

January 4, 2012

VIA Electronic Submission

Mr. Stephen M. Graham
Co-Chair
SEC Advisory Committee on Small and Emerging Companies

Ms. Christine M. Jacobs
Co-Chair
SEC Advisory Committee on Small and Emerging Companies

Re: File No. 265-27

Dear Co-Chairs Graham and Jacobs:

On behalf of OTC Markets Group Inc. ("OTC Markets Group"), I am writing regarding the issues on the agenda for the January 6, 2012 meeting of the SEC Advisory Committee on Small and Emerging Companies (the "Committee"). The issues to be discussed at the Committee meeting are of the utmost importance to the thousands of smaller U.S. companies that are traded by broker-dealers on our platform.

As further discussed below, we strongly support¹ the Committee's draft "Recommendation Regarding Relaxing or Modifying Restrictions on General Solicitation in Certain Private Offerings of Securities" (the "Draft Recommendation"), as well as Senate bill S. 1831, seeking to eliminate the ban on general solicitation for private securities offerings under Regulation D. In addition to our support of these measures, we recommend that any solicitation, advertising or promotion of secondary market trading of these and other securities be conditioned on public availability of adequate current information regarding the issuer, as defined in Rule 144 under the Securities Act of 1933 (the "Securities Act"). For non-SEC reporting issues, public availability should include disclosure on a publicly accessible internet website.

This letter primarily addresses issues relating to the secondary market trading of securities sold in private offerings, which are often traded on the OTC market. We advocate for an open and transparent OTC marketplace, which includes a competitive environment where broker-dealers can participate in the market and get the best prices for investors. Specifically, we strongly support a regulatory regime that promotes disclosure in the OTC market and regulates company insiders and promoters. As the operator of the primary OTC equity marketplace, we are best equipped to fully discuss the operation of the OTC market.

¹ In October, we were asked to provide our insight to the House of Representatives' Subcommittee on Capital Markets and Government Sponsored Enterprises as they considered the merits several bills, including H.R. 2940. In December, we provided written testimony to the Senate Committee on Banking, Housing, and Urban Affairs, in which we reiterated our support of ending the ban on general solicitation in private offerings of securities under Securities Act Rule 506.

Introduction to OTC Markets Group

OTC Markets Group operates OTC Link, the world's largest electronic marketplace for broker-dealers to trade OTC securities. The OTC Link platform supports a network of competing broker-dealers that provide investors with the best prices in over 10,000 OTC securities. Our technology platform has transformed the OTC market into an open, transparent and connected marketplace where investors can efficiently trade through the regulated broker-dealer of their choice.

Our platform categorizes the wide spectrum of OTC-traded companies into three tiers: OTCQX – The Intelligent Marketplace for the Best Companies; OTCQB - The Venture Marketplace; and OTC Pink – The Open Marketplace. Our tiered system permits companies to choose the level of disclosure they wish to provide to investors, and allows investors and regulators to identify the amount and quality of information companies provide.

The companies quoted on our platform include development stage enterprises, technology companies, community banks and established manufacturers. In each of the past two calendar years, an average of 75 companies that grew and matured while trading on the OTC marketplace subsequently listed on a senior U.S. exchange, making us the primary incubator for exchange listed companies. OTC Link currently enables trading in over 3,000 SEC registered companies current in their reporting, over 2,000 companies that report to a foreign regulator, over 500 banks that report to their U.S. banking regulator, and many smaller U.S. companies that have not met the current 500 shareholder threshold for mandatory SEC registration, but may make public disclosure through the internet, securities manuals, or other sources. Our platform also includes the securities of more than 600 non-SEC reporting issuers that provide public information to investors through our OTC Disclosure and News Service. Our understanding of this community of small, publicly traded issuers makes us uniquely qualified to comment on the Committee's Draft Recommendation.

Public Information Availability Improves Capital Formation and Protects Investors

OTC Markets Group has long been a proponent of issuer disclosure and trading transparency. We believe that regulators must change their approach and begin incentivizing the market to operate in an open and transparent manner, rather than in private.

We agree with Justice Brandeis, who noted that "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."² We have long espoused that philosophy as we work to increase the quality and quantity of real-time information available to investors in OTC securities.

We are a free and open society, and as such we should encourage an open marketplace for capital and incentivize market participants to operate in full view of the public. Open and transparent activity is always superior to opaque and closed environments. Activities conducted in public are open to scrutiny from the public, the press and the police. This transparency deters fraud and increases efficiency. The public and the press catch many more fraudsters than the police can catch alone, but they can only see information if regulation encourages its public exposure. For example, the string of frauds perpetrated by Chinese companies listed on NASDAQ was first brought to light by attentive members of the public and the press. In

² Louis D. Brandeis, *Other People's Money and How the Bankers Use It* (1914).

addition, the Madoff fraud lasted for so long in part because Madoff's entire operation was conducted in the dark, without the light of any public disclosure. If the public and press had access to the Madoff information, perhaps a calamity could have been avoided. As these examples indicate, although the SEC has the regulatory and legal means to gain access to non-public information, it is naïve to believe they will efficiently provide effective protection from bad behavior and fraud without the watchful eye of public scrutiny.

We operate an open and transparent platform where broker-dealers determine what to quote based on customer demand, and we see a wide variety of companies on our platform at all stages of business development. In 2007, we began categorizing OTC issuers on the basis of disclosure levels in order to incentivize disclosure and inform investors. In 2010, over 95% of the approximately \$144 billion of dollar volume traded through our marketplace was in companies that provide adequate current information to investors. Companies that provide no information represented less than 2% of total dollar volume. The companies on our platform that purposefully "Go Dark" and do not provide any financial information to the public are publicly marked with a "stop sign" logo. Investors are clearly warned that information may not be available.

The Current Regulatory Approach is Harming Capital Formation and Investors

The current approach to regulation in capital raising and secondary trading of smaller companies is outdated, and has resulted in much of the capital formation process occurring in the dark alleys and private clubs of finance. Regulation can no longer ignore the development of the internet and the ability of all investors to easily access and share information.

Regulation should be modernized to improve small business capital formation in the following areas:

- 1) Private offerings and secondary trading of restricted securities should no longer be hidden from public view;
- 2) Investors can be better protected by increasing transparency and public information availability regarding private offerings;
- 3) SEC registration and reporting under the Securities Exchange Act of 1934 (the "Exchange Act") is not the only route for companies to provide high-quality disclosure and financial reporting to investors; and
- 4) Small company trading needs the innovation of competing broker-dealers providing liquidity as a service for investors rather than an exchange-type agency auction model.

The transparency provided by general solicitation and advertising, done in conjunction with the public disclosure of adequate current information regarding the issuer, can only improve the efficiency of the capital formation process. Public disclosure allows the public and press to identify "problem" offerings. Limiting offerings to private communications allows promoters to hatch fraudulent schemes in the dark, away from public scrutiny.

Regulators have also advocated putting pricing and offering documents related to private placements behind passwords and firewalls. This approach moves information away from public view, and creates fundamentally flawed market dynamics with negative consequences. Investors are forced to trade in opaque, closed markets, without easy access to pricing

information or the advantages of open competition. In practice, this can allow fraudsters to gain access to an investor's information before disclosing anything to the investor, and to control which investors are ultimately permitted to view the information. Often, password protected websites restrict investors through confidentiality agreements, which prevent them from sharing their conclusions with other investors.

The brokerage industry is generally a capable gatekeeper with "know your customer" and customer suitability requirements. For markets to work efficiently, investors should have easy access to pricing and disclosure regarding all types of securities. Investors that are not qualified to participate in an offering can easily be identified prior to the initiation of any purchase or sale. For example, a broker-dealer may deem a certain investor not sophisticated enough to purchase options, but that investor is at least permitted to view the option terms and prices. Without adequate public disclosure and price transparency, unsophisticated investors will never gain the required knowledge to trade effectively.

General Solicitation

We support S. 1831, the "Access to Capital for Job Creators Act," and the disclosure proposals outlined above can apply to the private securities market. It is widely accepted that emerging companies should have access to accredited investors in order to fuel their growth, and accredited investors should be afforded every opportunity to find the best investment opportunities. Allowing general solicitation and advertising to accredited investors removes an unnecessary hindrance to small company capital formation, growth and hiring.

Allowing general solicitation only when a company makes adequate current information publicly available (as that term is used in Securities Act Rule 144), will increase information availability to investors and the efficiency of capital allocation. Such a change would promote additional public disclosure from all companies considering a private placement. The increased transparency would benefit current and potential investors, regulators and other market participants, and would provide capital raising opportunities to companies willing to provide public disclosure of their operations and financial condition. To that end, the SEC should also specifically allow for the public distribution of prices from broker-dealer managed transactions in restricted or "Rule 144A" securities.

The goal of the SEC's Regulation D should be to restrict private offerings to sophisticated investors who can understand the risks and withstand potential losses. That goal can be accomplished without mandating that all private sales take place in the dark. Congress and the SEC can allow unsophisticated investors to access information concerning private transactions while still restricting such investors from participating in private placements. The goals of investor protection and the provision of disclosure can be simultaneously met.

Greater Public Disclosure is the Best Fraud Prevention

Our focus on increased disclosure has made us keenly aware of the situations in which a lack of disclosure leads to opportunities for fraud, particularly involving private placements in publicly traded companies and in promotional activities. We strongly support regulation providing that any advertising relating to private placements, and any promotion regarding secondary trading, should be conditioned on (i) adequate current information being made publicly available and (ii) the public disclosure of information regarding a promoter and the person or entity that hired such promoter.

Specifically, any person or entity involved in the promotion of a security should be required to publicly disclose their identity and the actions they have taken to promote a specific security. This regulation should apply to the issuer and any person distributing the solicitation. This would allow for easy identification of a subset of corporate insiders that should be regulated when interacting with the markets, and would help ensure compliance with restrictions on promotional activities. We proposed such a rule³ to the SEC in 2006, and despite hundreds of supportive comments the SEC has not yet taken any action.

Securities Act Rule 144 includes a definition of adequate current public information that would be appropriate for the disclosure requirements described above. These rules would incentivize disclosure by non-reporting issuers, and would dramatically increase the amount and quality of disclosure available to investors and regulators. Moreover, the increased disclosure incentivized by these rules may reduce instances of fraud under Exchange Act Rule 10b-5, which applies to the purchase and sale of any security.

Conclusion

The regulatory action supported by the Committee is essential for spurring economic growth. Our interest in the development of small companies stems from our long-term involvement in the public secondary trading of small company securities. Decreasing the costs of raising capital, and supporting an investor base while still growing, are admirable goals that can be achieved by the combination of effective regulation and the maintenance of a vibrant OTC marketplace.

The OTC Markets Group platform provides an environment in which America's small companies can become the job creation engines we need, without onerous SEC regulation or exchange listing requirements. The SEC reporting structure is not the only answer for encouraging disclosure and transparency. Small company disclosure can be regulated in the form of adequate current information requirements and an OTC market structure that incentivizes companies to provide increased information to the marketplace.

Please contact me if you would like any additional information, and thank you for considering our comments.

Sincerely,

R. Cromwell Coulson
President and CEO, OTC Markets Group Inc.

³ See <http://sec.gov/rules/petitions/petn4-519.pdf>