



August 26, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Subject: File No. SR-NASD-2005-089

Dear Mr. Katz,

Pink Sheets LLC ("Pink Sheets") strongly supports increased regulatory oversight over the trading of OTC Equity Securities. We believe that the NASD's proposal to assume direct authority for the trading of OTC Equity Securities, including the OTC Bulletin Board, will focus regulatory attention on this important sector of the market. We applaud this development and offer our services, where useful, to facilitate a smooth transition.

Pink Sheets is the leading provider of pricing and financial information for the over-the-counter (OTC) securities markets and, among other things, operates an Internet-based, real-time quotation service for OTC equities and bonds for market makers and other registered broker-dealers.

We offer the following suggestions, which we believe will serve to strengthen the proposed rule and enable the NASD to better serve the interests of the investing public in OTC Equity Securities.

Rule Changes for Trading in OTC Equity Securities

We are pleased that responsibility for developing and adopting rule changes for the trading of OTC Securities has been delegated to NASD Regulation. We are especially gratified that these rule changes will encompass trading practices in all OTC Equity Securities, rather than be limited to the OTC Bulletin Board. It has been some time since the NASD focused regulatory attention on trading practices in the markets for over-the-counter securities that are not sponsored by it. As is true of all markets, technology has made great changes in the way OTC Equity Securities are traded. Rule changes are needed to reflect the current state of the markets.

We have three specific proposals for badly needed rule changes. Two of our proposals deal with the public dissemination of trade reporting information, while a third concerns the obligations of broker-dealers to avoid participation in the unlawful distribution of securities by their customers.

Dissemination of Real-Time Trade and Volume Data. First, we believe that NASDAQ Quotation Dissemination Service (the “Service”) should disseminate real-time trade and volume data for non-NASDAQ ADRs traded over-the-counter. At the present time, the Service disseminates real-time trade and volume data for domestic OTC Equity Securities, but does not disseminate real-time data for ADRs. Instead ADR data is disseminated at the end of the trading day.

There is no principled reason for the Service to discriminate between the dissemination of market data for domestic securities and ADRs. The Service receives the data from market makers for both groups of securities within the same time frame. Rule 6620 of the NASD’s Rules of Fair Practice (the “NASD Rules”) requires OTC Market Makers to transmit last sale reports of transactions in OTC Equity Securities, **including ADRs**, within 90 seconds after execution.

Second, we believe that the Service should disseminate real-time trade and volume data for odd-lot transactions in all OTC Equity Securities that are sold for a price greater than \$200 per share. The Service currently disseminates real-time trade and volume data for odd-lot transactions in OTC Equity Securities that are quoted on the OTC Bulletin Board that are sold for a price greater than \$200 per share, but does not disseminate such reports for other OTC Equity Securities, including securities that are quoted on the Pink Sheets.

There can be no justification for discriminating between the dissemination of market data for OTC Equity Securities quoted on the OTC Bulletin Board as compared to the Pink Sheets. The Service receives reports in all odd-lot transaction in OTC Equity Securities within 90 seconds after execution. We would think it would be most simple and straightforward to disseminate to private vendors all odd-lot transactions in OTC Equity Securities. We speculate that practical limits in data processing capacity may require some limitations in data dissemination. However, this economic choice should not result in a procedure that harms the investing public. Investors suffer substantial disadvantages under the current procedure, which discriminates against the dissemination of trades reports merely because an OTC Equity Security is quoted in a different venue.

The NASD has repeatedly acknowledged the benefits to the investing public from the dissemination of real-time trade and volume data during market hours. For example, in 1992, in its comments to the proposed penny stock rules, the NASD stated that the “dissemination of real-time trade and volume data during market hours will significantly benefit investors by providing the same high degree of market visibility and more efficient price discovery for all . . .”¹

1. ¹ SEC Release No. 34-30608, 1992.

There is no good reason to deny the investing public transparency in ADR transactions and high-priced odd-lot transactions in OTC Equity Securities. We urge NASD Regulation to review this issue as soon as possible for the protection of investors.

A Broker-Dealer's Obligation Not to Participate in Unlawful Securities Distributions. The SEC has long held that a broker-dealer independently violates the registration requirements of Section 5 when the broker-dealer participates in an unlawful distribution of securities by other persons. The broker-dealer may be found in violation of Section 5 even though the broker dealer may not have any direct relationship with the issuer or any of its affiliates. See, *Distribution By Broker-Dealers Of Unregistered Securities*, Securities Act of 1933, Release No. 4445; Securities Exchange Act of 1934, Release No. 6721, (February 2, 1962). A broker-dealer is therefore obligated to make appropriate inquiries to make certain that its facilities are not being used by its customers to distribute unregistered securities to the public. A broker-dealer cannot merely rely on representations by a customer, the acceptance of the shares by a transfer agent, or an opinion of counsel that the shares are freely tradable.

Many fraudulent distributions are accomplished when a customer of a broker-dealer places an unsolicited order to sell a large block of a little known micro-cap security. The customer may be a control person, affiliate or may have obtained the securities from a promoter. In any event, we believe the broker-dealer is obligated to reject such orders, whether or not such orders are "solicited," unless it can determine that the customer can make the offer without violating the federal securities laws. We think part of "knowing the customer" is knowing how the customer obtained the securities that are being offered for sale and determining whether or not such offers comply with the federal securities laws. See, *Sales of Unregistered Securities By Broker-Dealers*, Securities Act of 1933, Release No. 5168; Securities Exchange Act of 1934, Release No. 9239 (July 7, 1971).

It has been some thirty years since the SEC and the NASD last provided guidance in this area. Our recent experience at Pink Sheets indicates that the broker-dealer community needs to be reminded of its obligations to avoid participation in the unlawful distribution of securities by their customers. We therefore believe that the need to avoid participation in unlawful distributions would be an appropriate topic for an NASD Notice to Members, a forum often used by the NASD to remind the securities industry of its obligations under the federal securities laws. In any event, NASD Regulation should review this issue as soon as possible with a view to proposing rules that would preclude the participation of broker-dealers in unlawful distributions of securities by their customers, which are all too often used for a fraudulent or manipulative purpose. In the same vein that broker dealers must monitor for signs of money laundering, proper industry-wide procedures and controls must be established in regards to preventing fraudulent distributions of securities by broker-dealer customers. NASD guidelines will protect investors from unregulated control persons, affiliates and promoters that abuse

the facilities of legitimate broker-dealers to dump unregistered OTC Equity Securities into the market for which adequate current information is not publicly available.

Trade Halt Authority

NASD Rule 6545 currently provides Nasdaq with authority to impose trading and quotation halts in an OTCBB-eligible security when (i) a foreign regulatory authority or market halts trading in the same security for reasons of public interest, (ii) Nasdaq or a registered securities exchange halts trading in a listed security and the OTCBB-eligible security is a derivative of the listed security and (iii) when an issuer has violated the notification requirements of Rule 10b-17 under the Exchange Act. The proposed rule would transfer this authority to the NASD.

We believe that the NASD's authority to call trading halts should be extended to all OTC Equity Securities, rather than limited to OTCBB-eligible securities. There is no good reason to deny investors in OTC Equity Securities that are not OTCBB-eligible the salutary protections of Rule 6545.

We also believe that the NASD's authority to call trading halts in OTC Equity Securities should be extended to situations where the NASD's regulatory concerns indicate that a trading halt is necessary to protect the public interest, rather than relying on actions by other markets. Many OTC Securities are not traded in foreign markets and are not derivatives of listed securities. Recently the Commission has instituted trading halts in OTC Equity Securities where questions had arisen indicating the occurrence of an unlawful distribution of securities, there were doubts about the quality of information that had been distributed to the public, or concerns that invalidly issued securities were being traded on the public markets. Prompt regulatory action in such cases protects investors. We believe the NASD, by virtue of its regulatory power over broker-dealers who trade OTC Equity Securities, serves as a front-line defense for the public against fraudulent and manipulative activities in the market for OTC Equity Securities and is best positioned to take prompt action to protect the investing public. The authority we propose would conserve the Commission's enforcement resources and enable securities regulators to respond quickly to halt fraudulent activity at the earliest possible moment.

We believe that the halt authority should be limited to four days so "piggy back eligibility" under Rule 15c2-11 is not affected. Since NASD halts generally will not be subject to judicial review, it is imperative that NASD halts not result in the unintended destruction of the market in a security.

In summary, we believe the NASD should have the authority to call trading halts in all OTC Equity Securities, rather than be limited to trading halts in securities quoted on the OTC Bulletin Board, and that this authority should extend to situations where fraudulent or manipulative activities are strongly suspected.

Clearly Erroneous Authority

We strongly support the portion of the proposal that effectively extends the NASD's authority to cancel clearly erroneous transactions to all OTC Equity Securities. The capacity to cancel erroneous transactions is necessary to avoid the confusion in the market for OTC Equity Securities that occurs when such transactions are not reversed promptly. However, we believe that thirty (30) minutes is too short a time period to identify and correct clearly erroneous transactions in the relatively slow-moving market for OTC Equity Securities. We therefore propose that the NASD should have the authority to cancel clearly erroneous transactions until the settlement date for such transactions.

Conclusion

On the whole, we believe the proposed rule will advance the interests of the investing public and strongly support its adoption with the modifications suggested in this letter.

Please call me if you have any questions.

Very truly yours,

R. Cromwell Coulson
Chief Executive Officer