

July 6, 2021

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

**Re: OTC Link LLC Comments to Proposed Rule Change Relating to Members' Filing Requirements Under FINRA Rule 6432 (File No. SR-FINRA-2021-14)**

OTC Link LLC ("OTC Link")<sup>1</sup> respectfully submits this comment letter to the Securities and Exchange Commission (the "Commission" or "SEC") in response to the above-referenced proposed rule filed by the Financial Industry Regulatory Authority ("FINRA") concerning changes to FINRA Rule 6432 (the "Rule Proposal"). In connection with the Commission's recent amendments to Exchange Act Rule 15c2-11 ("Rule 15c2-11"), the Rule Proposal would amend FINRA Rule 6432 to require that a Qualified Interdealer Quotation System (or "Qualified IDQS") provide to FINRA (i) a modified Form 211 filing in connection with each initial information review that it conducts, and (ii) a daily data file containing specified information about securities quoted on its system.

We support the efforts of FINRA and the Commission to modernize and bring transparency to the over-the-counter equities market. We have long advocated for a more streamlined administration of Rule 15c2-11 and the ability of IDQSs to file Form 211s.<sup>2</sup> As the operator of a Qualified IDQS directly impacted by the Rule Proposal, our comments are narrowly focused on the application of FINRA's existing Rule 5250 (Payments for Market Making) ("Rule 5250") to the activities of a Qualified IDQS as outlined in the Rule Proposal. We do not expect the existing application of Rule 5250 to have a significant impact on our ability to perform initial information reviews under amended Rule 15c2-11. However, we believe the modernized interpretation and application of Rule 5250 that we propose here would benefit issuers, investors and regulators alike.

### Background

Footnote 17 of the Rule Proposal notes that the modified Form 211 submitted by a Qualified IDQS must contain a certification that neither the Qualified IDQS, nor its associated persons, have accepted or will accept any payment or other consideration for filing the Form 211 in accordance with FINRA Rule 5250.<sup>3</sup> As set forth below, **Rule 5250 does not (and should not) apply to Qualified IDQSs filing Form 211s, nor does it**

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<sup>1</sup> OTC Link LLC is a wholly-owned subsidiary of OTC Markets Group Inc. OTC Link LLC is a FINRA member broker-dealer and operates public trading markets where approximately 11,000 equity securities are traded by nearly 90 of the industry's largest broker-dealers. Our SEC regulated Alternative Trading System, OTC Link ATS, functions as a Qualified IDQS and, following the September 28, 2021 compliance date, will make publicly available determinations as to a security's compliance with the Rule 15c2-11 requirements.

<sup>2</sup> See OTC Markets Group comments to FINRA Regulatory Notice 17-14 (Jan. 8, 2018), available at [https://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/17-14\\_OTCmarkets\\_comment.pdf](https://www.finra.org/sites/default/files/notice_comment_file_ref/17-14_OTCmarkets_comment.pdf), see also OTC Markets Group comments to FINRA Regulatory Notice 17-41 (Feb. 8, 2018), available at [https://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/17-41\\_OTCmarkets\\_comment.pdf](https://www.finra.org/sites/default/files/notice_comment_file_ref/17-41_OTCmarkets_comment.pdf).

<sup>3</sup> Rule Proposal at pg. 6, fn. 17.

**achieve its stated investor protection goals.**

FINRA Rule 5250 prohibits member firms from accepting payments from issuers for publishing quotations, acting as market maker, or filing a Form 211 in connection with these activities. Rule 5250 also contains several exemptions for “bona fide services”, reimbursement for administrative fees, and fees provided for under exchange rules. The bona fide services exemption permits compensation for underwriting and other ancillary services. This carve-out may include fees for advisory and legal services, exchange listing costs, fees for inclusion in the OTCQX or OTCQB markets, or a subscription to disclosure services and related compliance products.

FINRA’s own guidance clearly outlines the purpose of the prohibition on payments for market making in Rule 5250: a potential conflict arises when firms are responsible for both reviewing a company’s information and subsequently making a market in the company’s securities.<sup>4</sup> This conflict could influence a firm’s decision to quote or make a market in the security, and the price at which it would quote the security.<sup>5</sup>

We appreciate the potential for perverse incentives to develop in such a relationship and do not take issue with the underlying intent of the rule. However, the prohibition on payments for market making contained in Rule 5250 should not extend to Qualified IDQs, based on both a strict application of the rule and as a matter of public policy.

Scope of the Rule

Rule 5250 prohibits issuer payments made in connection with “publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.” **IDQs do not publish quotations, nor do they act as market makers.** Rather, Rule 15c2-11 makes clear that *brokers* publish quotations and IDQs “regularly disseminate” and “make known to others” the quotations that are published or submitted by broker-dealers.<sup>6</sup> Similarly, IDQs do not act as a market makers, but rather facilitate market marker quotations.<sup>7</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997), available at: <https://www.govinfo.gov/content/pkg/FR-1997-07-10/html/97-18090.htm> (“Order Adopting Rule 5250”); see also FINRA Regulatory Notice 14-16 (Jul. 7, 2014), available at: <https://www.finra.org/rules-guidance/notices/14-26> (“Accepting such prohibited payments compromises the independence of a firm’s decision regarding its quoting and market making activities and, among other things, harms investor confidence in the overall marketplace because investors are unable to ascertain which quotations are based on actual interest and which quotations are supported by issuers or promoters.”); see also FINRA Regulatory Notice 20-03, available at <https://www.finra.org/rules-guidance/notices/20-03> (“Rule 5250 is designed to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer’s securities.”).

<sup>5</sup> See Order Adopting Rule 5250 at 37106 (“[Payments prohibited by the rule] may be viewed as a conflict of interest since they may influence the member’s decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote”).

<sup>6</sup> 17 CFR 240.15c2-11(e)(3), (e)(8).

<sup>7</sup> Section 3(a)(38) of the Exchange Act defines a market maker as “any dealer who, with respect to a security, holds itself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for its own account on a regular or continuous basis.”

**The Rule Proposal's extension of Rule 5250 to Qualified IDQs that would file modified Form 211s with FINRA is misguided.** The Rule 5250 adopting release specifies that the restriction applies to compensation received “for submitting an application *to make a market in an issuer's securities.*”<sup>8</sup> Thus, the prohibition on receiving payments for filing Form 211s only applies to member firms that are either publishing proprietary quotations or making markets in the subject security. It does not extend to a neutral market operator conducting initial information reviews or filing Form 211s with FINRA.

#### Improving the Operation of Public Markets

Notwithstanding the straightforward application of the rule, FINRA should reconsider whether the prohibition on payments related to initial information reviews and the filing of Form 211s serves the public interest.

Conducting an initial information review under Rule 15c2-11 can be resource intensive. To best protect investors and ensure an efficient market, the process should involve a thorough review of the issuer's disclosure, background checks, red flag reviews and comprehensive communication and follow-up with company representatives—a process akin to listing on an exchange or being approved for the OTCQX and OTCQB markets.

Artificially suppressing the ability to be compensated for these reviews makes it more difficult for firms to provide these valuable gatekeeping services. **The prohibition on payment for Form 211 information reviews also heightens the barriers to entry for smaller companies, startups and minority owned businesses to gain access to our public markets,** as they are less likely to have a relationship with a firm that is willing to undertake the review process for free.

The recent amendments to Rule 15c2-11 provide an opportunity to modernize the way issuer information is reviewed and disclosed to investors. The Commission and FINRA can improve the pathway for issuers seeking to become public, or those that seek to regain compliance under Rule 15c2-11, by taking a transparency-based approach. A regulated Qualified IDQS should be permitted to receive payment for initial information reviews, provided that such services are offered under “fair access” standards and the nature of the relationship, the scope of the services and the amount of payment received are fully disclosed. Instituting this type of regulated, transparent process would improve our public markets for issuers, investors and regulators.

#### Conclusion

OTC Link thanks the Commission and FINRA for the opportunity to comment on Proposed Rule 6432. For the reasons described above, our comments reflect our support of the proposal and are intended to offer recommendations to enhance its stated objectives. OTC Link would welcome the opportunity to discuss our comments in greater detail at the convenience of the Commission and FINRA.

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<sup>8</sup> Order Adopting Rule 5250 at 37106.

OTC Link LLC  
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Please feel free to contact us with any questions or to request additional information.

Very truly yours,



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