



January 20, 2010

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

**Re: Comments to SR-FINRA-2009-089 - Proposed Rule Change to Adopt
FINRA Rule 6490, Relating to Processing of Company-Related Actions and
Implementing Fees for Such Services**

Dear Ms. Murphy,

Pink OTC Markets Inc. respectfully submits the following comments on the proposed rule change to adopt FINRA Rule 6490 relating to processing of corporate actions for OTC equity and debt securities and to implement fees for such services.

Pink OTC Markets generally supports FINRA's efforts to clarify the scope of its regulatory authority and discretionary power when processing documents related to Rule 10b-17 announcements and other Company-Related Actions, including name changes, mergers and bankruptcy, and to establish fees.

The proposed rule change advises that FINRA may find documentation in a request to process a company related Action deficient and refuse to process the Action. It provides a list of factors which may be considered when determining whether a request is deficient. Among these factors are: 1) whether an issuer is current in its reporting obligations to the SEC or other regulatory authority, and 2) if there is significant uncertainty in the settlement and clearance process for the security. Pink OTC Markets requests that FINRA provide additional guidance on both of these factors.

A significant number of corporate actions are processed currently for securities of OTC companies that are not current in their SEC reporting obligations. According to our records, in a recent period, 16% of all name and symbol changes and 13% of all stock splits processed for SEC reporting companies were for companies that were not current in their reporting obligations. How does FINRA plan to treat requests related to these delinquent filers, some of which are severely delinquent yet have an active trading market for their securities? Will filing delinquency be a cause for automatic deficiency or will some additional criteria be used in determining deficiency of requests to process Company-Related Actions for delinquent filers?

There is a significant divide today in the OTC marketplace regarding the Depository Trust Corporation's (DTC's) proposed rules for eligibility of transfer agents and issuers into DTC's FAST system. In recognition of this situation, we ask that FINRA provide further guidance to the market about what constitutes a "significant uncertainty in the settlement and clearance process." Will issuers that are not designated by DTC eligible

for FAST be judged to have significant uncertainty in the settlement and clearance process? And if so, will that be automatic cause for deficiency which will result in refusal by FINRA to process the Company-Related Action?

FINRA is proposing to establish fees to be paid by the issuers of OTC securities when they submit documentation to FINRA announcing a Company-Related Action. Pink OTC Markets generally supports the establishment of such fees, however, we have several concerns about the impact fees will have on OTC issuer behavior in terms of timely reporting and how the Company-Related Actions will be processed by FINRA if no payment is made. First, we are concerned that the imposition of fees may in fact cause non-compliance by issuers. Will fees, even a \$200 fee, cause more issuers to effect a corporate action through their transfer agent and DTC without ever notifying FINRA? What are the consequences of non-payment? What course of action will FINRA take for OTC issuers who effect a Company-Related Action without notifying FINRA at all? If FINRA lacks the authority to enforce 10b-17 because it has no privity with issuers, FINRA should coordinate with the SEC, which does have this authority. FINRA should address this issue in its rule proposal and perhaps amend the Rule to make clear that non-complying issuers will be reported to the SEC for enforcement action.

Secondly, FINRA proposes a \$5000 fee for a notification made after the effective date. We understand that FINRA intends the high fees for late filing to act as a deterrent to late notification. However, \$5000 is a significant financial burden to many OTC issuers, many of which are small businesses run by officers who are focusing on their own business needs and may not be knowledgeable about Rule 10b-17 timely notification requirements. Furthermore, if there is no significant consequence for non-compliance, then a \$5000 penalty fee may serve as a deterrent to providing notification to FINRA at all. What percentage of notifications for OTC Company-Related Actions would be subject to the late fees today and how does FINRA plan to notify OTC issuers of these new fees so they can make timely notice and avoid the proposed late fees?

While FINRA is working to establish new procedures and documentation for the processing of Company-Related Actions, Pink OTC Markets asks that they consider the following suggestions for improving the current processing and dissemination of Company-Related Actions:

- 1) Limit intraday processing of Company-Related Actions to emergency situations such as security revocations and quotation and trading halts. This causes unnecessary confusion in the marketplace. For example, on January 11, 2010 at approximately 2:00 P.M., FINRA notified the marketplace via the Daily List published on OTCBB.com that Linde AG ADR was converting to a sponsored program and the trading symbol was changed from LNAGY to LNEGY, effective January 11th. Generally, notification of this type of corporate action is made at least one day prior to the effective date so that the marketplace can make note of the change and effect necessary system changes in order that quotation, trade reporting and other market activities are taking place under the correct trading symbol.

- 2) Coordinate processing Company-Related Actions across all Departments within FINRA. In the example above regarding Linde AG's ADR, the symbol was cancelled mid-day, but FINRA's TRF continued to accept trade reports under the old symbol after it was cancelled. In this case Pink OTC Markets had to notify the firms that reported trades via Pink Link that the symbol had been cancelled and instruct them to contact FINRA to get instructions to re-report the trades.
- 3) Ensure information regarding OTC Company-Related Actions is disseminated accurately and consistently on Daily Lists found on both OTCBB.com and the NasdaqTrader website. For example, on October 29, 2009 there was a reverse split and a name/ symbol change for Genio Group Inc. (GNOI). FINRA assigned a new trading symbol to the new Millennium Prime Inc. On www.nasdaqtrader.com, the new symbol was identified as MLNM and on www.otcbb.com, the new symbol was identified as MLMN. For obvious reasons, conflicting information about a trading symbol assignment is confusing to the markets. In this case, Pink OTC Markets contacted FINRA to determine the correct trading symbol so that we could make the appropriate changes to our systems; however, no correction notice was ever disseminated to a wider audience through the Daily List.

Pink OTC Markets is supportive of FINRA's efforts to clarify the scope of its regulatory authority and discretionary power when processing documents related to Rule 10b-17 announcements and other Company-Related Actions. We urge FINRA to provide more transparency to the market in defining their criteria for determining deficiency for issuers that are delinquent in SEC filings and as to what constitutes a "significant uncertainty in the settlement and clearance process." We ask FINRA to consider the impact of very high penalty fees for untimely notification of Company-Related Actions by unsophisticated OTC issuers. Pink OTC Markets believes that a critical element of any proposal to begin collecting fees from issuers should include a process whereby notification is made to all OTC issuers directly to educate them regarding their obligations under Rule 10b-17 and the new Company-Related Action processing fees and warn them of the penalty fees. Further, we hope FINRA will consider the suggestions above for improving the dissemination of information related to Company-Related Actions. We believe that they will help maintain an orderly market and reduce unnecessary confusion among investors who maintain an interest in trading these OTC securities

Please call if you have any questions or require additional information.

Regards,



Liz Heese
Managing Director, Issuer Services