pink OTC MARKETS

April 9, 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. 61677
File No. SR-FINRA-2009-054

Dear Ms. Murphy,

Pink OTC Markets Inc.[1] ("Pink OTC") respectfully submits the following comments on Amendment No. 1 of 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 "Amended Proposal"). Pink OTC submitted comments on FINRA's original proposal, dated August 17, 2009.[2]

We continue to believe, as stated in our earlier comment letters, that the proposed FINRA Rules are flawed and, without substantial modification, not in the best interests of the investing public. We therefore reiterate our earlier comments. Here, we focus on four issues that are of particular concern:

- The Amended Proposal fails to consider the harmful effects caused by a rule that only requires limit order display when the broker-dealer handling the order is itself publishing a quotation in an interdealer quotation system as a market maker.

- The Amended Proposal's handling of locked and crossed quotations demonstrates FINRA's self-interested lack of concern for market quality.

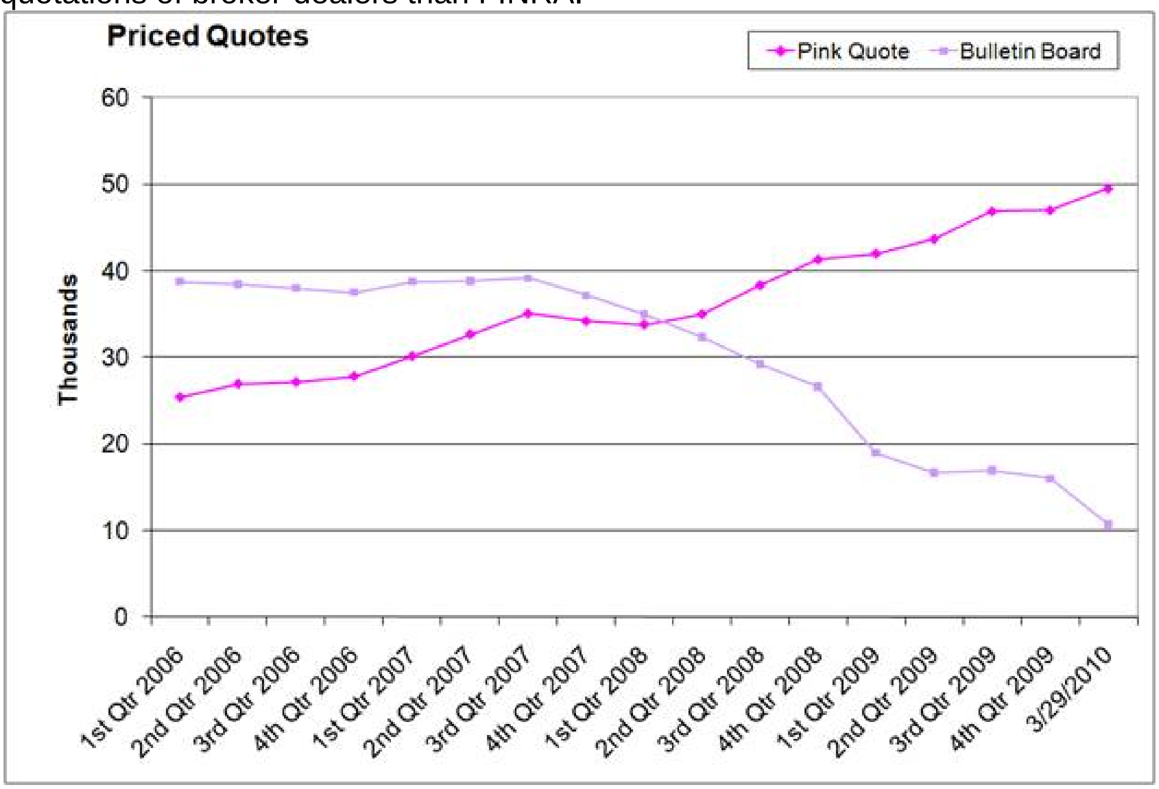
[1] Pink OTC is the leading provider of financial information and technology services for the OTC Equity Securities markets. Among other things, Pink OTC operates Pink Quote™, a real-time interdealer quotation system for OTC Equity Securities for market makers and other broker-dealers registered with FINRA. More information can be found at www.pinkotc.com
[2] See "Comments to Securities Exchange Act Release No. 60515; File No. SR-FINRA-2009-054" by R. Cromwell Coulson, CEO of Pink OTC Markets Inc. (January 6, 2010), http://www.sec.gov/comments/sr-finra-2009-054/finra2009054-12.pdf; and "Comments to Securities Exchange Act Release No. 60515; 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.

- The Amended Proposal fails to take account of the need to protect investors from the risks inherent in publishing large-sized quotations in thinly traded OTC markets.

- The Amended Proposal unfairly discriminates against business models that employ principal trading, including trading on a riskless principal basis, in favor of certain agency models, to the detriment of investors.

The Limit Order Display Proposal Is Detrimental to the OTC Market

FINRA has not adequately addressed the concerns raised by several comments that the proposed rule would degrade market quality by discouraging market makers from entering quotations into an interdealer quotation system ("IQS"). FINRA's proposal would require an OTC Market Maker that publishes a quotation for a security in an IQS to display a customer limit order that improves the broker-dealer's quote. The proposed rule does not require the publication of customer limit orders by 1) broker-dealers handling a customer order that are not an OTC Market Maker as defined by FINRA Rule 6420(e)[3], or 2) market makers that do not publish a quotation for that security in an IQS. Valid comments that pointed out the negative effects on market quality of this portion of the proposal were labeled "inappropriate." We believe that our comments deserve more consideration than that - especially since the below numbers clearly show Pink OTC has proven itself to be a superior collector of voluntarily published priced quotations of broker-dealers than FINRA.



[3] "'OTC Market Maker'" means a member of FINRA that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC Equity Security in any inter-dealer quotation system, including any system that the SEC has qualified pursuant to Section 17B of the Exchange Act. A member is an OTC Market Maker only in those OTC Equity Securities in which it displays market making interest via an inter-dealer quotation system."

Proposed Rule 6460, as currently drafted, applies solely to any "OTC Market Makers displaying a priced quotation in any OTC Equity Security in an inter-dealer quotation system [emphasis added]." Our Pink Quote platform, which is the leading IQS in the OTC equity markets, allows quote publication by FINRA members that are market makers, agency brokers or electronic communication networks (ECNs).

No brokerage firm is ever required to make a market in any OTC Equity Security or publish quotations in an IQS. Accordingly, there is no good reason for only targeting OTC Market Makers, and not imposing a limit order display rule on any member firm that directly or indirectly displays a priced quotation in an IQS or ECN that makes their orders publicly available. The unintended consequence of this rule is to discourage broker-dealers from making publicly displayed markets in OTC Equity Securities.

In the OTC markets, a broker-dealer is free to publish, withdraw and republish a quotation at any time without penalty. A broker-dealer is also free to act as agent or principal in trading customer orders and may act as agent some of the time and principal at other times, in its discretion, without meeting the definition of OTC Market Maker set forth FINRA Rule 6420(e). A broker-dealer that trades as principal can elect to act, or cease to act, as a market maker at any time. A principal trader handling customer order flow would easily avoid the requirement to display a customer order by simply not directly publishing proprietary quotes in an IQS, but instead publishing proprietary quotes through another market maker or agency broker that publishes quotations in an IQS or in an ECN. An OTC Market Maker in some OTC Equity Securities that wished to avoid the limit order display rules in other Securities could simply publish its proprietary and any customer orders it chose to display in such Securities on an ECN. Moreover, under the Amended Proposal, any principal trader, including a broker-dealer that generally acts as an OTC Market Maker, could temporarily cease the publication of proprietary quotes in an IQS when customer orders were received, and therefore not be required to display them, and then resume the publication of proprietary quotes when the customer orders were executed internally. We do not believe anyone intends to provide this sort of limit order display discretion to broker-dealers, as it is likely to lead to abuses that will result in customer complaints and a loss of investor confidence.

There is obviously an economic disadvantage imposed on any broker-dealer that displays limit orders – otherwise, there would be no need to require limit order display through the rule-making process. The most basic economic principles therefore dictate that a broker-dealer will not publish a quotation if the negative effect of displaying a limit order is greater than the penalty for not publishing a quote. Since the Amended Proposal does not require broker-dealers acting as agents, or acting as principal, but not publicly displaying prices as an OTC Market Maker, to display customer limit orders, broker-dealers can reduce the costs imposed by the limit order display rule by acting as agents or principals, but not as market makers, whenever they believe it is in their best interests to do so. The Amended Proposal therefore must inevitably result in a reduction in quotation activity in OTC Equity Securities. Since a reduction in quotation activity is associated with a decline in market quality, the Amended Proposal, even if amended to include all FINRA member firms, will degrade the quality of markets in OTC Equity Securities.

Perhaps FINRA believes that the benefits of the proposed rule will outweigh its costs. If so, FINRA is obligated to explain why it believes this is so, and why this burden should only be imposed on member firms that are acting as OTC Market Makers, instead of all member firms that are directly or indirectly publicly displaying quotes or orders. It simply does not address the valid concerns raised by comments to state that it would be "inappropriate" to impose some sort of penalty for failure to quote. FINRA also needs to explain why the limit order display rule should be imposed on OTC Market Makers, but not on agency brokers, principal traders that are not market makers, and ECNs.

In our comment, we suggested that a broker-dealer should be required to display a limit order in circumstances where a broker-dealer is not publishing its own quotation, or route the order. We agree that it would not be appropriate to impose a limit order display obligation on a broker-dealer that never directly or indirectly publishes quotations in a particular security in an IQS or otherwise makes them publicly available. However, the Amended Proposal would provide an easy way for a OTC Market Maker that regularly publishes quotations in an IQS to avoid displaying customer limit orders by simply temporarily ceasing to act as a OTC Market Maker, and, if it decides to publish quotes at all, publishing them in an ECN. The inability to profit from an order and the requirement to relinquish these profits, as well as potential future business from a customer, to a competitor would serve as a market penalty. Perhaps FINRA believes a different sort of disincentive would better satisfy its regulatory goals. But, to simply state that a proposed remedy is "inappropriate" without more explanation provides evidence that FINRA has not properly considered the issues raised in the comment.

The Proposal's Treatment of Locked and Crossed Orders is Flawed

FINRA's response in the Amended Proposal regarding locked and crossed markets smacks of self-interest.

The Amended Proposal continues to limit the requirement that broker-dealers implement policies and procedures that reasonably avoid locked and crossed markets to quotations <u>within the same IQS</u>. FINRA speciously contends that this limitation is necessary because there is not currently a "mandated consolidated quotation dissemination mechanism for OTC Equity Securities."

In our prior comment letters, we pointed out that a broker-dealer's duty of best execution may require a broker-dealer to canvass several market venues that are reasonably available to obtain the best possible price for a customer order. This duty of best execution has historically included a duty to canvass quotations that are not included within a "mandated consolidated quotation dissemination system" for NMS securities, as well as OTC Equity Securities. As stated by NASD Regulation, FINRA's predecessor, regarding securities dually-quoted on the OTCBB and Pink Quote: "Best execution requires that a firm make use of all technology reasonably available to it and when reliable, take into consideration superior priced orders that are resident in electronic systems that reasonably and readily accessible. Since both systems would be readily available to most broker/dealers, a broker-dealer should review the quotations on both quotation systems before executing a customer transaction." [4] There is no good reason why the duty to avoid locked and crossed quotations should not be co-extensive with the duty of best execution.

FINRA blithely ignores this valid comment by arguing that without a mandated consolidated quotation dissemination mechanism for OTC Equity Securities, it would be unreasonable to require broker-dealers to avoid locked and crossed markets across IQSs.

The fact is that Pink OTC currently disseminates a widely accessible, consolidated national best bid and offer for OTC Equity Securities quoted in IQS. Pink OTC has for many years purchased market data from FINRA for the purpose of disseminating a consolidated NBBO on its platform. Whether or not it is "mandated," the fact is that a widely accessible, consolidated national best bid and offer exists and should be used by broker-dealers to avoid locking and crossing markets across multiple IQSs. We submit that it is "unreasonable" not to require broker-dealers to use the existing technology that establishes a consolidated NBBO.

FINRA's response is intended to bolster its proposal 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").[5] We do not believe the QCF Proposal serves any valid regulatory purpose. Instead, its goal is to finance FINRA's activities by unlawfully taking revenues that Pink OTC currently receives from the dissemination of market data.

FINRA's true motives for the QCF Proposal are made clear in its Amended Proposal. If FINRA really cared about market quality, it would have already made a consolidated quotation available by purchasing market data from Pink OTC. The truth is that the QCF Proposal is an illegal revenue grab, devoid of any valid regulatory purpose, and an abuse of FINRA's regulatory prerogatives.

We continue to believe that a broker-dealer's duty to avoid locked and crossed markets should be co-extensive with its duty of best execution. FINRA needs to explain why broker-dealers cannot use the consolidated NBBO that is widely disseminated by Pink OTC to satisfy this obligation.

The Amended Proposal Will Cause a Loss of Investor Confidence

FINRA has failed in its response to consider the ways in which the market for OTC Equity Securities differs from the market for NMS securities and the

[4] Letter, dated April 28, 1999 from Mary N. Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc. to R. Cromwell Coulson.
[5] 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).

resulting impact on market quality resulting from the adoption of rules designed for a much different market environment. As we pointed out in each of our earlier comment letters, there are significant differences between the market and liquidity for NMS Stocks and the market and liquidity for OTC Equity Securities. As a result, rules that improve the quality of markets for NMS stocks are difficult to apply to the markets for OTC Equity Securities, and a procrustean application of NMS rules to the trading of OTC Equity Securities can have serious adverse affects.

Among other things, OTC Equity Securities are much more thinly traded than NMS securities. As a result, the risk that an order will be traded around is much more likely in the markets for OTC Equity Securities. This is especially the case when large orders or a large aggregation of many smaller orders on a broker-dealer's books are displayed in a quote montage.

In our earlier comments, we suggested that broker-dealers should have discretion over the size of a potentially market impacting displayed order to protect the order from being traded around. FINRA rejected these comments and suggested instead that a broker-dealer could obtain the consent of the customer to refrain from displaying the entire customer size. We do not believe FINRA's response is practical in an environment where many customer orders are submitted electronically and where an aggregation of small orders can create a market impact in an illiquid security that can be traded around. We believe that FINRA should act carefully, and the amount that is required to be displayed should be limited to half the largest individual order size on the broker-dealer's books above the tier size, but not more than five times tier size, unless the customer affirmatively requests that the full size of the order be displayed. A customer that affirms the publication of a large order cannot be heard to complain when the order remains unexecuted. Some limitation is necessary to protect investors that may not fully comprehend the nature of the OTC equity markets.

FINRA should consider the important fact that continuous transparency of prices is a service that is voluntarily provided by OTC Market Makers, as broker-dealers are not required to submit priced quotations into any IQS that services the OTC market. As we have stated earlier, broker-dealers are free to withdraw and resubmit quotations at any time and from time to time, as they see fit. So, a broker-dealer that receives a large-sized limit order, or has a large aggregation of many smaller orders on its books, may be required by best execution principles to protect those orders from being traded around by withdrawing any proprietary quotations that it has published and not displaying any customer order in an IQS. Broker-dealers should not be required to choose between their duty of best execution and the limit order display rule.

It should be understood that the economic risk faced by a predatory trader is much reduced by the opportunity to view all of the aggregate liquidity existing at a certain price level. Accordingly, the Amended Proposal, as currently drafted, provides an opportunity for predatory traders to profit by trading around publicly displayed liquidity representing customer orders. Our experience is that customers whose orders are traded around become very frustrated with the workings of the market, whether or not the trading around is lawfully permissible. The Amended Proposal therefore is likely to cause investors to lose confidence in OTC equity markets.

The goal of limit order display is to increase the ability of investor orders to meet without intervention by a principal. A price and partial size-based limit order display rule would facilitate the meeting of customer orders, while not giving free rein for predatory traders to trade around these orders, which is effectively just another form of principal intervention.

The Amended Proposal Favors Certain Agency Models to the Detriment of the OTC Market

We disagree with FINRA's conclusion that the Amended Proposal strikes the appropriate balance between addressing the practical difficulties of incorporating access fees in published quotes and the need to curtail potentially excess undisclosed access fees. The Amended Proposal shows that FINRA has a peculiar fondness for certain agency models, whether or not favoring such models operates in the best interests of investors.

It should be noted that Pink OTC does not execute trades and therefore will not be directly affected by this portion of the Amended Proposal. If anything, Pink OTC stands to benefit in the short-term from the introduction of access fees because they will provide an opportunity for Pink OTC to provide a service to bill access fees on behalf of our customers. Of course, we would rather spend our technology efforts on products that make trading more efficient and transparent rather than supporting a fee structure that reduces price transparency and complicates trading.

We recognize that access fees are strongly supported by ArcaEdge because their ECN model is founded on charging a fee to the taker of liquidity. Our platform is open to all broker-dealers, market makers, agency brokers and ECNs, and ArcaEdge is an important customer of Pink OTC's IQS. ArcaEdge does not compete with us in providing IQS services, but is a competitor with other broker-dealers operating as market makers and agency brokers for execution services in OTC Equity Securities. Accordingly, we have no reason to oppose its interests in offering increased competition for execution services.

ArcaEdge has introduced important innovations into the market for OTC Equity Securities that have improved market quality and benefitted investors. Useful innovations should be encouraged and fostered. It should be noted that the subscribers to ArcaEdge have all agreed to pay fees for taking liquidity, and we do not oppose that business model acting in competition to other agency brokers, principal traders and market makers for execution services in OTC Equity Securities.

That said, every other FINRA member in the OTC equity market, including market makers, other principal traders and agency brokers, has been willing to trade for free with other broker-dealers. We do not understand FINRA's reluctance to permit ArcaEdge to fit into that model by displaying their access fee within their quote and trading with non-subscriber broker-dealers in the wholesale OTC market on a riskless principal basis to earn their access fee commission.

It is irrelevant that Regulation NMS established an access fee cap for NMS securities after commentators raised similar concerns to the ones made by comments on FINRA's earlier proposal. Unlike the market for OTC Equity Securities, the market for NMS securities historically had permitted ECNs and stock exchanges to charge per share, execution-based access fees that were not disclosed in their quotes. Business models had been instituted that depended on the continuation of this practice. In contrast, no business model depends on the receipt of access fees among broker-dealers in the OTC equity markets. It is therefore feasible to institute better regulations that avoid the problems of access fees -- unnecessary transactions costs and quotations that fail to reflect the actual cost of a transaction to investors -- unfortunate side-effects of a market that permits broker-dealers to charge access fees.

ECNs should be permitted to trade on a riskless principal basis with non-subscriber broker-dealers. We understand that ArcaEdge in particular has tried to use this approach, but has been discouraged by FINRA from operating in this manner. FINRA's recalcitrance is regrettable. FINRA should clearly state why an ECN is unable to charge non-subscriber broker-dealers in the OTC wholesale market their fee on a riskless principal basis.

No change in existing OTC trading practices would be required to permit an ECN to operate on a riskless principal basis. Trading on a riskless principal basis would enable ECN models to charge the equivalent of access fees to market participants in a completely transparent manner. Quotes in an IQS would reflect their actual costs. There would be no need to set up systems to capture access fees, which would necessarily and unfairly burden smaller broker-dealers. A level playing field would exist among broker-dealers that would not unduly favor a particular business model.

It would be better to continue the current practice of sub-penny quote increments, rather than permit the introduction of hidden access fees. The NMS markets adopted a rule prohibiting sub-penny quoting to avoid overloading systems with quote traffic. This is not a substantial issue in the OTC markets, where quote volumes are much lower, and trades have been done on a sub-penny basis for decades. FINRA needs to explain why continuing the long-standing practice of sub-penny quote increments is not preferable to the known harms caused by access fees. It is wrong to woodenly apply market structure concepts derived from the markets for NMS securities that degrade market quality and harm investors when forced onto the much different markets for OTC Equity Securities. It is worth noting that the SEC's recent equity concept release contemplates the reduction of quote increments in NMS securities.[6]

[6] See "Concept Release on Equity Market Structure," Release No. 34-61358 (January 14, 2010), at 72.

The Amended Proposal will have the effect of causing broker-dealers to abandon principal and riskless principal business models in favor of agency models so that they can charge access fees. This is a foolish and undesirable result.

The Securities and Exchange Commission historically has favored agency models because they provide better disclosure to investors by disaggregating the prices paid for securities from commissions paid to broker-dealers for execution services. Ironically, FINRA's Amended Proposal would obscure disclosure by adding a layer of access fees onto securities prices. While this undesirable consequence may have been necessary in the market for NMS securities due to historical practices in that market, there is no need to introduce access fees into the market for OTC Equity Securities, when much better alternatives are readily available.

Conclusion

As stated in our earlier comment letters, Pink OTC generally supports regulatory efforts to improve the quality of markets in OTC equity securities. We continue to 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, the Amended Proposal, in its current form, will adversely affect market quality and harm investors. Its faults have been pointed out by several thoughtful comments. Rather than proposing amended rules that take into account the valid concerns raised by these comments, FINRA has autocratically dusted them off as of no consequence.

We do not believe that Congress instituted notice and comment procedures so that they would be treated by regulatory agencies as a mere formality and a nuisance. Instead, Congress intended that agencies treat comments seriously and provide thoughtful reasons for rejecting them. If FINRA has a sound basis for its conclusions, then it should describe them. Giving valid comments short shrift, as FINRA does in the Amended Proposal, is disrespectful to its Congressionally mandated responsibilities.

We strongly believe that the Amended Proposal needs further amendment to protect the investing public and should not be adopted until the issues described in this comment letter and others are adequately addressed.

Please call if you have any questions.

Very truly yours,

R. Cromwell Coulson
Chief Executive Officer