



February 14, 2012

VIA Electronic Submission

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

Re: **File No. SR-FINRA-2011-058; Release No. 34-66168**

Dear Ms. Murphy:

OTC Markets Group Inc. ("OTC Markets Group"), a financial information and technology services company, operates OTC Link, an electronic interdealer quotation system in the United States OTC securities market that enables its broker-dealer subscribers (all of which are members of the Financial Industry Regulatory Authority, Inc. ("FINRA")) to post quotes and communicate with each other regarding the execution of transactions. OTC Link LLC, a wholly-owned subsidiary of OTC Markets Group, has applied for FINRA membership. OTC Markets Group has informed FINRA that it intends for OTC Link LLC to operate the OTC Link interdealer quotation system as an Alternative Trading System ("ATS") registered with the Securities and Exchange Commission (the "Commission").

OTC Markets Group respectfully submits the following comments in response to the Commission's filing of an Order (the "Commission Order") Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change to Amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the "Proposed Rule").

Background

OTC Markets Group has submitted three prior comments regarding the Proposed Rule. Each comment expressed our view that FINRA did not adequately study the potentially harmful effects of the Proposed Rule on the quality and efficiency of the OTC Market. We originally commented in a letter dated November 10, 2011, noting that FINRA's analysis in support of the Proposed Rule was flawed and misleadingly simplistic. On November 18, 2011, we contacted, via email, economists in the Commission's Division of Risk, Strategy, and Financial Innovation requesting an economic review of the statistical analysis offered by FINRA in support of the Proposed Rule. A copy of that email was published as a comment to the Proposed Rule. On December 29, 2011 we submitted another formal comment letter questioning the data analysis set forth by FINRA in support of the Proposed Rule and presenting the results of our own statistical analysis. In the December 29, 2011 letter, we reviewed data relating to all trades in OTC equity securities on October 27, 2011, which was the highest volume day during

that month, and determined that the Proposed Rule would harm liquidity and impose direct costs on many investors.

We are not now repeating each of the arguments we previously raised in opposition to the Proposed Rule, although our conviction on those matters has not wavered. We intend here to express our support to the Commission Order and offer additional data for study by the Commission.

The Commission Order

OTC Markets Group wholeheartedly supports the Commission's stated grounds for considering the disapproval of the Proposed Rule, and describes additional statutory deficiencies implicated by the Proposed Rule. As discussed in our prior comment letters, we believe the Proposed Rule would impair to operation of the OTC market to the detriment of investors and the public interest.

As noted in the Commission Order, the Proposed Rule expressly contravenes the requirements of Sections 15A(b)(6) and 15A(b)(11) of the Securities Exchange Act of 1934 (the "Act"). OTC Markets Group also asserts that the Proposed Rule must be evaluated in the context of Section 3(f) of the Act.

Specifically, FINRA's lack of reasonable analysis regarding the effects of the Proposed Rule leaves the Commission in danger of violating Section 3(f) of the Act, which requires the Commission, when reviewing an SRO rule, to consider whether the rule will promote efficiency, competition, and capital formation.¹ As explained in detail in OTC Markets Group's December 29, 2011 comment letter, FINRA's analysis failed to uncover, or even consider, the Proposed Rule's potential negative effects on displayed liquidity and costs related to the execution of marketable orders. We are encouraged by the Commission Order and trust that it will lead to the additional analysis necessary to fulfill the mandate of Section 3(f) of the Act.

Moreover, the Proposed Rule directly contravenes the requirements of Section 15A(b)(6) of the Act. The Proposed Rule's likely negative impact the operation of the OTC market, as revealed by OTC Markets Group's data analysis, impedes the mechanism of free trade, and fails to protect either investors or the public interest.

The Proposed Rule also disregards Section 15A(b)(11) of the Act, which requires that FINRA's rules be designed "to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations." To the contrary, the OTC Markets Group study exposed that the Proposed Rule would lead to decreased displayed liquidity at the

¹ "whenever . . . the Commission is engaged in . . . the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."

inside, thereby making quotations less informative and leading to a less orderly process for the publishing of quotations.

For these reasons, and the analysis set forth in our previous comment letters relating to the Proposed Rule, we recommend that the Commission disapprove the Proposed Rule. We support any action by the Commission to promote a pilot program to better determine the effects of a change in tier sizes in the OTC market. The tier sizes used in such a pilot program should not necessarily be based on the NMS standards in Proposed Rule, but rather should be the result of additional analysis of the available OTC market data. That will allow a pilot program to determine the overall effectiveness of tier size changes in the OTC market, rather than focusing only on whether the tier sizes in the rule proposal are right or wrong.

Additional Data

OTC Markets Group continues to maintain that data study and analysis should be primary tool for evaluating the Proposed Rule or any other prospective rule relating to tier sizes in the OTC market. OTC Markets Group has previously supplied an analysis of trading data for October 27, 2011, and we are now able to provide the Commission with a more comprehensive relevant data set.

In conjunction with this letter, OTC Markets Group is providing to the Commission the quote and trade data for the entire month of October 2011. The data is sorted to provide the initial inside quote movement and size for each security throughout the month, all priced quote updates during the month, and all trade data for the month.

A copy of the data will be included on a DVD sent to the attention of Elizabeth M. Murphy, Secretary, Securities and Exchange Commission. We encourage the Commission to use the data in conducting its own study of the effects of the Proposed Rule on the OTC market, and to make the data available to anyone wishing to conduct a similar analysis.

FINRA already has access to all quote and trade data relating to the OTC market, including the data to be provided to the Commission by OTC Markets Group. We ask that FINRA or the Commission provide the data, either from its own sources or in the format made available by OTC Markets Group, for study by a panel of independent academics. The resulting analysis should recommend to FINRA and the Commission the appropriate tier size levels to use in any pilot program altering tier sizes in the OTC market. Professor William Christie of Vanderbilt University, a noted expert in market structure and financial analysis, would be the ideal candidate to lead an independent study on the effect of tier sizes in the OTC market. OTC Markets Group would be happy to provide any additional data needed to complete a comprehensive study.

We have asserted in our prior comment letters on the Proposed Rule that blindly instituting NMS standards into the OTC market without sufficient analysis undermines the rule making process and can harm the quality of the market. The NMS and OTC

markets vary widely with respect to types of securities and level of trading activity, making many NMS standards inappropriate for the OTC market. Some NMS standards are not even well-suited to small company trading in the NMS market, as evidenced by NASDAQ's recent "Market Quality Program" proposal aimed at combatting its struggle to offer liquidity in smaller companies.² This proposal included, among other things, a modified tier size requirement for market makers wishing to qualify. While the Commission denied this proposal, NASDAQ's suggested parameters indicate that current tier size and other NMS standards may be stifling liquidity for small NMS companies.

Conclusion

OTC Markets Group respectfully requests that in determining whether to disapprove the Proposed Rule, the Commission support a full and complete analysis of the OTC quote and trade data for the month of October 2011 and any other OTC market data it deems relevant to its evaluation. We reiterate our support for the Commission Order, and our conviction that the Commission should determine to disapprove the Proposed Rule. Should the Commission determine to implement a pilot tier size program in the OTC market, an in-depth, academic study of the available data should provide FINRA and the Commission with more appropriate tier size levels than the NMS standards currently used in the Proposed Rule.

Please contact me if you have any questions or require any additional information.

Very truly yours,



Daniel Zinn
General Counsel
OTC Markets Group Inc.

CC: Hon. Mary Schapiro, Chairman
Hon. Luis Aquilar, Commissioner
Hon. Daniel Gallagher, Commissioner
Hon. Troy Paredes, Commissioner
Hon. Elisse Walter, Commissioner

² See SR-NASDAQ-2012-014, proposing a pilot "Market Quality Program," or "MQP" that would have allowed market makers to receive a fee for making markets in specific securities subject to certain terms. As part of the MQP, NASDAQ proposed that to be eligible for payment, a market maker must, among other things, display at least 500 shares of the qualifying MQP security.

Dr. Craig Lewis, Director & Chief Economist, Division of Risk, Strategy,
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Dr. Kathleen Hanley, Deputy Director & Deputy Chief Economist, Division
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