Dear Secretary Murphy:

We are writing on behalf of our client, OTC Markets Group Inc. ("OTC Markets Group"),¹ in response to 1) NASDAQ OMX BX, Inc.'s (the "Exchange") filing of Amendment No. 1 to the proposed rule change (the "Amended BX Rule Filing") to create a listing market on the Exchange to be named "The BX Venture Market" as announced in the "Notice of Filing of Amendment No.1 to Proposed Rule Change to Create a Listing Market on the Exchange,"² and 2) the Commission's "Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change, as Modified by Amendment No. 1, to Create a Listing Market on the Exchange" (the "Order Instituting Proceedings").³ In a letter dated October 3, 2010, we previously commented on the Exchange's initial filing of the proposed rule change (the "Initial BX Rule Filing," and together with the Amended BX Rule Filing, the "BX Rule Filings") as announced in the "Notice of Filing of Proposed BX Rule Filing to Create a Listing Market on the Exchange."⁴ We believe the comments we made in our original comment letter are still relevant to the Commission's review of the Amended BX Rule Filing and the Order Instituting Proceedings, and we therefore incorporate by reference the comments in our prior letter regarding The BX Venture Market.

The Exchange, through the BX Rule Filings, proposes that The BX Venture Market will list securities that do not meet the quantitative requirements of the NASDAQ Stock Market ("NASDAQ") and other national securities exchanges. The stated purpose of The BX Venture Market is to provide an alternative listing market for smaller companies not

¹ Effective January 18, 2011, Pink OTC Markets Inc. changed its name to OTC Markets Group Inc.

² See Securities Exchange Act Release No. 63597 (Dec. 22, 2010), 75 FR 82098 (Dec. 29, 2010).

³ See Securities Exchange Act Release No. 63448 (Dec. 7, 2010), 75 FR 77036 (Dec. 10, 2010).

⁴ See Securities Exchange Act Release No. 62818 (Sept. 1, 2010), 75 FR 54665 (Sept. 8, 2010).

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previously listed on such exchanges and issuers that delist from NASDAQ or other national securities exchanges.⁵ Among other things, the BX Rule Filings would establish quantitative and qualitative requirements for securities to be approved for listing and trading on The BX Venture Market that are less stringent than those required for a listing on the other national securities exchanges. The BX Rule Filings do not address how quotations for securities displayed on The BX Venture Market and transactions in securities effected on The BX Venture Market will be disseminated. The BX Rule Filings indicate that the Exchange intends to make a separate rule filing relative to the dissemination of quotations in securities displayed on, and transactions in securities effected on, The BX Venture Market.⁶ The BX Rule Filings further indicate that the Exchange believes that securities listed on The BX Venture Market will not be classified as national market system (“NMS”) securities, that such securities will trade both on The BX Venture Market and over-the-counter (“OTC”),⁷ and that OTC transactions in such securities will be reported through FINRA’s Over-the-Counter Reporting Facility (the “OTCRF”).⁸ We are commenting on the proposed listing requirements for securities to be listed on The BX Venture Market, the dissemination of quotation and transaction information for such securities, and related issues.

I. General

As an initial matter, we generally support the entry of new venues for the trading of non-NMS equity securities into the U.S. marketplace. On the other hand, it is not widely understood that the existing OTC market⁹ for non-NMS equity securities currently provides a robust solution for companies that are unable to meet the listing standards of a national securities exchange. In the Amended BX Rule Filing, the Exchange stated that it “believes that The BX Venture Market will be a more attractive alternative to domestic companies that might otherwise have considered listing on non-U.S. junior markets, which generally have lower listing requirements.”¹⁰ We disagree with that assertion, as The BX Venture Market seeks to occupy a niche in the U.S. trading markets - relative to start-up companies and companies that are delisted from an exchange - that is already well-served by the OTC market, primarily through (i) the services provided by the numerous market maker, agency and ECN broker-dealers competing to trade unlisted securities on OTC Markets Group’s platform and (ii) other experimental marketplaces for investors in pre-exchange listed securities, such as SecondMarket and Sharespost. In

⁵ *Id.*

⁶ *See id.*, note 5.

⁷ *See id.* at 54665-66.

⁸ *See id.* at 54666, note 7.

⁹ Our references to the “OTC market” in this letter refer generally to the entirety of off-exchange trading of non-exchange listed securities in the U.S.

¹⁰ Securities Exchange Act Release No. 63597, 75 FR at 82100.

particular, OTC Markets Group's tiered classification structure, based on the amount and quality of information that unlisted companies provide to investors, serves a valuable role. The adequacy and vibrancy of the OTC market means that if the Commission were to decide the risks associated with The BX Venture Market are such that it is necessary to disapprove the Amended BX Rule Filing, there will be no negative repercussions on the existing market for the securities The BX Venture Market seeks to list and trade.

We are concerned about the impact of The BX Venture Market in light of the failure of previous attempts by other national securities exchanges to create a tier with lower listing standards. Those failures have created a regulatory bias against smaller entrepreneurial companies being publicly traded. We believe prior similar attempts have failed in large part because the risks presented by early stage companies or economically distressed issuers are not aligned with what investors expect from securities associated with the brand of a national securities exchange.

In The BX Venture Market we see another attempt to implement processes that have proven ineffective in the past for smaller entrepreneurial companies, while trying to maintain an association with a national securities exchange – in this case, the Exchange. Despite the Exchange's declarations to the contrary, policies such as the use of two and three letter stock symbols and the distribution of market data through an NMS plan could cause investors to believe The BX Venture Market is populated with NASDAQ-quality, NMS securities.

Smaller companies, much like venture capital and other early stage investments, are higher risk investments, and while some companies will succeed in growing to be listed on a national securities exchange, many once promising ventures will fail. Investors are naturally confused and disappointed when the smaller companies do not all perform as expected of a security listed on a national securities exchange. In contrast, when trading on the OTC market, investors are on notice that the securities have different risk levels that should be factored into the trading prices. As shown in the chart below, with segmentation, investors have clearly rewarded the better quality OTC companies with more interest and higher liquidity, while avoiding the lower quality companies.¹¹

¹¹ OTC Markets Group maintains three tiers of issuers based upon information availability. The top tier, OTCQX, is a quality-controlled marketplace for investor friendly companies that meet financial and disclosure standards. The second tier, OTCQB, is designed for smaller companies that are current in their reporting obligations to the SEC or a U.S. banking regulator, but have not yet qualified for OTCQX. The third tier, OTC Pink, is a speculative trading marketplace. OTC Pink is further divided into categories based on the disclosure each issuer makes available.

OTC Markets Group Tiers	# Securities	December 2010 Monthly \$ Vol.	% of Total \$ Vol.
OTCQX	159	\$1,971,091,273	13.8%
OTCQB	3,851	\$3,970,777,887	27.9%
OTC Pink - Current Information	1,830	\$7,762,691,726	54.5%
OTC Pink - Limited Information	749	\$339,886,184	2.4%
OTC Pink - No Information	3,375	\$207,888,915	1.5%
Total Quoted OTC Market	9,986	\$14,252,350,531	

The securities of thousands of small U.S. companies and of companies formerly traded on an exchange, among others, are traded in the OTC market in a highly transparent and highly regulated manner. The OTC market today is an effective transition marketplace for companies seeking to graduate to an initial exchange listing as NMS securities and for those issuers that delist from the exchanges. For example, for the years 2009 - 2010, 405 companies that were delisted from an exchange were traded in the OTC market (either exclusively in OTC Markets Group's OTC Link interdealer quotation system or additionally in FINRA's electronic bulletin board system). During that same time, 157 companies traded in the OTC market moved to an exchange. Of these 157 companies, 124 had not previously been listed on an exchange and 33 companies were relisted after having been delisted from an exchange.

These OTC market graduation rates compare favorably with other countries' feeder markets. For example, in Canada's well-regarded marketplace for smaller companies, the TSX Venture Exchange, during 2009 and 2010¹² 59 companies graduated to a listing on the Toronto Stock Exchange.

The OTC market provides multiple means for the trading of non-NMS equity securities, and we believe OTC Markets Group's innovative market tiers (OTCQX, OTCQB and OTC Pink) offer substantial opportunities for issuers to provide disclosure regarding such securities.

¹² Data current through December 30, 2010, available at:
http://www.tmx.com/en/pdf/month_stats/FinancingStats_Jan11.pdf

By including the term “OTC” in the name of each of our market tiers and providing clear descriptions of the disclosure made available by issuers of securities traded within each tier, OTC Markets Group makes known the risks of investing in non-NMS securities, especially those with inadequate public information. Further, issuers that choose to qualify for our OTCQX tier by working with a U.S. law firm or investment bank to review and provide professional advice on the information they are making publicly available, can, in a more efficient manner, provide disclosure equal or superior to the proposed disclosure to be offered by issuers on The BX Venture Market. Review by a professional third-party advisor gives investors confidence that proper due diligence has been performed on the sufficiency of a company’s management and its business operations. The review process is efficiently tailored for small companies, and the reputational risk to the third-party advisors helps ensure that they thoroughly review any company with which they associate.

II. Stock Symbols

Although the “National Market System Plan for the Selection and Reservation of Securities Symbols” indicates that exchange-listed securities may have symbols between one and five letters in length, we do not believe the Exchange should use 1, 2, or 3 letter symbols typical of NMS securities (“NMS Type Symbols”) for securities listed on The BX Venture Market. As recognized by the Exchange in both the Initial BX Rule Filing and the Amended BX Rule Filing, there is a clear qualitative difference between current exchange-listed securities that are permitted to have the shorter NMS Type Symbols and the securities proposed to be traded on The BX Venture Market. All current exchange-listed securities are designated as NMS securities, but the securities proposed to be traded on The BX Venture Market will not meet the high listing standards required of NMS securities.

Securities that trade solely in the OTC market usually do not meet the higher, exchange-listing standards and are not NMS securities. These OTC securities have historically had, and will continue to have, 4 or 5 letter symbols. To effectively ensure investors are on notice of the lesser-quality, non-NMS nature of The BX Venture Market securities, these securities should not use symbols of 3 or fewer letters that are historically associated with higher quality, exchange-listed NMS securities. A symbol of at least 4 letters would put investors on notice that The BX Venture Market-listed securities may not be typical exchange-listed, NMS securities. In fact, we believe it would be misleading for a non-NMS security to have a 1, 2 or 3 letter symbol because it gives the false impression that the security is an exchange-listed, NMS security. Further, The BX Venture Market securities will also trade with 4 or 5 letter symbols in the OTC market. Requiring The BX Venture Market securities to have 4 or 5 letter symbols will enable investors to track these securities with a single symbol for both The BX Venture Market and OTC market trading.

It should be noted that NMS Type Symbols may restrict competition from the OTC markets. Many broker-dealers operate as market makers or ECNs only in non-NMS securities, and the routing systems are not configured to send shorter symbols. This

restriction on competition first came to light when Archipelago Exchange listed symbols such as ADIY, RZIP, and ZAAP. In reaction to substantial trading by broker-dealers in the OTC market, Archipelago switched to using only 2 and 3 letter symbols. This use of NMS Type Symbols effectively reduced the amount of OTC market trading volume in those securities and resulted in a decrease in the competition for execution of investor orders. At present, many of the broker-dealers in the OTC market are smaller companies who would be greatly harmed if The BX Venture Market were permitted to use NMS Type Symbols, because their systems do not enable trading in NMS Type Symbols.

III. BX Corporate Governance Requirements

We continue to believe, as noted in our prior letter on the Initial BX Rule Filing, that companies to be listed on The BX Venture Market should be required to immediately and fully comply with The BX Venture Market's proposed independent director requirement applicable to the audit committees and compensation committees. These independence requirements are integral to assuring that issuers have adequate audit procedures in place and that executive compensation is appropriate. Just as a hospital would want its doctors to complete medical school before they were hired to practice medicine on its patients, the Exchange should also want these requirements to be satisfied well before a company is approved for listing and trading on The BX Venture Market.

Failure to strictly apply the independent director requirements prior to listing will likely lead some investors to purchase the securities of issuers that have inadequate audit standards or corporate governance practices. The effect of independent directors is not something that can be applied retroactively. The Exchange believes that issuers' agreement to "comply with the Exchange's corporate governance standards . . . will provide additional protections to their investors . . ." ¹³ We believe that investors will have no additional protection unless the Exchange vigorously enforces the independence requirements as a requirement for both initial and continued listing. Strict corporate governance standards applied to small companies are meaningless without firm enforcement.

IV. Dissemination of Quotations and Transaction Reports

The Order Instituting Proceedings asks whether the Exchange has "sufficiently addressed how quotations and transactions reports relating to BX-listed securities will be disseminated? Will this result in fragmentation of pricing information relating to these securities? Will this undermine the ability of investors to receive best execution? Why or why not?"

We do not believe the Exchange has sufficiently addressed how quotations and transactions reports relating to The BX Venture Market will be disseminated. We have found no reference in the proposed rules of The BX Venture Market relating to the

¹³ Securities Exchange Act Release No. 63597, 75 FR at 82100.

dissemination of this market data. Furthermore, the description in the Amended BX Rule Filing is vague at best, at least with respect to the dissemination of quotation information. The Initial BX Rule Filing stated that the Exchange intends to make a separate rule filing relative to the dissemination of quotations in securities listed on, and transactions effected on, The BX Venture Market, but this has apparently not yet occurred. Until the Exchange provides more specificity regarding these crucial issues relating to market data, it is not possible to evaluate the adequacy and legality of the manner in which such market data will be disseminated. Until the Exchange publishes additional information regarding market data, we reiterate our comments from our prior letter because we believe the goal of market data dissemination should be to provide purchasers of such data with the specific information they seek, and to inform, not mislead, investors. The issues relating to the dissemination of market data by The BX Venture Market include the following:

- The BX Venture Market has proposed that its market data be distributed by an NMS market data plan; however, securities listed on The BX Venture Market will not be NMS securities. Investors presumably purchase an NMS plan to receive data regarding such NMS securities and not any non-NMS securities. It follows that such consumers who purchase NMS data should not be forced purchase non-NMS market data for securities listed on The BX Venture Market at a presumably higher cost in order to compensate The BX Venture Market for its data.
- Including market data from The BX Venture Market into an NMS Plan could mislead investors into believing securities listed on The BX Venture Market are exchange-listed NMS securities rather than securities that do not qualify for an exchange listing.
- Investors interested in non-NMS market data should have the opportunity to purchase data that suits their needs. Market data produced by The BX Venture Market should be competitively sold on the open market, along with other non-NMS data – not automatically bundled into an NMS Plan.
- Distribution of market data produced by The BX Venture Market by any of the existing NMS equity market data plans would require an amendment to such plan. For example, the NASDAQ UTP Plan is, by its terms, limited to certain NASDAQ securities, and securities listed on The BX Venture Market are not eligible.

To provide the best information to investors, OTC Markets Group would consider working with the Exchange to create a consolidated quote stream for non-NMS securities, including securities listed on The BX Venture Market, through NASDAQ, OTC Markets Group, or both. This would follow the Canadian model, where a physical

consolidated quote feed is offered by TMX Group.¹⁴ The TMX Feed is a pass-through model, meaning that the market data fees and the data policies of the contributing marketplaces are passed through to the end user. This superior model creates a simple quote stream accessible to all market participants, spurs competition and innovation for market data producers to create licensing models that deliver value to end users, and sets a baseline for competing consolidators.

V. Issuers Previously Listed On a National Securities Exchange

We do not agree with the dichotomous definition of a company previously listed on a national securities exchange specified in Proposed Rule 5506(b) of The BX Venture Market. Proposed Rule 5506(b) states that “[f]or purposes of this Rule 5506, a company will be considered to have been previously listed on another national securities exchange: (1) if it was listed on such an exchange at any time during the three months before its listing on the Exchange; or (2) until September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2008 and September 30, 2011.”

We do not understand why the Exchange suggests a three year and nine month look-back for initially determining whether a security was previously listed on another exchange, and only a three month look back when making such a determination after September 30, 2011. We see no reason, nor has the Exchange provided an explanation, why it is appropriate to apply an initial look-back period that is fifteen times greater than the period to be used on an on-going basis after September 2011. If a three month look back period is appropriate as of October 2011 and thereafter, the same period should be applied from The BX Venture Market’s inception.

VI. Conclusion

An equity trading venue should seek to provide liquidity while informing investors as to the possible risks and rewards of the securities on its platform. The BX Venture Market’s plans to use NMS Type Symbols and distribute data through an NMS plan will only mislead investors into believing they are investing in NASDAQ-quality, NMS securities. Lax enforcement of corporate governance standards, and an inconsistently applied rule regarding previous listing on a national securities exchange, will further lower the quality of issuers on The BX Venture Market.

We encourage experimentation with new methods of supporting small companies as they strive to list on a national securities exchange. We are proud of the unprecedented transparency and efficiency our platform has brought to the OTC market, and we believe others can join us in providing valuable services to OTC issuers, broker-dealers and investors. While we do not believe The BX Venture Market needs to be approved to

¹⁴ See TMX Information Processor, available at: http://www.tmx.com/en/data/tmx_ip/index.html

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facilitate a liquid, transparent market for non-NMS securities, if it is approved, we believe the issues we have raised should be addressed beforehand.

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We appreciate the Commission and its staff's consideration of these comments. We would be happy to discuss these comments further if the Commission or its staff wish to do so.

Sincerely yours,

A handwritten signature in black ink that reads "Michael R. Trocchio". The signature is written in a cursive, slightly slanted style.

Michael R. Trocchio