



December 21, 2020

Via Electronic Submission

Ms. Josephine J. Tao
Assistant Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Exemptive Relief under Section 36 of the Exchange Act and Amended Rule 15c2-11(g)

OTC Link® LLC, FINRA/SIPC member and wholly-owned subsidiary of OTC Markets Group Inc. (“OTC Markets Group”), operates trading platforms on which a diverse network of broker-dealers provide liquidity and execution services for over 11,000 U.S. and global securities. One such platform is OTC Link ATS, an alternative trading system (an “ATS”) that operates pursuant to the exemption from the definition of an “exchange” under Rule 3a1-1(a)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”) and is subject to oversight by the Securities and Exchange Commission (the “SEC” or the “Commission”).¹

Securities on OTC Link ATS are organized into market tiers, based on the public availability of current information, meeting minimum financial thresholds and other factors. These market tiers include the OTCQX® Best Market, the OTCQB® Venture Market, the Pink Open Market and the Expert Market. The Expert Market operates as a distinct market tier on which OTC Link LLC’s broker-dealer subscribers (each, a “Subscriber” and collectively, the “Subscribers”)² can find price transparency and achieve best execution in certain securities that may not be eligible or suitable for retail investors. The distribution of quotations published or submitted on the Expert Market is currently limited to broker-dealers and such quotations are not made available to the general public.

Request

OTC Link LLC, on behalf of the Subscribers, respectfully requests that the Commission grant an exemption from paragraphs (a)(1)(i) and (d)(1)(i)(A) of the Amended Rule, pursuant to Section 36 of the Exchange Act and paragraph (g) of the Amended Rule, or any such other form of relief as the Commission may deem appropriate, to permit Subscribers to publish or submit, on a continuous basis, proprietary quotations for certain securities on the Expert Market, without obtaining and reviewing certain specified documents and information that must be current and publicly available, as required under Amended Rule 15c2-11(a)(1)(i), and preserving the applicable documents and information, as required under Amended Rule 15c2-11(d)(1)(i)(A),

¹ OTC Link ATS is a qualified interdealer quotation system (a “qualified IDQS”), as defined in paragraph (e)(6) of Rule 15c2-11 under the Exchange Act, as amended on September 16, 2020 (the “Amended Rule”).

² All Subscribers to OTC Link ATS must be FINRA member broker-dealers and must enter into a subscription agreement with OTC Link LLC that outlines the terms and conditions of their use of OTC Link ATS. All OTC Link ATS Subscribers can access all market tiers, including the Expert Market.

where the distribution of real-time and delayed quotations is limited to specified categories of sophisticated and professional investors, as described below.³

I. Background on the Expert Market

Prior to the Amended Rule, broker-dealers could continue to quote a security in perpetuity, even after information about the issuer was no longer current or publicly available. Upon the Compliance Date for the Amended Rule, among other things, broker-dealers will no longer be permitted to quote in perpetuity securities of issuers for which the Amended Rule's specified information is no longer current and publicly available.⁴ This may disadvantage existing shareholders of such securities because it will become more difficult for broker-dealers to source liquidity for certain securities without an electronic, centralized platform for quotations. As a result, OTC Link LLC represents that it plans to modify the operations of the Expert Market to permit its Subscribers to publish or submit proprietary quotations for certain securities, with certain safeguards to further the Commission's goals in amending Rule 15c2-11 of reducing the potential for fraud and manipulation and to protect retail investors.⁵

A. Quotations on the Expert Market and distribution of Expert Market data

All quotations on the Expert Market will be attributable to Subscribers intending to publish or submit such quotations at prices at which the Subscriber is prepared to trade.⁶ In operating the Expert Market, OTC Link LLC represents that it will establish, maintain, and enforce written policies and procedures that are reasonably designed to allow only permitted recipients to view, and to prevent the general public from viewing quotations published or submitted on the Expert Market.

OTC Markets Group currently distributes Expert Market data solely to broker-dealers. OTC Markets Group controls which Subscribers, market data distributors, and users have access to the data feed containing Expert Market data. Furthermore, the Expert Market data is clearly identified in the data feed, which allows recipients to control its distribution and display. OTC Link LLC will implement policies and procedures to regularly surveil the use of this data feed.⁷

³ OTC Link LLC does not request the same relief for OTC Link ATS, as a quotation medium, because OTC Link ATS does not publish or submit quotations on the Expert Market and, thus, does not engage in activity that is subject to the provisions of Rule 15c2-11. Rather, OTC Link ATS serves as the electronic platform on which Subscribers can publish or submit quotations and send trade messages in OTC equity securities.

⁴ The "Compliance Date" referred to herein is September 26, 2021.

⁵ All representations and facts described herein are limited to activities that occur on OTC Link ATS and within the Expert Market.

⁶ The exemptive order from November 21, 2016, <https://www.sec.gov/rules/exorders/2016/34-79360.pdf>, that permits broker-dealers to publish or submit quotations in an IDQS for a security that is eligible to be quoted in another IDQS, in reliance on the "piggyback" exception, under Rule 15c2-11(f)(3), without the broker-dealer independently complying with the provisions of Rule 15c2-11, will not apply to Subscribers that publish or submit quotations on the Expert Market.

⁷ All entities that distribute OTC Markets Group's market data, including Subscribers, are required to enter into a Market Data Distribution Agreement ("MDDA") directly with OTC Markets Group. OTC Markets

OTC Markets Group will distribute quotations published or submitted on the Expert Market to market data distributors, including to Subscribers, that agree to contractual and data access restrictions in an MDDA that limits the distribution and display of quotations to certain eligible investors, as described in the following section. Accordingly, real-time and delayed quotations⁸ published or submitted on the Expert Market will not be permitted to be distributed or displayed to the general public. Further, as a term of the MDDA, such market data distributors would require any person to whom they distribute quotations published or submitted on the Expert Market that is not party to the MDDA to agree, by contract, not to distribute such quotations to any person that is not a permitted recipient as described herein.

Moreover, under such policies and procedures, OTC Link LLC will determine whether market data distributors, including Subscribers, are complying with the terms of the MDDA. OTC Link LLC will regularly review activity on the Expert Market and will establish policies and procedures that provide for further review and escalation of issues, including irregular quotation activities that may indicate fraudulent behavior (e.g. unusually high volumes) and non-compliance with the MDDA. Escalation of issues may include a determination of whether any Subscriber should be denied further access to the Expert Market or whether a detailed referral should be made to FINRA or Commission staff.

B. Categories of investors eligible to view quotations published or submitted on the Expert Market

As described above, OTC Link LLC will limit access to real-time and delayed quotations that are published or submitted by Subscribers on the Expert Market exclusively to certain types of investors that have the ability to tolerate the risk associated with investing in the securities of such companies.⁹ Accordingly, the universe of investors eligible to view quotations published or submitted on the Expert Market will be limited to the following categories of investors (each, a “Qualified Expert” and collectively, the “Qualified Experts”):

- Qualified institutional buyers, as defined in Rule 144A(a)(1) of the Securities Act of 1933 (the “Securities Act”);

Group controls which market data distributors are permitted to receive market data, and the MDDA requires each such distributor to report all end-users to OTC Markets Group.

⁸ “Delayed” quotations, for the purpose of this exemptive request, shall not include “End-of-day” quotation information, which is defined in the MDDA, and is generally understood to mean information consisting of a snapshot of the best bid price and size and the best ask price and size for a security, taken at the close of regular trading hours. End-of-day quotation information does not include the identity of the broker-dealer(s) that published or submitted the quotation(s) comprising the “end-of-day” quotation. This information is used by broker-dealers, custodian banks, clearing firms, prime brokers and service bureaus for valuation, settlement, accounting, clearing and custody purposes because it can be more accurate than last transaction information. Thus, end-of-day quotation information that is used by broker-dealers in providing valuation, settlement, accounting, clearing and custody information to its customers may be viewed by retail investors, however, it is not actionable for the purposes of effecting transactions.

⁹ Market data distributors will be contractually required to ensure that the recipients of quotations published or submitted on the Expert Market meet the definition of a Qualified Expert, as described herein.

- Accredited investors, as defined in Rule 501(a) of Regulation D;¹⁰
- Qualified purchaser, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 (the “Investment Company Act”); and
- Foreign brokers or dealers, as defined in Rule 15a-6(b)(3) under the Exchange Act.

Qualified Experts may receive quotations published or submitted on the Expert Market from OTC Markets Group directly or from any market data distributor that has entered into the MDDA with OTC Markets group, or from both.¹¹ OTC Markets Group will distribute quotations of an issuer’s security on the Expert Market to the issuer of any such security if the issuer contractually agrees not to distribute such quotations, directly or indirectly, to any person that is not a current officer, director or employee of the issuer.

C. Categories of securities that are eligible to be quoted on the Expert Market

The following categories of securities will be eligible to be the subject of Subscribers’ proprietary quotations on the Expert Market:

1. Category 1: Securities that are eligible for public quoting¹² in reliance on the piggyback exception but subsequently lose such eligibility.

This includes two types of securities:

- **Category 1(a): Securities of issuers for which current information is not publicly available upon the Compliance Date.**

Securities that are publicly quoted in reliance on the piggyback exception prior to the Compliance Date and lose such eligibility upon the Compliance Date due to a lack of current and publicly available issuer information will be eligible to be quoted on the Expert Market.¹³ A

¹⁰ The term “accredited investor” includes, among other things, any broker or dealer registered pursuant to section 15 of the Exchange Act, any bank as defined in Section 3(a)(2) of the Securities Act, investment adviser registered pursuant to Section 203 of the Investment Advisers Act of 1940, and investment company registered under the Investment Company Act of 1940. See Rule 501(a)(1) of Regulation D. Furthermore, the term accredited investor also includes any entity of a type not listed in Rule 501(a)(1), that is not formed for the specific purpose of acquiring the securities offered, that own investments in excess of \$5,000,000, which could include a foreign bank or other non-U.S. financial institutions. See Rule 501(a)(9) of Regulation D.

¹¹ Qualified Experts that receive Expert Market data directly from OTC Markets Group would be subject to a subscriber agreement that contractually limits any further distribution.

¹² “Public quotes,” “public quoting,” or “public quotations” for the purpose of this letter shall mean quotations eligible for distribution to the general public on a quotation medium in accordance with the provisions of Rule 15c2-11 prior to the Compliance Date, or under the Amended Rule, as applicable.

¹³ Many of the changes to the piggyback exception under the Amended Rule are aimed at minimizing “the false appearance of an active market” for the benefit and protection of retail investors. See SEC Release No. 33-10842, Publication or Submission of Quotations Without Specified Information (Sept. 16, 2020), available at: <https://www.sec.gov/rules/final/2020/33-10842.pdf> (hereinafter referred to as the “Adopting Release”), pgs. 45, 57, 97, 116, fn. 376, 169; see also, Adopting Release, pg. 77 (“To protect retail investors from the harms resulting from incidents of fraud and manipulation in OTC securities for which no or limited publicly available information about the issuers exists to help counteract misinformation, such

quoted market on the Expert Market for such security must commence within four business days from the date on which it loses its eligibility to be quoted in reliance on the piggyback exception. Subscribers will not be permitted to publish or submit quotations in the Expert Market for securities that trade on the grey market¹⁴ on the Compliance Date.

- **Category 1(b): Securities that lose piggyback-eligibility following the Compliance Date.**

This category of securities includes those that are, or become, publicly quoted in reliance on the piggyback exception under the Amended Rule after the Compliance Date, and that subsequently lose such eligibility, due to: (1) a failure to meet the frequency of priced quotations requirement,¹⁵ (2) their shell status,¹⁶ or (3) a lack of current and publicly available information.¹⁷ A quoted market on the Expert Market for such security must commence within four business days from the date on which it loses its eligibility to be quoted in reliance on the piggyback exception.

- 2. Category 2: Securities that are issued by companies subject to a confirmed Chapter 11 bankruptcy plan.**

Securities issued in conjunction with a Chapter 11 bankruptcy plan, confirmed pursuant to §1129 of the U.S. Bankruptcy Code (the “Code”) and that are exempt from registration in accordance with §1145 of the Code will be eligible for quotations on the Expert Market. The issuers of these securities are subject to oversight of the bankruptcy court.¹⁸ After confirmation of the bankruptcy plan, the bankruptcy courts may direct the company and others to carry out the plan.¹⁹ Subscribers’ quotations on the Expert Market for any security included in this category must commence within 90 calendar days from the date on which the security is issued.

[Expert Market] exemptive relief could focus on the types of investors that have the ability to assess an investment opportunity, including the ability to analyze the risks and rewards.”)

¹⁴ As referenced in the Adopting Release, in the grey market, “trades in OTC securities occur without broker-dealers publishing quotations in a quotation medium”. See Adopting Release, pg. 216.

¹⁵ Amended Rule 15c2-11(f)(3)(i)(A).

¹⁶ Amended Rule 15c2-11(f)(3)(i)(B)(2).

¹⁷ Amended Rule 15c2-11(f)(3)(i)(C).

¹⁸ The Commission’s 1999 proposed amendments to Rule 15c2-11 would have allowed for the informational requirements to be satisfied by (1) a disclosure statement approved by a bankruptcy court and (2) the issuer’s financial statements. See Publication or Submission of Quotations Without Specified Information, Exchange Act Release No. 41110 (Feb. 25, 1999), 64 FR 11126 (Mar. 8, 1999), available at: <https://www.sec.gov/rules/proposed/34-41110.htm#A20a> (“The Proposing Release contained amendments to permit broker-dealers that quote the securities of non-reporting companies emerging from bankruptcy to review the bankruptcy court-approved disclosure statement and issuer financial information required by the Rule from the date that the bankruptcy court confirms the reorganization plan.”).

¹⁹ 28 U.S.C. § 1142.

D. Securities that are the subject of a trading suspension order, revocation order, or issued by a defunct issuer

If a security quoted on the Expert Market is issued by a company that becomes subject to a trading suspension or registration revocation order, or is identified by OTC Link LLC as “defunct,”²⁰ OTC Link LLC will remove quotations for such securities from the Expert Market. Once the applicable trading suspension order terminates or the subject security is re-registered with the Commission following an applicable Section 12(j) revocation order, the subject security must either undergo an initial information review under paragraph (a) of the Amended Rule or meet the requirements of an applicable exception therefrom to become publicly quoted or quoted on the Expert Market. OTC Link LLC will flag on its website any “formerly suspended” security for such period of time as set forth in OTC Link LLC’s policies and procedures (expected to be two years following the applicable suspension).²¹

II. Relief for Subscribers Publishing or Submitting Certain Quotations on the Expert Market

OTC Link LLC, on behalf of the Subscribers, requests that the Commission grant an exemption from Amended Rule 15c2-11(a)(1)(i) and (d)(1)(i)(A), pursuant to Section 36 of the Exchange Act and paragraph (g) of the Amended Rule, or any such other form of relief as the Commission may deem appropriate, to permit Subscribers to publish or submit, on a continuous basis, proprietary quotations on the Expert Market, without obtaining and reviewing certain specified documents and information that must be current and publicly available, as required under Amended Rule 15c2-11(a)(1)(i), and preserving the applicable documents and information, as required under Amended Rule 15c2-11(d)(1)(i)(A), where the distribution of real-time and delayed quotations is limited in the manner described in this letter.

Such relief is necessary or appropriate in the public interest, and is consistent with the protection of investors, to prevent certain existing shareholders from being disadvantaged as a result of the Amended Rule. If the Commission grants the requested exemption, the Expert Market would provide an electronic platform with priced quotations for specific categories of sophisticated and professional investors to access liquidity for securities that are no longer eligible for continued public quotations under the Amended Rule,²² while protecting retail investors from viewing real-time and delayed quotations in such securities. Further, such relief would promote retail investor protection by helping to prevent retail investors from making investment decisions based solely on quotation activity rather than based on current and publicly available information about the issuers of such securities. Additionally, the inability of retail investors to view real-time and delayed quotations in the Expert Market should minimize

²⁰ Certain issuers of securities quoted on the Expert Market may cease operations, cease to exist or otherwise fail to respond to inquiries by OTC Link LLC (in each case, a “defunct” issuer). In the event that OTC Link LLC has actual knowledge of an issuer’s “defunct” status, it shall remove quotations for the securities of such an issuer from the Expert Market.

²¹ OTC Link LLC would remove any such flag if it becomes aware of a Commission or court order finding for the successful challenge of the applicable trading suspension.

²² See Adopting Release, pg. 77 (“The Commission believes that, under certain conditions and circumstances, it could be beneficial to establish an ‘Expert Market’ that would enhance liquidity for sophisticated or professional investors in grey market securities, as well as for small companies seeking growth opportunities that might prefer to be quoted in a market limited to such persons.”).

instances where such investors are induced to purchase securities as a result of viewing the “pump” in a pump-and-dump scheme. OTC Link LLC also believes that such relief would enhance efficient pricing for certain securities by providing a centralized location for quotations so that trading in such securities would not migrate to the non-quoted grey market. Such relief also would promote capital formation through transactions executed in securities quoted on the Expert Market.

III. Conditions

1. Subscribers that publish or submit quotations on the Expert Market will not provide any real-time or delayed quotations published or submitted on the Expert Market, whether directly or indirectly from another source, to any person that is not a Qualified Expert.

2. OTC Link LLC will establish, maintain, and enforce reasonably designed written policies and procedures to operate the Expert Market in a manner that is consistent with how the Expert Market is described in this letter. Such policies and procedures would account for the following: (1) the manner in which the distribution of real-time and delayed quotations on the Expert Market is limited, directly and indirectly, only to Qualified Experts and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities; (2) specific actions that will be taken if OTC Link LLC becomes aware that any Subscriber or market data distributor or user has violated the contractual obligations described above in Part I.A., and specific actions that will be taken if OTC Link LLC becomes aware that an issuer has violated its contractual obligation not to distribute, directly or indirectly, quotations published or submitted on the Expert Market for its security to any person that is not a current officer, director, or employee of the issuer; and (3) the regular surveillance of the Expert Market data feed and quotation activity on the Expert Market to determine whether a Subscriber or market data distributor or user has facilitated access, directly or indirectly, to quotations published or submitted on the Expert Market to any person that is not a Qualified Expert or, as applicable, an issuer of a security for which quotations are published or submitted on the Expert Market with respect to its own security.

3. OTC Link LLC will preserve, for a period of not less than three years, the first two years in an easily accessible place, the documents and information related to records of Subscribers’ quoting activity on the Expert Market. In accordance with complying with this condition, OTC Link LLC would preserve the following records:

- Documents and information regarding OTC Link LLC’s written policies and procedures related to the Expert Market, including records related to the implementation of such written policies and procedures;
- Documents and information regarding any processes undertaken by OTC Link LLC that analyze information over time to identify whether the distribution of quotations published or submitted on the Expert Market is limited only to Qualified Experts and, as applicable, issuers of securities for which quotations are published or submitted on the Expert Market with respect to their own securities; and
- Documents and information regarding OTC Link LLC’s ongoing surveillance of the quoting activity and distribution of quotations published or submitted on the Expert Market, including any reports that identify exceptions to compliance with the written policies and procedures and the resolution of such exceptions.

December 18, 2020
OTC Link LLC

OTC Link LLC understands that any relief provided will be based on the representations and facts provided, in particular the safeguards and conditions related to ensuring that real-time and delayed quotations published or submitted on the Expert Market are not directly or indirectly provided to persons that are not Qualified Experts, and that it will promptly notify Commission staff should there be any material changes in any of the representations or facts, such as in the operation of the Expert Market as described in this letter.

Please contact Dan Zinn (dan@otcmarkets.com) with any questions or to request additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Zinn". The signature is written in a cursive style with a long horizontal stroke at the end.

Daniel Zinn
General Counsel
OTC Markets Group Inc.