



December 10, 2008

Ms. Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-2001

**Subject: Comments to Securities Exchange Act Release No. 33-8836  
File No. 265-24**

Dear Ms. Harmon:

Pink OTC Markets Inc. (formerly, Pink Sheets LLC) ("Pink OTC") respectfully submits the following comments in response to the Discussion Paper for Consideration by the Securities and Exchange Commission ("SEC") Advisory Committee on Improvements to Financial Reporting contained in Securities Exchange Act Release No. 33-8836. Pink OTC supports the efforts of the Advisory Committee to reduce the complexity of the U.S. financial reporting system and to increase the usefulness of that system for investors, including through fair value determinations made under Financial Accounting Standards Board ("FASB") Statement No. 157, Fair Value Measurements.

Pink OTC believes that its inside market quotations should be considered Level 1 inputs under FASB Statement No. 157, and therefore used to "mark securities to market" in financial statement reporting. Pink OTC would also like to correct several factual errors made by the New York State Society of Certified Public Accountants (the "NYSSCPA") in its comments to Release No. 33-8836.

Pink OTC is the leading provider of pricing and financial information for the over-the-counter ("OTC") securities markets. Among other things, Pink OTC operates Pink Quote, an internet-based, real-time quotation service for OTC equities for market makers and other broker-dealers registered under the Securities Exchange Act of 1934.

Pink Quote disseminates to public information vendors, such as Bloomberg and Reuters, and other purchasers of its market data continuous updates of quotations provided by broker-dealers from 8:00 a.m. to 4:00 p.m. daily. Where two or more priced bid and two or more priced ask quotes are available from independent

broker-dealers, Pink Quote disseminates an inside market quote consisting of the best bid and best ask. Pink Quote also disseminates market maker quotes when the number of quotes are insufficient to establish an inside market, unpriced quotes, quotes representing unsolicited customer orders and closed quotes that are no longer available because the market maker is no longer making a market in a particular security. The OTC market displayed on Pink Quote is a public market, easily viewed by market participants, the investing public and regulators, and the nature of each quote is clearly indicated to any interested person.

Only SEC-registered broker-dealers who are members of the Financial Industry Regulatory Authority, Inc. ("FINRA"), formerly known as the National Association of Securities Dealers, Inc. ("NASD"), may publish quotes on Pink Quote. As FINRA members, all broker-dealers providing quotes to Pink Quote must meet the rules of conduct applicable to FINRA members that deal in OTC Equity securities.<sup>1</sup> Among the rules governing conduct of broker-dealers who quote on Pink Quote are the following:

- NASD Rule 2110, "Standards of Commercial Honor and Principles of Trade," states that a "[FINRA] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."<sup>2</sup>
- NASD Rule 2320, "Best Execution and Interpositioning," or the "Best Execution Rule," requires members to "use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions."
- NASD Rule 3320, "Offers at Stated Prices" or the "Firm Quote Rule," provides that "[n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to

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<sup>1</sup> After the consolidation of the member regulatory organizations of the NASD and the NYSE into FINRA on July 30, 2007, FINRA members were governed by the FINRA Transitional Rulebook, composed of NASD rules and incorporated NYSE rules. FINRA is currently in the process of creating the new Consolidated FINRA Rulebook. As rules are added to the Consolidated FINRA Rulebook they will be removed from the Transitional Rulebook. See SR-FINRA-2008-028 (September 25, 2008). The SEC approved the first series of additions to the FINRA Consolidated Rulebook in SR-FINRA-2008-028, and such changes become effective December 15, 2008.

<sup>2</sup> NASD Rule 2110 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 2010 will apply.

purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.” NASD Interpretive Material (“IM”) 3320 specifically includes Pink Quote quotations in the sphere of the Firm Quote Rule, and explains that this rule prohibits “backing away” from a quote upon inquiry by a prospective purchaser or seller.<sup>3</sup>

- NASD Rule 6620, “Reporting Transactions in OTC Equity Securities,” requires FINRA members to report transactions to FINRA’s OTC Reporting Facility within 90 seconds after execution.<sup>4</sup>
- NASD Rule 6650, “Minimum Quotations Size Requirements for OTC Equity Securities” or the “Minimum Quote Size Rule,” prescribes minimum quote sizes depending on the price of a security.<sup>5</sup>

As a result of these conduct rules, a Pink Quote quotation is considered firm, unless clearly designated otherwise, and broker-dealers are prohibited from failing to honor (or “backing away from”) either the price or size of their published quotations. Quotes and real-time trade reports are widely disseminated through public information vendors. This transparency enables investors, regulators and other interested persons to monitor carefully the conduct of broker-dealers placing quotations in Pink Quote. As a result, issuers, investors, regulators and other interested persons are confident that the prices disseminated by Pink Quote accurately reflect fair value.

FASB Statement No. 157, Fair Value Measurements, requires that accountants making fair value determinations of the value of securities and other assets take a market approach, “marking to market” except where relevant market data is unavailable. In FASB Statement No. 157, Fair Value Measurements, “fair value” is defined as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement

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<sup>3</sup> IM-3320, “Firmness of Quotations,” explains that “[m]embers and persons associated with member in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and wire quotations as well as quotation in the National Quotation Bureau sheets.” The National Quotation Bureau was a predecessor company to Pink OTC Markets Inc.

<sup>4</sup> NASD Rule 6620 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 6620 will apply.

<sup>5</sup> NASD Rule 6650 is effective until December 15, 2008. On that date, the substantially identical FINRA Rule 6450 will apply.

date.”<sup>6</sup> Inputs to fair value determinations are organized into a “Fair Value Hierarchy” of unadjusted quoted prices in active markets for identical assets or liabilities (Level 1), observable inputs other than quoted prices, such as prices for similar assets, or similar or identical assets in non-active markets (Level 2) and unobservable inputs for the asset or liability (Level 3).<sup>7</sup> When making fair value determinations, accountants must use data from the lowest level available.

FASB discusses Pink Quote quotations as inputs in FASB Statement No. 157, Fair Value Measurements, and FASB Statement No. 115, Accounting for Certain Investments In Debt and Equity Securities. FASB Statement No. 157 states that in dealer markets, as opposed to exchange markets, “[t]ypically bid and ask prices (representing the price the dealer is willing to pay and the price at which the dealer is willing to sell, respectively) are more readily available than closing prices. Over-the-counter markets (where prices are publicly reported by the National Association of Securities Dealers Automatic Quotations systems or by [Pink Quote]) are dealer markets.”<sup>8</sup> Pink Quote quotes are also mentioned in paragraph 3(a) of FASB Statement No. 115, where they provide the “readily determinable” fair value of an OTC equity security, “provided that those prices or quotations for the over-the-counter market are publicly reported by the National Association of Securities Dealers Automated Quotations systems or by [Pink OTC].”<sup>9</sup> Paragraph 3(a) of FASB Statement No. 115 has been amended, but not deleted or replaced, by FASB Statement No. 157.<sup>10</sup>

Under FASB Statement No. 157, a dealer market, such as Pink Quote, provides a Level 1 input when its prices and quotations are indicative of an active market. An active market for an asset or liability is one in which “the transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis.”<sup>11</sup> In response to the recent turmoil in the financial markets, the SEC Office of the Chief Accountant and FASB Staff Clarifications on Fair

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<sup>6</sup> FASB Statement of Accounting Standards No. 157, “Fair Value Measurements,” paragraph 5, FAS157-6.

<sup>7</sup> *Id.*, paragraph 22, FAS157-10.

<sup>8</sup> *Id.*, paragraph A20, FAS157-18.

<sup>9</sup> FASB Statement of Financial Accounting Standards No. 115, Accounting for Certain Investments in Debt and Equity Securities, paragraph 3(a), FAS 115-3—FASB 115-4.

<sup>10</sup> FASB Statement of Accounting Standards No. 157, “Fair Value Measurements,” FAS157-1.

<sup>11</sup> *Id.*, paragraph 24, FAS157-10

Value Accounting joint release, dated September 30, 2008, noted that the determination of whether a market is active or not is a matter of judgment, and that a significant increase in the bid-ask spread of an asset and the presence of a relatively small number of bidders are signs of an inactive market.<sup>12</sup> In addition, FASB Staff Position No. FAS 157-3, released October 10, 2008, states that “[i]n an active market, a broker quote should reflect market information from actual transactions . . . .”<sup>13</sup>

Pink OTC believes that where Pink Quote quotations reported for an OTC equity security meet the best execution requirements of the Best Execution Rule (NASD Rule 2320), such quotations are Level 1 inputs under the Fair Value Hierarchy. The Best Execution Rule requires broker-dealers to determine that the market in which they are making a transaction for a customer or a customer of another broker-dealer is the best market for the subject security, and that the price obtained is the most favorable for the customer under prevailing market conditions. NASD Rule 2320(g)(3)(A) provides that where two or more priced quotations of an OTC equity security are “displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis,” members may rely on those two quotes in making a best execution determination. Pink OTC is such an inter-dealer quotation system, and it publishes an inside market quote that can be relied upon for best execution determinations when two or more priced quotations are displayed for an OTC equity security.<sup>14</sup>

Since an inside market quote on Pink Quote satisfies the Best Execution Rule, it should also qualify as a Level 1 input for FASB Statement No. 157 purposes. The inside market quote identifies markets where there are at least two or more bid and two or more ask quotations for a particular security, and such quotations are updated continuously. Broker-dealers providing the competing bid and ask quotes necessary for an inside market base their quotes on other market transactions occurring with such frequency and volume as to constitute an active market under FASB Statement No. 157. The status of inside market quotes on Pink Quote as Level 1 inputs is also consistent with FASB Statement No. 115, which states that

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<sup>12</sup> SEC office of the Chief Accountant and FASB Staff Clarifications on Fair Value Accounting (Sept. 30, 2008), available at [www.sec.gov/news/press/2008/2008-234.htm](http://www.sec.gov/news/press/2008/2008-234.htm).

<sup>13</sup> FASB Staff Position No. FAS 157-3, Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active, 3-4.

<sup>14</sup> Securities Exchange Act Rule 15c2-11(e)(2) defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.”

Pink Quotes quotations provide “readily determinable” fair values for OTC equities.<sup>15</sup> The inside market quote provided by Pink Quote should therefore be used to mark securities to market, as required under FASB Statement No. 157.

We strongly support the use of fair value determinations and “marking to market” where there is an active market in a security because we believe participants in financial markets must be provided with financial statements that contain current, accurate values of assets. We believe that Pink Quote provides crucial data for making fair value determinations with respect to OTC equity securities.

We would also like to take this opportunity to correct two misstatements in the comments of the NYSSCPA to the Advisory Committee’s Discussion Paper.

First, the NYSSCPA states that a “pink sheets” quote is “more of an expression of interest to buy and sell, and the prices listed on the pink sheets are not credible” and that “if more than one dealer lists on the pink sheets . . . prices that are materially different from each other may be quoted resulting in unreliable measurements if one price is unreasonably high.”<sup>16</sup> This is incorrect because, as discussed above, the Firm Quote Rule requires that all quotations on Pink Quote be firm unless otherwise clearly stated. A FINRA member making a quote must be prepared to buy or sell a “normal unit of trading” in the quoted security, unless the quotation is clearly designated as not firm or firm for less than a normal unit of trading.<sup>17</sup>

Second, the NYSSCPA states that the bid-ask spread of quotes on Pink Quote is “utterly meaningless” for anyone wishing to buy or sell more than 100 shares.<sup>18</sup> This is also incorrect because all broker-dealers quoting on Pink Quote must adhere to NASD Rule 6650, the Minimum Quote Size Rule, which provides that members making quotations in the OTC market must supply the following minimum quotes for all equity securities:

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<sup>15</sup> FASB Statement of Financial Accounting Standards No. 115, Accounting for Certain Investments in Debt and Equity Securities, paragraph 3(a), FAS 115-3—FASB 115-4.

<sup>16</sup> Letter from David A. Lifson, New York State Society of Certified Public Accountants, to Nancy Morris (Sept. 28, 2007), available at [www.sec.gov/comments/265-24/26524-13.pdf](http://www.sec.gov/comments/265-24/26524-13.pdf).

<sup>17</sup> See IM-3320, “Firmness of Quotations.”

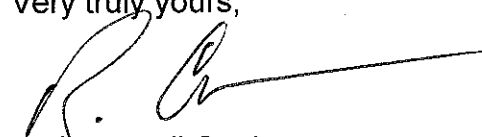
<sup>18</sup> Letter from David A. Lifson, New York State Society of Certified Public Accountants, to Nancy Morris (Sept. 28, 2007), available at [www.sec.gov/comments/265-24/26524-13.pdf](http://www.sec.gov/comments/265-24/26524-13.pdf).

Price (Bid or Offer)	Minimum Quote Size
0-.50	5,000
.51-1.00	2,500
1.01-10.00	500
10.01-100.00	200
100.01-200.00	100
200.01-500.00	25
500.01-1000.00	10
1000.01-2500.00	5
2500.01 +	1

Many OTC equity securities are priced at less than \$1.00 and therefore quoted in amounts of either 2,500 or 5,000 shares. Only shares priced in excess of \$100.00 can be quoted for amounts of 100 shares or less. There are relatively few securities quoted on Pink Quote, or for that matter, on any national securities exchange, priced at amounts greater than \$100.00.

Thank you for the opportunity to comment upon the work of the Advisory Committee on Improvements to Financial Reporting, and to correct the record concerning the quotations provided by Pink Quote. Please call if you have any questions or require any additional information.

Very truly yours,



R. Cromwell Coulson  
Chief Executive Officer