

October 12, 2018

Via Electronic Submission

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506  
pubcom@finra.org

Re: FINRA Special Notice  
Financial Technology Innovation in the Broker-Dealer Industry

Dear Ms. Mitchell:

On behalf of OTC Markets Group Inc. ("OTC Markets Group"),<sup>1</sup> I am pleased to submit this letter in response to the Financial Industry Regulatory Authority, Inc's ("FINRA") request for comment on Financial Technology Innovation in the Broker-Dealer Industry.

At OTC Markets Group, our mission is to create better informed and more efficient financial marketplaces. Armed with data and technology, we have drastically improved the OTC equity market over the years. We are committed to continuing this trend and leveraging technology to bring more transparency and efficiency to our public markets.
















We are encouraged by the innovation and promise of technological breakthroughs in artificial intelligence, machine learning and distributed ledger technology, and we are also mindful of the various ways that we can leverage existing technology and data to achieve FINRA's dual goals of investor protection and market integrity. Market participants and regulators must work together to improve our capital markets by developing these solutions.<sup>2</sup>

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<sup>1</sup> OTC Markets Group Inc. (OTCQX: OTCM) operates the OTCQX® Best Market, the OTCQB® Venture Market and the Pink® Open Market for 10,000 U.S. and global securities. Through OTC Link® ATS and OTC Link ECN, we connect a diverse network of broker-dealers that provide liquidity and execution services. We enable investors to easily trade through the broker of their choice and empower companies to improve the quality of information available for investors. To learn more about how we create better informed and more efficient markets, visit [www.otcmarkets.com](http://www.otcmarkets.com). OTC Link ATS and OTC Link ECN are operated by OTC Link LLC, member FINRA/SIPC and SEC regulated ATS.

<sup>2</sup> See Michael S. Piowar, *Remarks at the 2018 RegTech Data Summit - Old Fields, New Corn: Innovation in Technology and Law* (March 7, 2018), <https://www.sec.gov/news/speech/piowar-old-fields-new-corn-innovation-technology-law>. ("In part, RegTech covers the use of technology by regulators to fulfill their duties in a more thorough and efficient manner, as is the case when our Market Abuse Unit Analysis and Detection Center deploys technological tools to detect insider trading and market manipulation activities. [...] In part, RegTech also refers to the use of technology by regulated entities to streamline their compliance efforts and reduce legal and regulatory costs. For instance, some have suggested that using blockchain technology and artificial intelligence tools would allow the easy and secure transfer of critical regulatory data to multiple federal agencies. **Most importantly, the term**

We understand that instances of fraud hurt overall investor confidence on exchanges and OTC markets, and ultimately impede the capital formation process. OTC Markets Group has been proactive in providing tools for investor protection, such as the suite of marketplace “designations” and informational “flags” displayed below. These visual data points are made publicly-available for free on the company’s quote page and distributed to broker-dealers and compliance departments as part of our Compliance Data feeds. We urge regulators to leverage similar data-driven enforcement methods to oversee our public markets.

<b>Penny Stock Exempt</b>		This security is exempt from the definition of a Penny Stock under SEC Rule 240.3a51-1.
<b>Verified Profile</b>		The Company Profile data was verified by the issuer within the previous 6 months.
<b>Transfer Agent Verified</b>		The company’s share data, including authorized, outstanding, restricted and unrestricted shares, displayed on the company’s “Security Details” page, has been verified by its transfer agent.
<b>Shell Risk</b>		The company displays characteristics common to Shell Companies.
<b>Shell</b>		The company has self-reported as a Shell Company, as defined by Securities Act Rule 405 and Exchange Act Rule 12b-2, in its public filings.
<b>Promotion Flag</b>		The security is currently undergoing promotional activity.
<b>Bankruptcy</b>		The company is currently in bankruptcy or reorganization proceedings.
<b>Control Dispute</b>		Multiple parties are engaged in a dispute over control of the company.
<b>Prohibited Service Provider</b>		The company is affiliated or associated with an individual or firm on our “Prohibited Service Providers” list, which includes prohibited attorneys, accountants/auditors and other service providers.
<b>Unable to Contact</b>		OTC Markets Group is unable to verify contact information for the company.
<b>Delinquent SEC Reporting</b>		Company is not current in its reporting obligations under Section 13 or 15(d) of the Exchange Act.
<b>Pink Limited Information</b>		The company has limited financial information not older than six months available on <a href="http://www.otcmarkets.com">www.otcmarkets.com</a> or on the SEC’s EDGAR system.
<b>Pink No Information</b>		The company is not able or willing to provide current disclosure to the public markets - either to a regulator, an exchange or OTC Markets Group.
<b>Dark or Defunct</b>		The company is not able to provide disclosure to the public markets.
<b>Caveat Emptor</b>		Buyer Beware. There is a public interest concern associated with the company, which may include a spam campaign, questionable stock promotion, known investigation of fraudulent activity committed by the company or insiders, regulatory suspensions, or disruptive corporate actions.

*covers collaboration between private and public actors to take advantage of existing technologies to make everyone’s lives easier.”) (emphasis added).*

Timely, understandable information helps market participants identify fraudulent and manipulative activities. Making this information easily available online gives investors the necessary tools to price risk and make informed investment decisions. Increased disclosure enhances the valuable role our markets play as an entry point to the capital markets.

Data indicates that investors have adopted our market designations and flags. Over the past two years, securities identified as “Pink Limited Information” or “Pink No Information” comprised just 1% of the total dollar volume traded across all our markets, and trading in securities designated as “Caveat Emptor” was limited to just 0.1% of dollar volume across all markets.

In line with our disclosure and data driven philosophy, we propose the following common-sense recommendations that would enable FINRA to leverage existing technologies and market best-practices:

- (1) Adopt investor suitability standards based on risk-tolerance.
- (2) Enable more real-time enforcement by allowing Interdealer Quotation System (“IDQS”) operators to work directly with FINRA to halt trading in a security and quickly evaluate whether and when a halt should be lifted.
- (3) Increase the amount of information broker-dealers receive from transfer agents.
- (4) Update FINRA Rule 6432 to require IDQS operators to publicly display Form 211 company information and to track and publicly display the timeliness of company disclosure on an ongoing basis.

### **(1) Adopt Investor Suitability Standards Based on Expertise and Risk Tolerance**

Objective, data-driven risk categorization allows markets to serve the needs of all types of investors—those with an appetite for risk, those who are risk tolerant and those who are risk averse.

FINRA should leverage market data and standards to develop an objective approach to product suitability. OTC Markets Group would welcome the opportunity to work with FINRA and others to evaluate the efficacy of an “experts only” classification for the securities of certain issuers that do not make information publicly available (e.g., those designated by OTC Markets as “Pink No Information” or “Caveat Emptor”). Broker-dealers can then establish customer risk profiles and compliance thresholds based on trading experience and overall risk tolerance, which has proven to be a successful practice in the options industry.

## **(2) Enable More Real-Time Regulatory Oversight and Enforcement**

As the financial industry continues to employ real-time Fintech and Regtech solutions across their compliance and surveillance departments, market operators and broker-dealers are often in the best position to help identify red flags, including questionable disclosure, problematic corporate actions and fraudulent promotional schemes. FINRA should leverage this industry insight and technology to quickly respond to indications of fraud in a timely manner, including initiating FINRA trading halts when the market pricing process has been materially disrupted by potential fraud or manipulative activities.

This can be accomplished by allowing the operator of an IDQS to request that FINRA halt trading in a security, or otherwise take appropriate enforcement action, when the IDQS believes there may be fraudulent or manipulative trading activity. FINRA should also refer evaluations of these requests to its Regulatory Operations Oversight Committee or a similar committee of industry participants. If an issuer has a written agreement with its IDQS to provide ongoing disclosure, the issuer should also be able to request news-based market wide trading halts through their IDQS, similar to the process on many foreign markets.

Other industries apply dynamic, real-time “halts” to mitigate ongoing fraud risks. For example, to apply for a credit card, a user must first meet objective standards and provide certain information. After the user has been approved and the card is issued, activity on the card is monitored by the credit card company. If the credit card company suspects that the holder is engaged in fraudulent activity, is no longer creditworthy, or the account has been hijacked by a third party, the credit card company will temporarily freeze the user’s account. Like the credit card industry, FINRA should also be able to lift halts quickly and efficiently when the facts dictate.

The partnership between market operators and regulators is vital. Over the past year, the OTC Markets Group compliance department made approximately 20 regulatory referrals to FINRA and/or the SEC, assisting in numerous trading suspensions. Of the 293 OTC equity securities suspended by the SEC during 2017, over 90% were in securities designated as “Pink No Information”. The industry/regulator partnership can produce real, tangible results if we work together to implement real-time enforcement efforts—including faster trading halts and suspensions and a streamlined trade resumption process.

## **(3) Increase Company Share Information Available to Broker-Dealers by Updating Transfer Agent Regulations**

Transfer agents hold the keys to detecting and preventing the illegal sale and transfer of securities. Unlocking company share issuance data possessed by transfer agents—and allowing broker-dealers to rely on it for compliance purposes—could help reduce manipulative trading and unlawful securities transfers.

Broker-dealers shoulder significant responsibility for preventing illegal sales of restricted securities. However, current regulations do not permit broker-dealers to rely on information from an SEC-registered transfer agent when conducting compliance reviews.<sup>3</sup> The FINRA guidance is counter-intuitive. Broker-dealers acting in a gatekeeper capacity should have as many informational resources as possible. Instead, the lack of transparency between transfer agents and broker-dealers creates an environment where investment professionals are left in the dark and unwilling to facilitate transactions in small company securities, often at the expense of shareholders and the greater capital formation process.

The majority of the industry's leading transfer agents now participate in the OTC Markets Group Transfer Agent Verified Share Program. Transfer agents submit current and reliable shares outstanding information for top-tier OTCQX and OTCQB securities directly to OTC Markets Group via a secure, electronic file transfer. We display this information on our website alongside a "verified" logo indicating that the information is up-to-date and has been verified by the transfer agent. As of September 2018, 91% of the U.S. companies trading on our OTCQX and OTCQB markets are represented by participating transfer agents and have verified share information publicly available on their company pages. Exhibit A hereto details how this information is displayed on our website.

Requiring that additional share information be made public in a machine-readable format would provide broker-dealers with valuable data to help detect Section 5 violations and fraudulent behavior. We invite FINRA to join us in advocating that the SEC modernize transfer agent regulations and increase the amount of information available to broker-dealers (including the issuance, ownership and transfer history of shares). Transfer agents must be trusted record keepers on which broker-dealers and regulators can rely.

#### **(4) Increase the Efficiency of FINRA Rule 6432 by Promoting Disclosure and Engaging Market Operators**

In our data-driven "sharing economy," FINRA should review its rules with an eye towards unlocking valuable information from market participants and engaging market operators.

Exchange Act Rule 15c2-11 and FINRA Rule 6432 govern the submission and publication of quotations to an IDQS by broker-dealers in securities not listed on a national securities exchange. These rules require broker-dealers to review and maintain specified information about the issuer of a security before publishing a

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<sup>3</sup> See FINRA Regulatory Notice 09-05, *Unregistered Resales of Restricted Securities*, available at: <http://www.finra.org/sites/default/files/NoticeDocument/p117716.pdf>. ("In considering their obligations [with respect to identifying and preventing unregistered securities distributions], firms should be aware that there are limitations on their ability to discharge those obligations by relying on others. 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.")

quotation for that security in any IDQS. However, broker-dealers have no obligation to disclose this core company information to the investing public. Further, each broker-dealer must collect and maintain their own records for the same security, a redundant and inefficient practice which creates information asymmetries.

Rule 6432 would have significantly greater utility if this information was required to be made public and easily available online. FINRA needs to adopt a public disclosure-based approach to its administration of Rule 6432, with the ultimate goal of ensuring that there is sufficient information for investors to make an informed assessment of the financial position and prospects of an issuer. To this end, we have made the following recommendations:

- All information submitted to FINRA in connection with a Form 211 should be made publicly available on the applicable IDQS.
- The ultimate responsibility for the accuracy of this information should lie with the issuer, rather than the broker-dealer. This would help to facilitate broker-dealer engagement with small-cap issuers and ultimately increase the quality of information available to investors.
- On an ongoing basis, the applicable IDQS should also be required to track and publicly display the timeliness of company disclosure on an ongoing basis, as OTC Markets Group does today.
- Finally, an IDQS that is an alternative trading system (“ATS”) and that publishes the information specified under Rule 15c2-11 on its website should be allowed to file a Form 211 for certain low-risk securities (e.g. SEC reporting companies).

Rule 15c2-11 and FINRA Rule 6432 aim to ensure investors have timely access to material company information. Accordingly, FINRA should welcome the highest degree of market participation by regulated entities with the greatest ability to access and disseminate that information. See our previous comment letters for an in-depth discussion of the above and additional suggestions related to Rule 6432 reform.<sup>4</sup>

Modern-day trading venues have become public repositories for information about the securities that trade there, such that broker-dealers and investors often use these marketplaces as their primary resource in making investment decisions. We welcome FINRA’s current and future efforts to leverage data and technology to arm investors and broker-dealers not only with more information but with **more useful information** about public companies.

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<sup>4</sup> OTC Markets Group made comments to the Securities and Exchange Commission (the “SEC”) on Rule 6432 when it was last amended in 2014. See, OTC Markets Group Inc. Comment Letter on Proposed Amendments to FINRA Rule 6432; File No. SR-FINRA-2014-011, available at: <https://www.sec.gov/comments/sr-finra-2014-011/finra2014011-1.pdf>. More recently, we submitted a comment letter in response to FINRA Regulatory Notice 17-14, with our suggestions on how to improve the administration of Rule 6432 and the Form 211 process. Available at: [http://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/17-14\\_OTCmarkets\\_comment.pdf](http://www.finra.org/sites/default/files/notice_comment_file_ref/17-14_OTCmarkets_comment.pdf).

OTC Markets Group Inc.  
October 12, 2018

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We appreciate the opportunity to comment on FINRA's Fintech initiative. Please contact me at (212) 896-4413 or [dan@otcmarkets.com](mailto:dan@otcmarkets.com) with any questions.

Very truly yours,

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

Daniel Zinn  
General Counsel  
OTC Markets Group Inc.

**EXHIBIT A**

Market Activity / Stock / OTCM / Security Details

**OTCM**  
 OTC Markets Group Inc.

**27.50** ↑ 0.48  
 1.78%  
 27.00 / 28.00 (355 x 200)

Class A Common Stock

Real-Time Best Bid & Ask: 05:00pm 10/11/2018  
 Delayed (15 Min) Trade Data: 03:57pm 10/11/2018

Overview Quote Company Profile **Security Details** News Financials Disclosure Research

**OTCM SECURITY DETAILS**

**Share Structure**

Market Cap	311,849,601		10/10/2018
Authorized Shares	14,000,000	🔒	10/10/2018
Outstanding Shares	11,541,436	🔒	10/10/2018
Restricted	1,407,87	🔒	10/10/2018
Unrestricted	10,133,566	🔒	10/10/2018
Held at DTC	9,660,958	🔒	10/10/2018
Float	6,969,899		03/31/2018
Par Value	0.01		

This symbol indicates that the share information has been verified by the company's transfer agent

Date that the share information was provided to OTC Markets Group by the company's transfer agent

Market Value calculated only for respective security

**Transfer Agent**

**Shareholders**

[Continental Stock Transfer & Trust Company](#)

Shareholders of Record 177

03/31/2018