

**January 6, 2010**

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

**Re: Comments to Securities Exchange Act Release No. 60515  
File No. SR-FINRA-2009-054**

Dear Ms. Murphy,

Pink OTC Markets Inc.<sup>1</sup> ("Pink OTC") respectfully submits the following additional comments on the proposal by the Financial Industry Regulatory Authority, Inc. ("FINRA") to adopt new FINRA Rules 6434 (Minimum Pricing Increment for OTC Equity Securities), 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access Fees) and 6460 (Display of Customer Limit Orders) (collectively, the "Current Proposal"). The comments Pink OTC submits today supplements our original comment letter on the Current Proposal that was submitted to the Securities and Exchange Commission (the "Commission") on September 23, 2009 (the "Initial Comment Letter").<sup>2</sup>

Proposed FINRA Rule 6460 should be amended as follows:

- To require a broker-dealer that receives a limit order in an OTC equity security to:
  - Execute the order,
  - Display the order in an inter-dealer quotation system or an Alternative Trading System that makes its quotations publicly available (a "Public ATS"), or
  - Transmit the order to another broker-dealer that will display the order in an inter-dealer quotation system or a Public ATS.
- Alternatively, Rule 6460 should not be adopted at this time.
- Broker-dealers should also be required to display limit orders in OTC debt securities.

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<sup>1</sup> Pink OTC is the leading provider of financial information and technology services for the OTC equity securities markets. Among other things, Pink OTC operates Pink Quote™, a real-time inter-dealer quotation system for OTC equity securities for market makers and other broker-dealers registered with FINRA. More information can be found at [www.pinkotc.com](http://www.pinkotc.com)

<sup>2</sup> See "Comments to Securities Exchange Act Release No. 60616; File No. SR-FINRA-2009-054" by R. Cromwell Coulson, CEO of Pink OTC Markets, Inc. (September 23, 2009), <http://www.sec.gov/comments/sr-finra-2009-054/finra2009054-9.pdf>.

Pink OTC is concerned about the consequences for adoption of new FINRA Rule 6460, which would require the display of customer limit orders in OTC equity securities under certain circumstances, and urges the Commission to require that it be amended or not be adopted at this time.

## **Pink OTC's Prior Comment**

While generally expressing support for FINRA's efforts to improve market quality, Pink OTC's Initial Comment Letter pointed out severe flaws in the Current Proposal that would negatively impact market quality in its current form. We urged the Commission to require substantial amendments to the Current Proposal prior to its adoption.

Since the time Pink OTC submitted its Initial Comment Letter, FINRA has proposed to create a Quotation Consolidation Facility ("QCF") that would serve as a commercial data consolidator and disseminator for quote data in the over-the-counter equity market (the "QCF Proposal").<sup>3</sup> FINRA argues that the QCF Proposal "is consistent with the goals articulated in [the Current Proposal] to extend selected Regulation NMS protections to the over-the-counter market."

For the reasons stated in its comment letter,<sup>4</sup> Pink OTC is strongly opposed to the QCF Proposal. Pink OTC believes that far from furthering the market quality improvement goals expressed in the Current Proposal, the QCF Proposal will seriously degrade the quality of the market for OTC equity securities. Pink OTC therefore believes that additional comments on the Current Proposal are warranted at this time.

## **Limit Order Display in the OTC Markets**

Pink OTC generally supports the introduction of a limit order display rule in the market for OTC equity securities. We believe that limit orders enable customers to trade with each other, thereby improving market transparency and providing a competitive means of limiting trading costs. Properly designed and implemented, a limit order display rule may encourage customers to submit limit orders to their brokers and thereby improve market quality.

However, as we pointed out in our Initial Comment Letter, there are significant differences between the market for NMS Stocks and the market for OTC equity securities. As a result, rules that improve the quality of markets for NMS stock are difficult to apply to the markets for OTC equity securities, and a procrustean application of NMS rules to trading OTC equity securities can have serious adverse affects.

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<sup>3</sup> See "Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination for OTC Equity Securities," Release No. 34-60999; File No. SR-FINRA-2009-077 (November 13, 2009).

<sup>4</sup> See "Comments to Securities Exchange Act Release No. 60999; File No. SR-FINRA-2009-077," by R. Cromwell Coulson, CEO of Pink OTC Markets, Inc. (December 14, 2009), <http://www.sec.gov/comments/sr-finra-2009-077/finra2009077-1.pdf>.

Among other important market differences, all NMS stocks are listed on a national securities exchange. As a result, all NMS stocks are quoted in a market that disseminates real-time quotations that are publicly available. While broker-dealer quotations are publicly displayed in and disseminated in real time by Pink Quote and the OTC Bulletin Board, the two inter-dealer quotation systems that currently operate in the markets for OTC equity securities, many OTC equity securities are not quoted in Pink Quote, OTC Bulletin Board, or in any venue that publishes publicly available quotations. Some broker-dealers do not make their quotations publicly available. As a result, many OTC equity securities are traded in the gray market where quotations are obtained by direct communications among broker-dealers, and these quotations are not disseminated to the public.

The Current Proposal attempts to accommodate this difference in market structure by limiting the priced orders that must be displayed in an inter-dealer quotation system. The Current Proposal therefore modifies the NMS rule that governs limit order display. We believe this modification will result in less publicly displayed liquidity.

Under Rule 604 of Regulation NMS, a broker-dealer that receives a priced order from a customer must execute the order, display it or immediately transmit it to a firm that will display it. The Current Proposal would modify this requirement by requiring a limit order in an OTC equity security to be displayed only to the extent that the broker to which the order is submitted is currently publishing a quotation in that security in an inter-dealer quotation system. A broker that is not currently publishing a quotation, is only publishing a quotation in a quotation medium of limited circulation, or is only displaying proprietary orders in an Electronic Communications Network (“ECN”), is not required to publish a quotation representing a limit order from a customer. This would be true even though another broker-dealer may be publishing a quotation on an inter-dealer quotation system in the security, so that a publicly available quotation is currently available.

Since the display of limit orders potentially deprives a broker-dealer of the opportunity to profit from their execution, the Current Proposal will have the effect of discouraging broker-dealers from displaying quotations in an inter-dealer quotation system and cause more broker-dealers to trade OTC equity securities in the gray market. This disincentive to publicly display quotations would be exacerbated by the QCF Proposal. FINRA intends to discontinue its operation of the OTC Bulletin Board. As a result, Pink Quote will be the only remaining inter-dealer quotation system for OTC equity securities for the foreseeable future. Under the QCF Proposal, a four dollar position fee would be imposed by FINRA on quotes in any OTC equity security maintained in Pink Quote. At the present time, broker-dealers are not required to pay any fee to FINRA for positions maintained in Pink Quote. The additional cost of publishing quotations in Pink Quote under the QCF Proposal will impose an additional penalty on broker-dealers that publish quotations in OTC equity securities.<sup>5</sup>

Moreover, unlike the markets for NMS securities, broker-dealers are not required to publish quotations in OTC equity securities. Instead, broker-dealers are free

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<sup>5</sup> The proposed QCF fee essentially amounts to a heavy FINRA tax on publicly displayed prices.

to withdraw from publishing a quotation in any OTC equity security at any time. Quotations may also be re-established at any time. Accordingly, a broker-dealer that does not wish to display a customer limit order in an inter-dealer quotation system may simply withdraw its quotation while holding the limit order and re-establish a quotation after the customer limit order is executed or withdrawn.

The Current Proposal therefore penalizes broker-dealers that maintain priced quotations in inter-dealer quotation systems. This fact of life will cause fewer publicly available quotations to be disseminated to the investing public and less interaction among public orders. Broker-dealers will choose to easily avoid limit order display rules and FINRA fees on publicly displayed quotes by going dark or using semi-private quotation mediums of limited distribution to select broker-dealers and customers. These unfortunate consequences are directly contrary to the salutary goals of Regulation NMS.<sup>6</sup>

We therefore believe that the Current Proposal should be amended to require a broker-dealer that receives a customer limit order in an OTC equity security to execute the order, display the order in an inter-dealer quotation system or Public ATS, or transmit the order to another broker-dealer who will display it. This is essentially the requirement for limit order handling under Rule 604 of Regulation NMS.

We are aware that the limit order display rule we propose will require modifications in other rules that govern the market for OTC equity securities. For example, Rule 15c2-11 under the Securities Exchange Act of 1934 (the "Exchange Act") prohibits a broker-dealer from submitting a quotation for an OTC equity security into an inter-dealer quotation system unless the broker-dealer has obtained certain information from the security's issuer and verified its accuracy, unless the quotation "represents the customer's indication of interest and does not involve the solicitation of the customer's interest."<sup>7</sup> To the extent that a limit order submitted by a customer has resulted from the solicitation of the customer's interest, and no broker-dealer has obtained and verified the information required under Rule 15c2-11,<sup>8</sup> it would not be lawful to display the customer's limit order.

The Commission could provide an exemption from Exchange Act Rule 15c2-11 for customer limit orders displayed in connection with the limit order display rule. However, this may result in the display of quotations for securities in an inter-dealer quotation system where broker-dealers have not obtained and verified the information required under the Rule.<sup>9</sup> Alternatively, there could be an exception

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<sup>6</sup> "One of the primary objectives of the NMS is to help reduce [transaction] costs by improving market liquidity and depth. The best way to promote market depth and liquidity is to encourage vigorous competition among orders." Regulation NMS, Exchange Act Release No. 34-51808 (June 9, 2005), at 21.

<sup>7</sup> Exchange Act Rule 15c2-11(f)(2).

<sup>8</sup> FINRA Rule 6440 also requires a submission to FINRA on Form 211, which is frequently subject to a lengthy review process. As a practical matter, this required submission would preclude the immediate display of a customer limit order that is subject to Exchange Act Rule 15c2-11.

<sup>9</sup> Pink OTC believes that it makes no sense for a broker-dealer to gather information about an issuer without also making this information available to the public. Pink OTC maintains a publicly available website that issuers can use to provide the information required under Exchange Act

from the limit order display rule in cases where the display of a customer order would violate Rule 15c2-11.

In any event, it would be better not to have a limit order display rule at all than have a rule that would penalize broker-dealers that make quotations in OTC equity securities publicly available.

## **Publicly Available Quotations in Debt Securities**

Pink OTC believes that pre-trade transparency in securities improves the quality of markets generally and provides important protections for investors. Accordingly, Pink OTC supports proposals that encourage the public display of trading interest.

There is no principled reason why a limit order display rule for the OTC markets should be limited to equities. Investors would also benefit from a properly designed limit order display rule in debt securities. A limit order display rule is feasible for OTC debt securities because Pink Quote maintains “Yellow Sheets,” an inter-dealer quotation system for the display of quotations in debt securities. We believe that existing ATS systems also have the ability to publicly display quotations in OTC debt securities.

We therefore believe the Current Proposal should be amended to require the display of customer limit orders in OTC debt securities.<sup>10</sup> A limit order display rule for debt securities, as with equity securities, should require a broker-dealer to display in an inter-dealer quotation system or Public ATS a customer’s priced order in a debt security, whether or not the broker-dealer maintains a quotation in that security. In the alternative, the broker-dealer can transmit the customer order to some other firm that will display the quotation.

We believe that a limit order display rule for publicly traded debt securities may lead to greater pre-trade transparency in the trading of debt securities, to the benefit of public investors.

## **Conclusion**

Pink OTC generally supports regulatory efforts to improve the quality of markets in OTC equity securities. We believe that a rule requiring the display of customer limit orders, if properly designed and implemented, can improve the quality of markets by facilitating the interaction of customer orders.

Unfortunately, FINRA’s proposed Rule 6460 will have the perverse effect of penalizing broker-dealers that submit quotations into an inter-dealer quotation

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Rule 15c2-11. Pink OTC also categorizes securities quoted in its Pink Quote inter-dealer quotation system according to the quality of issuer information that is publicly available. Each security’s category is publicly available, disseminated through market data vendors and widely-used by broker-dealers and investors.

<sup>10</sup> To avoid front running, we think such an order should not be displayed where the face amount of the debt security is greater than \$100,000, unless the customer specifically requests that the order be displayed.

system. We have therefore proposed that FINRA require a broker-dealer to display customer limit orders in an inter-dealer quotation system or Public ATS, or transmit the orders to a broker dealer that will display them. This proposal will require some modifications to existing rules, but is more likely to accomplish the Commission's goals.

If these amendments are not feasible for any reason, proposed Rule 6460 should not be adopted at this time.

We also believe that there is no principled reason why customer limit orders in debt securities should not be protected by the limit order display rule. At least one inter-dealer quotation system exists that will display orders in debt securities, we believe other systems exists that have this capacity, and the market for debt securities currently suffers from a lack of pre-trade transparency. Investors would receive substantial benefits from a limit order display rule for debt securities.

Please call if you have any questions.

Very truly yours,



R. Cromwell Coulson  
Chief Executive Officer

