

August 5, 2014

## VIA Electronic Submission

Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Proposed Rule Change Relating to Quotation Requirements for Unlisted Equity Securities and Deletion of the Rules Related to the OTC Bulletin Board Service; File No. SR-FINRA-2014-030**

Dear Secretary:

OTC Markets Group Inc.<sup>1</sup> (“OTC Markets Group”) respectfully submits to the Securities and Exchange Commission (the “SEC”) the following comments on the rule change proposed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) relating to quotation requirements for unlisted equity securities and the deletion of the rules related to the OTC Bulletin Board Service (the “Proposal”).

OTC Markets Group strongly supports the Proposal. Enabling SEC registered, FINRA regulated alternative trading systems (“ATs”) to efficiently operate interdealer quotation systems for unlisted equity securities (“Qualifying IQs”),<sup>2</sup> while ensuring fair and non-discriminatory access to those systems, will strengthen the overall trading market in unlisted equity securities. FINRA’s OTCBB no longer provides broker-dealers with an effective service for pricing securities, and market participants will be better served by FINRA regulating Qualifying IQs instead of expending resources trying to operate the OTCBB.

---

<sup>1</sup> OTC Markets Group Inc. (OTCQX: OTCM) operates Open, Transparent and Connected financial marketplaces for 10,000 U.S. and global securities. Through our OTC Link® ATS, we directly link a diverse network of broker-dealers that provide liquidity and execution services for a wide spectrum of securities. We organize these securities into marketplaces to better inform investors of opportunities and risks – OTCQX®, The Best Marketplace; OTCQB®, The Venture Stage Marketplace; and OTC Pink®, The Open Marketplace. Our data-driven platform enables investors to easily trade through the broker of their choice at the best possible price and empowers a broad range of companies to improve the quality and availability of information for their investors.

<sup>2</sup> FINRA Rule 6420(f) defines “OTC equity security” as any security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term “OTC equity security” shall not include any Restricted Equity Security.

As the operator of OTC Link<sup>®</sup> ATS,<sup>3</sup> a FINRA member broker-dealer and an SEC registered ATS that is the primary Qualifying IQS,<sup>4</sup> we are well-positioned to analyze and comment on the Proposal.

Our comments specifically address the following aspects of the Proposal:

- 1) The proposed rules governing conduct, fair access and data will provide the necessary equal access for FINRA member broker-dealers without creating an unnecessary burden on OTC Link ATS and other Qualifying IQSs.
- 2) Discontinuing operation of the OTCBB, in conjunction with FINRA's expanded oversight of Qualifying IQSs, will help eliminate investor and issuer confusion while promoting the goals underlying Section 17B of the Securities Exchange Act of 1934 (the "Exchange Act").
- 3) The QCF Proposal remains unnecessary and unlawful, and would not further the best interests of investors, companies or regulators, thus we agree that the QCF Proposal should be permanently withdrawn. FINRA can easily ensure fair access to quote data through regulation of Qualifying IQSs, allowing broker-dealers and market data distributors to perform quote consolidation.

### **The Proposed Conduct, Fair Access and Data Availability Rules**

The Proposal would enhance FINRA's oversight of quotes in unlisted equity securities by applying targeted regulations to Qualifying IQSs. Specifically, the Proposal would require that each Qualifying IQS establish written policies relating to (1) the collection and dissemination of quotation information and (2) granting fair and non-discriminatory access to quoting and trading on its system. A Qualifying IQS would also be required to provide FINRA with a description of each of its data products, including applicable pricing information.

OTC Markets Group supports FINRA's stated goal to ensure fair access to quoting, trading, and market data for OTC equity securities. Unlike most ATSS, OTC Link ATS uses a network model that connects our broker-dealer subscribers to one another while providing transparent quotation and attributable trade messaging services. The success of the network model requires open, equal access to all eligible subscribers. Where other ATSS using a matching engine often seek to serve only a certain subset of broker-dealers, an open network such as OTC Link ATS grows stronger as more endpoints are connected. The network model works well for trading OTC equity securities by providing diverse liquidity and execution models for broker-dealers and

---

<sup>3</sup> OTC Link ATS is operated by OTC Markets Group's wholly-owned subsidiary, OTC Link LLC, member FINRA/SIPC and SEC registered ATS.

<sup>4</sup> See the Proposal, page 12. Approximately 10,000 OTC equity securities are quoted on OTC Link ATS, and over 99% of all priced quotes in those securities are published on OTC Link ATS.

investors. With the Proposal, FINRA is clearly demonstrating the foresight to ensure that this model can continue to thrive with proper oversight and regulation in the future.

As an SEC registered ATS, OTC Link ATS is already subject to the fair access provisions under SEC Regulation ATS Rule 301(b)(5),<sup>5</sup> which require us to maintain written standards for granting access to the system, not unreasonably limit such access, and keep records regarding grants and denials of access. Accordingly, we have policies in place that meet the guidelines set forth in the Proposal for providing access to quoting and trade messaging on OTC Link ATS, and have found compliance with the Regulation ATS fair access requirements to be beneficial rather than burdensome. The fair access requirements in the Proposal, which mirror those in Regulation ATS, are thus appropriately tailored to ensure non-discriminatory availability of system access without unnecessarily burdening the ATS providing the service. The fair access rules encourage participation by market makers, agency brokers, ECNs and ATSS with varied business models, creating efficient, more robust quoting markets in the subject securities.

The Proposal extends the fair access requirements to include policies and procedures relating to fair and consistent treatment of quotes received. OTC Link ATS agrees with this approach, and welcomes the additional oversight to be provided by FINRA in this area, which will build investor confidence and market integrity. Under the Proposal, the fair access requirements would be applicable to all Qualifying IQSs, not just ATSS<sup>6</sup>, which would level the playing field not only for subscribing broker-dealers, but also for the Qualifying IQSs themselves. Consistent application of the rules means competition among systems will breed innovation and efficiency instead of opaque, back-room deals.

Similarly, the Proposal's requirement for Qualifying IQSs to provide a written description of all data products will ensure a baseline of reliable, accurate information available to all investors. The Proposal's minimal amendments to existing information recording and reporting requirements will likewise improve the data available to FINRA while shifting the reporting responsibility to the Qualifying IQS handling the applicable quotes. We agree with FINRA that the shift in responsibility will streamline the reporting process. OTC Link ATS currently maintains this information and provides it to FINRA, thus the Proposal would not impose an additional cost or compliance burden.

---

<sup>5</sup> Regulation ATS Rule 301(b)(5), "Fair access," sets forth certain requirements applicable to an ATS that, during at least 4 of the preceding 6 calendar months, had 5 percent or more of the average daily trading volume of any non-NMS equity security. OTC Link ATS crosses the 5% threshold with respect to a number of non-NMS securities. Contrary to FINRA's assertion in Note 16 of the Proposal, crossing the 5% threshold requires an ATS to comply with the Regulation ATS fair access requirements with respect to *all* securities quoted on the ATS.

<sup>6</sup> We believe any Qualifying IQS would most likely have to register as an ATS, but we support the Proposal's flexibility in allowing FINRA to regulate non-ATS IQS as well.

An ATS such as OTC Link ATS has the ability to set rules covering its subscribers' use of the system. Each individual ATS may be best positioned to set certain rules, such as the hours during which quotes will be considered firm on the ATSS system, but the Proposal may be the first step in having FINRA to enhance its regulation of ATSS generally. By devoting all of its energy to regulating trading systems rather than operating them, FINRA may be in a position to give greater input to the ATS rulemaking process. The enhanced information provided by Qualifying IQSs will allow FINRA to better oversee member quotation and trading activity across all trading venues and brokers, ensuring a well regulated investor trading experience.

### **Discontinuing Operation of the OTCBB**

The Proposal discloses many of the relevant factors relating to the deterioration of the OTCBB. Due to the technical innovations and updated functionality offered by OTC Link ATS, the priced quotation activity in OTC equity securities has continued to migrate away from the OTCBB in recent years. As discussed in the Proposal, the OTCBB accounts for well under 1 percent of the disseminated inside quotes in OTC equity securities. OTC Link ATS purchases the OTCBB data and disseminates a consolidated national best bid and offer in OTC equity securities, but the contribution from the OTCBB is now negligible.

Exchange Act Section 17B was enacted in 1990 based on the premise that “the market for penny stocks suffers from a lack of reliable and accurate quotation and last sale information available to investors and regulators,” and that “a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory surveillance data to that market.”<sup>7</sup> In 1990, neither the private sector nor regulators had produced such a system, and as a result the OTCBB was created to be operated by FINRA's predecessor, the National Association of Securities Dealers (NASD), which also operated the Nasdaq Stock Market at that time.

Much has changed in the past quarter-century. In 1998, the SEC adopted Regulation ATS, which, among other things, exempted electronic market operators<sup>8</sup> from exchange

---

<sup>7</sup> Exchange Act Section 17B(a)(1) and (3).

<sup>8</sup>Under Regulation ATS Rule 300(a), an “*alternative trading system*” means any organization, association, person, group of persons, or system:

- (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of § 240.3b-16 of this chapter; and
- (2) That does not:
  - (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or
  - (ii) Discipline subscribers other than by exclusion from trading.

registration if they were operated by a FINRA member firm and registered with the SEC as an ATS. In 2006, Nasdaq began operating independently as a registered national securities exchange outside the purview of the NASD. As FINRA shed its role as owner and operator of NASDAQ, it began assuming the regulatory oversight role for many SEC registered national securities exchanges and all ATSS. FINRA currently acts as the primary regulator of broker-dealer trading on the majority of national securities exchanges. The OTCBB now represents the last vestige of FINRA operating a commercial marketplace for unlisted equity securities, allowing the rest of the organization to primarily focus on its core mission of broker-dealer regulation.

As FINRA notes in the Proposal, the OTCBB no longer fulfills the Section 17B mandate while the private sector has produced systems such as OTC Link ATS that meet the information needs of investors, regulators and other market participants, and are regulated by FINRA and the SEC. FINRA's proposal to regulate fair access and widespread information dissemination by Qualifying IQSs would give effect to the direct intent of Congress as expressed in Section 17B. It is clear that the Proposal as a whole will serve to increase the level of quotation transparency in OTC equity securities. OTC Markets Group agrees with FINRA that if the SEC deems it necessary, it can again use its exemptive authority under Section 17B(c) to give effect to the Proposal.

### **The QCF Proposal Remains Unnecessary and Unlawful, and Should be Withdrawn**

The Proposal references FINRA's 2009 "QCF Proposal," under which FINRA would create a commercial data consolidator and disseminator for quote data in OTC equity securities. OTC Markets Group and our representatives have filed several comment letters in opposition,<sup>9</sup> and in fact the overwhelming majority of commenters other than representatives of FINRA opposed the QCF Proposal.<sup>10</sup> Without restating the points made in our prior letters, OTC Markets Group reaffirms those arguments and reiterates our opposition to the QCF Proposal.

Advances in technology have further rendered the QCF moot. The QCF would create additional latency, complexity and cost as a monopoly central data consolidator similar to a securities information processor, or SIP. When SIPs were established in the 1970s, market participants did not have the technical capability to handle data from multiple contributors. The improvements in technology since then, however, have led to

---

<sup>9</sup> Letter from R. Cromwell Coulson, December 14, 2009, available at <http://www.sec.gov/comments/sr-finra-2009-077/finra2009077-1.pdf>; Letter from Michael Trocchio, Bingham McCutchen LLP, March 19, 2010, available at <http://www.sec.gov/comments/sr-finra-2009-077/finra2009077-17.pdf>; and Letter from Neal E. Sullivan and W. Hardy Callcott, Bingham McCutchen LLP, May 5, 2010, available at <http://www.sec.gov/comments/sr-finra-2009-077/finra2009077-22.pdf>.

<sup>10</sup> The full comment file on the QCF Proposal is available at <http://www.sec.gov/comments/sr-finra-2009-077/finra2009077.shtml>.

direct feeds from exchanges (“Fast Feeds”) and other markets that far outpace the data provided by the SIPs. As regulators have required disclosure and consistent use of data under Regulation NMS, more market operators have opted to take Fast Feeds from the primary trading markets.

While there is no SIP in the unlisted equity markets, brokers have developed systems for receiving quotes from multiple market operators and providing consolidated quotes to investors. The laws of physics are immutable: in this case, the more processing steps and network hops data must travel, the more delayed and stale prices become. The QCF would have introduced more steps into the data distribution process, and would ultimately slow down the flow of information to investors and other market participants.

FINRA acknowledges in the Proposal that Qualifying IQSs make quotation information available to investors and market participants. Through direct connectivity, extranet connectivity and our extensive network of market data distributors, OTC Markets Group widely disseminates real-time data, end-of-day data, historical quotation data, company financial data, security master data and company reference data. Our publicly available website also provides real time inside bid and offer prices free to investors and displays transparent pricing information for each of our market data licenses.<sup>11</sup>

We applaud FINRA’s stated intent to withdraw the QCF Proposal, and encourage FINRA to take that action whether or not the SEC approves the Proposal.

\* \* \*

We have long been committed to offering open, transparent and connected marketplaces by providing fair and non-discriminatory access to quoting and trading on OTC Link ATS, and to the data we collect and disseminate. The regulations set forth in the Proposal are aligned with our current method of operation as an interdealer quotation system that is an SEC registered ATS. FINRA’s thoughtful Proposal will allow the private sector to innovate and provide enhanced services to broker-dealers, companies and investors while ensuring equal access to quoting, trading and information in OTC equity securities. The market will be well served by FINRA devoting its considerable expertise to regulating OTC Link ATS and similarly situated Qualifying IQSs, and the activity on those systems, rather than unnecessarily expending resources operating the OTCBB or the QCF. FINRA’s intent to withdraw the QCF Proposal further bolsters its standing as the trusted regulator in the OTC equity securities market, rather than a commercial participant. We encourage the SEC to approve the Proposal, and look forward to working with FINRA to continually improve the OTC equity securities market.

---

<sup>11</sup> Fee Schedule available at <http://www.otcmarkets.com/services/market-data/fee-schedule/overview>.

We appreciate the opportunity to comment on this proposal. Please contact me at [REDACTED] or [REDACTED] with any questions.

Very truly yours,



Daniel Zinn

General Counsel

OTC Markets Group Inc.