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November 4, 2014

By Email (rule-comments@sec.gov)

Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

Re: File Number SR-FINRA-2014-030

Dear Secretary Fields:

We are writing on behalf of our client, OTC Markets Group Inc.¹ (“OTCMG”), in response to the Commission’s request for comments in its Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Quotation Requirements for Unlisted Equity Securities and Deletion of the Rules Related to the OTC Bulletin Board Service (the “OIP”).² The OIP relates to a proposed rule change filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) with the Commission (the “Proposal”).³ As more fully discussed below, OTCMG believes the Proposal should be approved.

Among other things, under the Proposal, FINRA seeks to: 1) cease operation of its OTC Bulletin Board Service (the “OTCBB”) and eliminate FINRA’s related rules; 2) adopt rules governing the treatment of quotations in over the counter (“OTC”) equity securities⁴ by FINRA-member inter-dealer quotation systems (“IQSs”),⁵ and addressing fair and non-discriminatory access to such systems; 3) adopt rules requiring FINRA-member IQSs to provide FINRA with a

¹ OTC Markets Group Inc. (OTCQX: OTCM) operates Open, Transparent and Connected financial marketplaces for 10,000 U.S. and global securities. Through its OTC Link® ATS, OTCMG directly links a diverse network of broker-dealers that provide liquidity and execution services for a wide spectrum of securities. OTCMG organizes these securities into marketplaces to better inform investors of opportunities and risks – OTCQX®, The Best Marketplace; OTCQB®, The Venture Marketplace; and OTC Pink®, The Open Marketplace. OTCMG’s 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.

² Securities Exchange Act Release No. 73313 (Oct. 7, 2014), 79 FR 61677 (Oct. 14, 2014).

³ Securities Exchange Act Release No. 72575 (July 9, 2014), 79 FR 41339 (July 15, 2014) (“Notice”).

⁴ FINRA Rule 6420(f) defines “OTC equity security” as any equity 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.

⁵ FINRA Rule 6420(c) defines “inter-dealer quotation system” as any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

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written description of quotation-related data products offered and related pricing information, including fees, rebates, discounts and cross-product pricing incentives; and (4) adopt rules expanding the reporting requirements related to quotation information in OTC equity securities. OTCMG's subsidiary, OTC Link LLC ("OTC Link"), is a member of FINRA and operates OTC Link ATS, an IQS registered with the Commission as an alternative trading system ("ATS") under the Commission's Regulation ATS. Consequently, OTC Link would be directly impacted by the Proposal, if approved.

OTCMG previously commented on the Proposal in response to the Notice in a letter dated August 5, 2014.⁶ OTCMG still fully supports the Proposal and hereby reaffirms its comments in its prior letter. This letter specifically addresses the question raised in the OIP regarding whether the Proposal is consistent with the requirements of Sections 15A(b)(6),⁷ 15A(b)(11),⁸ and 17B⁹ (collectively, the "Provisions") of the Securities Exchange Act of 1934 (the "Exchange Act"). OTCMG believes the Proposal satisfies the requirements of the Provisions and should be approved.

Section 17B

Section 17B was enacted as part of The Penny Stock Reform Act of 1990 to ensure the establishment of an automated quotation system for penny stocks (a subset of OTC equity securities) that would improve the availability of quotation information and further investor protection. Section 17B was enacted based on Congressional findings that:

- i. the market for penny stocks lacked reliable and accurate quotation and last sale information available to investors and regulators;
- ii. it was in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and

⁶ Letter from Daniel Zinn, General Counsel of OTC Markets Group Inc., Aug. 5, 2014, available at <http://www.sec.gov/comments/sr-finra-2014-030/finra2014030-1.pdf>.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(b)(11).

⁹ 15 U.S.C. 78q-2.

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- iii. an automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market.¹⁰

In light of these findings, Congress mandated under Section 17B(b) that the Commission facilitate the creation of one or more automated quotation systems, operated by a registered securities association or a national securities exchange, to collect and disseminate information regarding penny stocks.¹¹ When Section 17B was enacted, FINRA's predecessor, the National Association of Securities Dealers ("NASD"), operated the only automated quotation system for non-exchange-listed securities (NASDAQ), but penny stocks did not meet the standards for inclusion in NASDAQ. Congress recognized that the market for penny stocks had not reaped the benefits of the national market system that Congress sought through adoption of Section 11A of the Exchange Act.¹² In Section 17B, Congress chose an automated quotation system operated by a registered securities association or national securities exchange at a time when Regulation ATS did not yet exist,¹³ so it was not possible for the private sector to create an ATS for penny stocks. At the time, registered securities associations and national securities exchanges were the only entities that had the appropriate level of regulation and price transparency to achieve Congress' goals. Had the concept of an ATS existed in 1990, Congress may well have drafted Section 17B to permit an ATS, as a market operator whose operations are regulated by FINRA and the Commission, as a permissible entity to operate an automated quotation system for penny stocks.

Instead, the OTCBB was the fruit of the Commission's efforts to implement its mandate under Section 17B. The OTCBB was created and originally operated by the NASD (which was already operating the NASDAQ automated quotation system). However, as noted in the Rule Filing and OIP, use of the OTCBB by market participants to display quotations has declined so precipitously in the past few years that quotation information available through the OTCBB has

¹⁰ See 15 U.S.C. 78q-2(a).

¹¹ See 15 U.S.C. 78q-2(b).

¹² See H.R. Rep. No. 101-617, 101st Cong., 2nd Sess. at 1433 (1990) (the "House Report for the Penny Stock Reform Act") (stating "[t]he Committee notes that through the adoption of Section 11A of the Exchange Act in 1975, Congress sought an electronic national market system for equity securities qualified for trading in that market. Penny stocks have not been included in this evolving national market system."). The legislative history of the Penny Stock Reform Act makes clear that Congress understood that in 1990 the Pink Sheets (OTC Link's predecessor) did not offer an adequate means of publishing quotations for penny stocks because, among other things: it was published daily on paper even though the markets had moved to electronic trading systems and computerized quotation services; indications of interest may not even have had prices; Pink Sheets was available only to broker-dealer subscribers; broker-dealers widely ignored the minimum information requirements required prior to quoting in Pink Sheets; Pink Sheet quotations were not firm and may not have been honored; and most Pink Sheet stocks traded without effective electronic supervision. See *id.* at 8.

¹³ Regulation ATS was adopted on December 22, 1998. See Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70921 (Dec. 22, 1998).

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become “negligible” and “so incomplete as to be potentially misleading”¹⁴ Fortunately, much has changed since 1990, and Regulation ATS has allowed the private sector to develop robust, FINRA and Commission regulated, IQSs for OTC equity securities including penny stocks.

Although the OTCBB no longer fulfills the mandate of Section 17B, as noted in the Rule Filing and OIP, non-SRO ATSS now adequately perform the role that Congress envisioned would be played by an automated quotation system. At the same time, FINRA has been shedding its role as market operator and focusing almost exclusively on oversight of the U.S. securities market and its participants. In 2006, NASD ceased operating NASDAQ when NASDAQ began operating independently as a national securities exchange outside the purview of the NASD. As NASD/FINRA shed its role as owner and operator of NASDAQ, it began assuming the regulatory oversight role for many Commission-registered national securities exchanges and all ATSS. FINRA also currently acts as the primary regulator of broker-dealers trading on the majority of national securities exchanges. The OTCBB represents the last vestige of FINRA operating a commercial marketplace.

Although in Section 17B Congress chose to require that an SRO operate the automated quotation system, Congress wisely recognized that circumstances, such as the development of Regulation ATS, may change over time and gave the Commission explicit exemptive authority to react to such changes. Specifically, in Section 17B(c), the Commission is empowered to “grant such exemptions, in whole or in part, conditionally or unconditionally, to any penny stock or class of penny stocks from the requirements of subsection (b) as the Commission determines to be consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.”¹⁵

Given the current state of the market for penny stocks, the Commission should approve the Proposal and, if it deems necessary, use its exemptive authority under Section 17B(c) to do so. Such an exemption would not be unprecedented. The Commission has previously exercised its exemptive authority under Section 17B(c) when, in 1999, it prohibited the OTCBB from including quotations for any securities not registered with the Commission. Those securities, many of which are penny stocks, have not been quoted on the OTCBB since that time.

We believe the circumstances underlying and necessitating the adoption of Section 17B no longer exist because the private sector has created the type of quotation systems, regulated by FINRA and the Commission, that Congress desired when enacting Section 17B. It is also clear that the OTCBB no longer serves the purpose of Section 17B, and should be discontinued. Fortunately, because of its exemptive powers, the Commission does not need to force FINRA or

¹⁴ See OIP, 79 FR at 61680.

¹⁵ 15 U.S.C. 78q-2(b).

any other SRO to operate a quotation system in competition with those now provided by well-regulated IQSs.

Section 15A(b)(6)

OTCMG believes the Proposal also meets the requirements of Section 15A(b)(6). Section 15A(b)(6) requires FINRA's rules to, among other things, prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and generally protect investors and the public interest. The Proposal includes a comprehensive set of rules under which FINRA will regulate IQSs in the OTC market, including rules:

- i. governing the collection and dissemination of quotation information in OTC equity securities;
- ii. ensuring that each IQS establishes non-discriminatory standards for granting access; and
- iii. regulating the communication of any pricing change in IQS quotation-related data products.

Each of FINRA's proposed rule changes (other than the cessation of the OTCBB) clearly has as its focus the improved fairness of the dissemination or availability of quotation information. As described in the Proposal and noted in OTCMG's prior comment letter, these rules will provide additional transparency to the market and ensure fair access to quotation related services and data. OTCMG believes the Proposal will, if approved, further the objectives of Section 15A(b)(6).

Section 15A(b)(11)

Section 15A(b)(11) requires that FINRA have rules governing the form and content of quotations for OTC securities which may be distributed or published by FINRA members, and that such 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. The Proposal would require that qualifying IQSs submit to FINRA their procedures for collecting, distributing and publishing quotations. OTCMG believes that with this information, FINRA will better be able to exercise its regulatory authority to ensure the widespread dissemination of fair, informative and easily accessible quotation information. As such, OTCMG believes the Proposal is consistent with Section 15A(b)(11).

As stated in OTCMG's prior comment letter, FINRA's ceasing operation of the OTCBB would allow it to focus its considerable expertise on its role as a regulator, rather than a

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marketplace operator. In its regulatory capacity FINRA can oversee qualifying IQSs with a focus on the goals of Section 15A(b)(11). Ceasing operation of the OTCBB in favor of regulating qualifying IQSs furthers, rather than hinders, FINRA's ability to live up the standards of Section 15A(b)(11).

* * * * *

Please do not hesitate to contact me at [REDACTED] if you have any questions.

Very truly yours,



Michael R. Trocchio