

June 18, 2025

*Via Electronic Submission*

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
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**Re: Regulatory Notice 25-06: Request for Comment on Modernizing FINRA Rules,  
Guidance and Processes to Facilitate Capital Formation**

Dear Ms. Mitchell,

OTC Markets Group Inc. (“OTC Markets Group”)<sup>1</sup> respectfully submits this letter in response to the request for comments by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in Regulatory Notice 25-06 concerning whether additional changes to FINRA rules, guidance, operations or administrative processes would further facilitate capital formation and reduce unnecessary regulatory costs and burdens impacting the capital-raising process. Specifically, this letter will address the need for FINRA to update the guidance it issued to members in Regulatory Notice 09-05 (“FINRA Notice 09-05”) more than 15 years ago regarding the resale of unregistered equity securities sold in over-the-counter (“OTC”) transactions.

OTC Markets Group operates the primary OTC electronic trading market in the United States, where broker-dealers trade over 12,000 equity securities. While almost 90% of the total dollar volume on our markets is in larger international companies, such as Roche, Adidas and Heineken, the OTC market is also home to many smaller, venture-stage companies based in the United States. These companies trade on the OTC market in reliance on a valid exemption from registration. Over 450 “small” U.S. public companies (those having a market cap less than \$250M) across over 45 states trade on the OTCQX and OTCQB markets that we operate. Collectively, these small companies employ over 100,000 people in the U.S. and represent a wide variety of industries, including technology, community banking, financial services, healthcare, real estate, natural resources and consumer goods.

These smaller companies may not be ready for a large national exchange or may not have the budget for the high legal and accounting fees associated with ongoing public company reporting. Somewhat unfairly, characteristics inherent to small cap securities – lower trading volumes, a closely-held

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<sup>1</sup> OTC Markets Group Inc. operates regulated markets for trading over 12,000 U.S. and international securities. Our data-driven disclosure standards form the foundation of our four public markets: OTCQX® Best Market, OTCQB® Venture Market and, as of July 1, 2025, the OTCID Basic Market (replacing the Pink Open Market) and Pink Limited Information markets. Our OTC Link® Alternative Trading Systems (ATSs) provide critical market infrastructure that broker-dealers rely on to facilitate trading. Our innovative model offers companies more efficient access to the U.S. financial markets. OTC Link ATS, OTC Link ECN, OTC Link NQB and MOON ATS are each an SEC regulated ATS, operated by OTC Link LLC, a FINRA and SEC registered broker-dealer, member SIPC.

shareholder base, a share price under \$5 – have traditionally constituted regulatory “red flags”, in part due to regulatory guidance issued over 15 years ago in FINRA Notice 09-05.

The wide-ranging issues raised in FINRA Notice 09-05 ushered in an era of regulatory uncertainty among broker-dealers and clearing firms, which began treating the entire OTC market as categorically high-risk, irrespective of the actual characteristics of a specific security or the availability of mitigating information. The resulting prohibitive compliance costs among member firms had a chilling effect on transactions in unregistered or smaller-cap securities, to the detriment of quality issuers and investors alike. Many brokers and clearing firms determined not to engage in any OTC equities business at all, believing that the costs outweighed the benefits. Other firms passed the costs on to the shareholders, who either cannot clear or deposit their shares or must pay a disproportionate fee to do so. The net effect is a dysfunctional system where investors are locked out of the market, small companies lose access to public trading, and the liquidity needed to support capital formation dries up. With a devalued share base and no clear on-ramp to the public markets, companies are left at a standstill – unable to raise capital, attract new investors, or grow.

### **The Evolution of the OTC Market – Amended Rule 15c2-11 and OTC Markets Group’s Comprehensive Compliance Framework**

As OTC equity securities trading moved to electronic platforms, regulators and industry participants developed an efficient, data-driven approach that could ensure these securities were legally resold in the secondary market. The transformative amendments to Rule 15c2-11 in 2021 and the corresponding robust OTC Markets Group compliance infrastructure have greatly reduced the compliance burden on broker-dealers that seek to trade in OTC securities. Despite these advancements, broker-dealers remain constrained by outdated prescriptive guidance that does not acknowledge existing access to robust, real-time data that allows brokers to make informed, risk-based compliance decisions. Most critically, brokers may not rely on information from SEC-registered transfer agents whose business consists of collecting and verifying the very information that FINRA Notice 09-05 requires brokers to investigate.<sup>2</sup> Transparency aimed at identifying bad actors in the small cap marketplace and preventing the unregistered resale of restricted securities has greatly improved since FINRA Notice 09-05 was issued in 2009, and FINRA should update its guidance to acknowledge these developments in data gathering and verification.

### **FINRA Should Update its Guidance to Account for Amended Rule 15c2-11**

Addressing information asymmetry through disclosure provides the foundation of the disclosure-based system upon which our capital markets are built.<sup>3</sup> Prior to the amendments to Rule 15c2-11 in

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<sup>2</sup> See FINRA Regulatory Notice 09-05, *Unregistered Resales of Restricted Securities*, available at: <http://www.finra.org/sites/default/files/NoticeDocument/p117716.pdf>. (“FINRA, the SEC and the courts have repeatedly held that firms cannot rely on outside counsel, clearing firms, transfer agents, issuers, or issuer’s counsel to discharge their obligations to undertake an inquiry.”)

<sup>3</sup> See, e.g., Commissioner Caroline A. Crenshaw, Remarks at the Securities Regulation Institute (Jan. 30, 2023), available at <https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-securities-regulation-institute-013023>. (“Before 1929, all securities markets in the United States were private and thus, dark. The passage of the Securities Act and the Exchange Act...reflected an intentional and marked departure from that dark default. U.S. securities laws were designed to protect investors in large part by creating public markets, which are subject to registration requirements, and therefore an information sharing process intended to reduce the stark information asymmetry between the issuer of securities and its current and potential investors.”). See also Securities Act of

September of 2021, broker-dealers were required to review issuer information before quoting a security, however the rule did not require that any of that information be publicly available. The result was a group of securities that traded publicly, but without disclosing current material information to investors. Although OTC Markets Group flagged these companies on the “Pink No Information” tier, the possibility for significant information asymmetry still existed.

Following the September 2021 amendments, Rule 15c2-11 now requires that issuer information be both current and publicly available in order for a broker to publicly quote that issuer’s security.<sup>4</sup> The amendments applied ongoing disclosure requirements to all issuers with securities traded OTC, while solidifying OTC Markets Group’s role as a trusted steward of the OTC market. Under the amended rule and accompanying FINRA Rule 6432, qualified market operators – such as our OTC Link ATS – may conduct an “initial review” to bring a company to the public markets, indicating that a particular issuer meets the information requirements under the rule.<sup>5</sup> To date, OTC Link ATS has completed 306 such initial reviews and continues to publish daily compliance determinations for over 12,000 securities, indicating to the broker-dealer community which of those securities are eligible for public quotation.

Thanks to Rule 15c2-11 and OTC Markets Group’s work in reviewing and disseminating the required information, the “little-known security” FINRA cautioned against in 2009<sup>6</sup> is now the much better-known security of 2025, with public disclosures, compliance status, and quotation eligibility all available online.

### **FINRA Should Encourage Members to Rely on OTC Markets Group’s Comprehensive Compliance Framework**

As the information available on the OTC market has evolved, so too have the tools OTC Markets Group provides to the broker-dealer community and general investing public regarding the securities trading on its markets. Over the years, OTC Markets Group has developed a comprehensive suite of marketplace designations and information flags that we display for free on each company’s quote page on our website and distribute to broker-dealers and compliance departments as part of our Compliance Data feeds.<sup>7</sup> These compliance designations include the “Caveat Emptor” skull-and-crossbones icon (☠), as well as a host of other visual “flags” that help investors easily identify risk, including many of the “red flags” identified in Rule 15c2-11 and FINRA Notice 09-05 (e.g., promotion, hot sector, shell risk, bankruptcy, penny stock status, and affiliation with a prohibited service provider).<sup>8</sup> This information is integrated into many broker-dealer compliance processes so firms can better analyze securities and identify risk – in 2024, trading in securities designated as “Caveat Emptor” was limited to just 0.09% of dollar volume across our markets, indicating that the broker-dealer community has responded appropriately to our compliance determinations.

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1933, pmb., declaring its intent “[t]o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.”

<sup>4</sup> 17 CFR 240.15c2-11(a)(1)(i)(B).

<sup>5</sup> 17 CFR 240.15c2-11(a)(1)(ii)(A).

<sup>6</sup> See FINRA Regulatory Notice 09-05 at 4, citing Securities Act Rel. No. 4445, 1962 SEC LEXIS 74 (February 2, 1962).

<sup>7</sup> Additional information about OTC Markets Group Compliance Data Products is available at: <https://www.otcmarkets.com/market-data/compliance-data-products>.

<sup>8</sup> A full list of OTC Markets Group compliance and information flags is available at: <https://www.otcmarkets.com/files/OTCM%20Compliance%20Flags.pdf>.

Our Issuer Compliance team also monitors for promotional activities across our markets and flags securities with a promotion icon (🚩) when it becomes aware of stock promotion in a given security. With this information, brokers can identify securities in which the market pricing process may be broken, and warn investors accordingly. The OTC Markets Group Policy on Stock Promotion<sup>9</sup> and Best Practices for Issuers<sup>10</sup> further establish a framework that allows market participants to easily identify and respond to fraudulent promotional activities.

Division of labor improves efficiency, and it is not feasible for every broker-dealer to conduct extensive due diligence on 12,000 equity securities when a reliable (and regulated) market operator is already doing so. FINRA should update its guidance to encourage broker-dealers to rely on our compliance designations and the ongoing disclosure provided by issuers when determining which securities may require additional due diligence.

### **FINRA Should Encourage Members' Reliance on Transfer Agent Information**

Many of the “red flags” in FINRA Notice 09-05 focus on preventing the unregistered resale of restricted securities by scrutinizing information related to the history of each share issuance and identifying affiliate owners of the stock.<sup>11</sup> From this vantage point, transfer agents hold the key to detecting and preventing the illegal sale and transfer of securities. Their vital recordkeeping functions – such as maintaining lists of shareholders, affixing and removing restrictive legends from securities, and communicating with shareholders and beneficial owners – create valuable information about how the stock was issued, who has held it and for how long, and address many of the “red flags” outlined in FINRA Notice 09-05.

Allowing broker-dealers to rely on company share issuance data possessed by transfer agents for compliance purposes could therefore help reduce manipulative trading and unlawful securities transfers. However, current guidance in FINRA Notice 09-05 prevents broker-dealers from relying on information from SEC-registered transfer agents when conducting their compliance reviews.<sup>12</sup> This FINRA guidance is counter-intuitive. Broker-dealers should have as many informational resources as possible, and they should not need to independently verify information that SEC-registered transfer agents are already in the business of collecting and verifying.

OTC Markets Group already requires public disclosure of transfer agent data via its Transfer Agent Verified Share Program, which it introduced in 2016. Presently, a majority of the industry's leading transfer agents submit current and reliable shares outstanding information directly to us via a secure electronic file transfer for U.S. and Canadian securities on our OTCQX and OTCQB markets. Transfer agent data is displayed on the issuer's quote page on our website along with a “verified” logo indicating that the information is up-to-date and has been verified by an issuer's Transfer Agent.

By encouraging members to rely on this and other transfer agent data, FINRA would not only reduce duplicative compliance burdens but also promote more consistent, reliable evaluations of whether a security is eligible for resale. Transfer agents are registered entities, already trusted to maintain

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<sup>9</sup> See OTC Markets Group Policy on Stock Promotion, available at:  
[https://www.otcmarkets.com/files/OTC\\_Markets\\_Group\\_Policy\\_on\\_Stock\\_Promotion.pdf](https://www.otcmarkets.com/files/OTC_Markets_Group_Policy_on_Stock_Promotion.pdf).

<sup>10</sup> See OTC Markets Group Stock Promotion: Best Practices for Issuers, available at:  
[https://www.otcmarkets.com/files/Best\\_Practices\\_for\\_Issuers\\_Stock\\_Promotion.pdf](https://www.otcmarkets.com/files/Best_Practices_for_Issuers_Stock_Promotion.pdf).

<sup>11</sup> See FINRA Regulatory Notice 09-05.

<sup>12</sup> See FINRA Regulatory Notice 09-05, *supra* note 2.

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official records of ownership and restriction status – information that goes directly to the heart of the concerns outlined in FINRA Notice 09-05. Updating this guidance would give firms a clearer compliance roadmap, while also removing unnecessary friction from the deposit and transfer process for legitimate investors.

**For the reasons set forth above, FINRA should re-issue guidance that encourages firms to leverage available data to safely deposit and transfer OTC securities in line with the standards set forth in Rule 15c2-11, while taking into account the robust compliance framework established by OTC Markets Group and the share ownership and restriction information maintained by SEC-registered transfer agents.**

We encourage FINRA to update FINRA Notice 09-05 to account for amended Rule 15c2-11, FINRA Rule 6432, and the substantial progress made in OTC market transparency and compliance tools, such as our comprehensive Compliance Risk Flags and the Transfer Agent Verified Shares Program. The goal of regulatory reform in this area should be to enable market participants to efficiently custody and trade securities that are clearly “OK to trade,” and distinguish those from other securities that may require additional due diligence. Such reform would increase capital formation opportunities for companies clearly acting in compliance with existing rules and guidelines and allow broker-dealer compliance departments to devote more time and resources to those companies requiring additional scrutiny.

We thank FINRA for taking the time to consider these important issues and seek industry feedback, and we welcome the opportunity to discuss our comments with FINRA.

Respectfully submitted,



Daniel Zinn  
General Counsel



Flavia Vehbiu  
Deputy General Counsel