OTC Markets

TESTIMONY OF R. CROMWELL COULSON

PRESIDENT AND CEO OF OTC MARKETS GROUP INC.

BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS AND GOVERNMENT SPONSORED ENTERPRISES

COMMITTEE ON FINANCIAL SERVICES

HEARING ENTITLED "REDUCING BARRIERS TO CAPITAL FORMATION"

JUNE 12, 2013

INTRODUCTION

Chairman Garrett, Ranking Member Maloney and members of the Capital Markets and Government Sponsored Enterprises subcommittee, my name is R. Cromwell Coulson, president, CEO and director of OTC Markets Group Inc., operator of the OTCQX®, OTCQB® and OTC Pink® marketplaces where 10,000 U.S. and global securities trade.[1] I appreciate the opportunity to testify before the subcommittee today on the topic of "reducing barriers to capital formation." As an operator of public marketplaces for small companies and a publicly traded small company in our own right, I hope I can provide the committee with greater insight into barriers to capital formation that should be removed.

Our self-interest in changes to regulation is very clear. We want more openness so our public markets are more inclusive, we want better transparency so our public markets are better informed, and we want more connectivity so our public markets are more efficient. Finally, we want to remove unneeded regulatory burdens in order to reduce the cost and complexity imposed on smaller public companies.

We have the following recommendations to members that will help accomplish these goals:

[1] OTC Markets Group Inc. (OTCQX: OTCM) operates Open, Transparent and Connected financial marketplaces for 10,000 U.S. and global securities. Through our OTC Link® ATS we directly link a diverse network of broker-dealers that provide liquidity and execution services for a wide spectrum of securities. We organize these securities into marketplaces to better inform investors of opportunities and risks – OTCQX®, The Best Marketplace with Qualified Companies; OTCQB®, The Venture Stage Marketplace with U.S. Reporting Companies; and OTC Pink®, The Open Marketplace with Variable Reporting Companies.

Our data-driven platform enables investors to easily trade through the broker of their choice at the best possible price and empowers a broad range of companies to improve the quality and availability of information for their investors. To learn more about how we create better informed and more efficient financial marketplaces, visit www.otcmarkets.com.

OTC Link® ATS is operated by OTC Link® LLC, member FINRA/SIPC and SEC regulated alternative trading system.

1) Demand that the SEC complete rulemaking on Title II, Title III and Title IV of the Jobs Act in a timely manner, without overly complicated or costly barriers to companies raising capital under these new regulations.

2) Update Securities Act Section 17(b) to require increased disclosure of stock promotion activity and greater transparency into the people behind it.

3) Improve the share issuance process through better regulation of transfer agents and more thoughtful information exchange between transfer agents, broker-dealers and the Depository Trust Company (DTC).

4) Require that insiders and affiliates that buy or sell non-SEC reporting companies publicly disclose transaction information in a manner similar to SEC Forms 3, 4 and 5.

5) Bring more transparency to holders of non-exchange traded securities by expanding Section 13(f) of the Exchange Act to require that institutional investment managers disclose their holdings of all publicly traded equity securities.

6) Implement a quote and order price increment (tick size) pilot for all publicly traded small companies. The pilot should include increased minimum displayed size requirements for broker-dealer proprietary quotes and orders.

7) Reject any attempt to create a “trade-at rule” that would require orders to be routed to the best publicly displayed price. Such a rule would effectively reduce choice and innovation, decrease competition between market centers and impose increased and unnecessary costs on investors.

8) Support diverse choice and healthy competition among trading venues, and reject any regulation or policy that would lead to giving a “centralized trading monopoly” to the listed stock exchanges or any other trading venue.

9) Make margin-eligible all non-penny stocks that are actively traded on “established public markets” and make the SEC responsible for determining the margin eligibility of all equity securities.

10) Make all non-penny stocks that are actively traded on “established public markets” exempt from state Blue Sky secondary trading restrictions.

11) Update the SEC definition of penny stocks to take into account interim capital raises.

12) Allow companies to transparently pay market makers in order to initiate quotations in securities, provide tighter spreads and make more liquid markets.

13) Allow smaller SEC reporting companies to opt out of XBRL filings until the cost is vastly reduced.

14) Remove antiquated Section 17B of the Exchange Act.

15) Institute a 25% corporate tax rate and deductibility of dividends for publicly traded smaller companies.

Of course, we need our marketplaces to be well regulated, but it is important to acknowledge that the U.S. equity markets have the most regulated trading of all our financial markets. The broad anti-fraud provisions in Section 10(b) of the Exchange Act and its related rules already give regulators a broad sword against those who seek to commit fraud and other crimes in the securities markets.

Before I begin, I would like to give some background on the history of our company as it will provide context to our testimony. In 1997, I led a group of investors to acquire OTC Markets Group’s predecessor business, the National Quotation Bureau. At the time, trading was a largely phone-based process with little price transparency, electronic connectivity or information availability on the companies that traded. This made for an opaque and inefficient market with high transaction costs and little liquidity.

It is easy to forget that less than twenty five years ago there was no consumer Internet brimming with information about companies and people, no Yahoo! Finance with a wealth of information and no online brokers for investors to trade electronically. Company brochures, financial statements and investment advice were distributed in paper through the mail, and stock prices were obtained through a phone call or visit to a broker. Clearly, times have changed, and we must update our securities laws to reflect these changes so investors and markets are empowered with more information when they analyze, value or trade securities.

OPENING PUBLIC MARKETS TO MORE COMPANIES AND INVESTORS

At OTC Markets Group we operate Open, Transparent and Connected marketplaces, and our mission is to create better informed and more efficient financial marketplaces. We started transforming our marketplaces with a real-time quotation service for broker-dealers to provide price transparency and best execution in off-exchange securities. We also developed the website that became www.otcmarkets.com, to give investors around the world instant access to high-quality financial data.

In 2003, we launched our electronic trade messaging platform, which later became OTC Link® ATS, operated by OTC Link LLC, our wholly-owned subsidiary and an SEC registered alternative trading system and FINRA/SIPC member broker-dealer. The launch of electronic trading in 2003 kicked off a series of changes in technology, transparency and regulation that has transformed trading into our modern, efficient electronic system with transparent and well-regulated[2] broker-dealer trading. We have a diverse community of broker-dealer liquidity and execution providers showing their best quotes and orders and directly interacting with each other across our network. In short, we create the data technology plumbing for securities trading by market makers and agency brokers.

Ten years later, our marketplaces are home to 10,000 U.S. and global securities that traded a combined dollar volume of $135 billion in 2012, including over 3,000 ADRS and ordinary shares of global companies that are also listed overseas and primarily follow SEC Rule 12g3-2b by providing their home country disclosure in English, over 3,000 SEC registered companies current in their reporting, and over 600 community banks that report to their U.S. banking regulator. We also have hundreds of smaller U.S. companies that are exempt from SEC

[2] See attached Regulation of Trading Summary

reporting because of their smaller number of shareholders but use our services to publicly distribute their disclosure to investors. OTCQX, our best marketplace with qualified companies, had a dollar volume of $22.9 billion last year and an aggregate market capitalization of $1.3 trillion.

The leading electronic broker-dealers that trade NYSE and Nasdaq securities also use their technology to trade OTCQX, OTCQB and OTC Pink securities, with the result that the investor trading experience is now almost identical. The extensive market data, company data and security information provided by our platform and our Issuer Services business can be found at most of the major online brokers, market data vendors and financial portals, including Bloomberg, Reuters, Schwab, E*Trade, TD Ameritrade, Scottrade and Yahoo! Finance.

Since our OTC Link ATS serves broker-dealer subscribers that need to deliver best execution to investors in a wide spectrum of securities, we see companies along a continuum, ranging from those that act private or have financial reporting difficulties to those that provide the highest level of public disclosure. We help identify these companies based on the quality of their financial disclosure by segmenting them into three marketplaces – OTCQX, our best marketplace with qualified companies; OTCQB, our venture stage marketplace with U.S. reporting companies; and OTC Pink, our open marketplace with variable reporting companies.

Our marketplaces, like all public markets, are better informed and more efficient when there is transparency of trading activity and company information. We work with broker-dealers on the trading process, but need to engage companies to provide better information for investors. Smaller companies are not owned by big institutions or index funds. Stock pickers own small company's shares, and stock pickers are looking for quality companies, with quality managements and quality disclosure so they can make intelligent investment decisions. Transparency builds trust, and we have designed our tiered marketplaces to encourage companies to make more current information publicly available. As companies climb to their highest achievable marketplace and take advantage of services that enable them to provide more information to their investors, whether it be our OTC Disclosure and News Service or our access to our Real-Time Level 2 (OTCQX, OTCQB and OTC Pink) market data, their public trading becomes more informed and efficient, their shares more liquid, and they experience improved access to capital.

We have created alternative reporting standards that provide a disclosure framework for non-SEC reporting companies seeking to make adequate current information publicly available[3]. With our OTCQX U.S. Disclosure Guidelines and our OTC Pink Basic Disclosure Guidelines, we provide a structure and format for a wide variety of companies to publish and distribute their disclosure and make it freely available on the internet.[4] Our services ensure company data is disseminated to market data distributors and financial portals, and that their financial statements are converted into XBRL to be made available on Yahoo! Finance[5] and to financial database providers. Our OTCQX U.S. Disclosure Guidelines, which we follow when posting our own disclosure, requires an audit by a PCAOB firm and provides comprehensive disclosure for investors in a non-overly complex manner. Our OTC Pink Basic Disclosure Guidelines help small companies meet the minimum standards of Securities Act Rule 144 and Exchange Act Rule 15c2-11, and the cost of our disclosure service and XBRL conversion is significantly lower than charges imposed on SEC reporting companies.

We clearly label each security with its marketplace designation. Investors know that OTCQX-traded companies meet certain qualitative and quantitative standards, including minimum financial requirements and a management review, that they provide ongoing audited disclosure to investors and are sponsored by professional FINRA-member investment bank, depositary bank or securities law firm. Likewise, investors in companies on our OTCQB marketplace know that while these venture stage companies are current in their reporting to the SEC or a bank or insurance regulator, they may also be a shell company, financially distressed or in bankruptcy, and that the SEC does not review or verify the background of their management team. Investors in OTC Pink companies know that these companies provide current, limited or no information to investors, and that they are generally more speculative, smaller and/or less investor-focused. Recently, the SEC publicly recognized the quality of our OTCQX and OTCQB marketplaces by declaring them “established public markets” for purposes of establishing a public market price when registering securities for resale in equity line financings.[6]

In the end, whether a company trades on the NYSE, Nasdaq or the OTCQX, OTCQB or OTC Pink marketplaces, that company can realize all the benefits public trading provides.

---

[3] See: http://www.otcmarkets.com/learn/otc-company-reporting
[4] Example: http://www.otcmarkets.com/stock/OTCM/filings
[5] Example: http://finance.yahoo.com/q/is?s=OTCM+Income+Statement&annual
[6] See the SEC’s Compliance and Disclosure Interpretation: http://www.sec.gov/divisions/corpfin/guidance/sasinterp.htm at Question 139.13.

I. CREATING BETTER INFORMED PUBLIC MARKETS

Before discussing our specific proposals, I would like to share our insight, as the operator of marketplaces for the trading 10,000 securities, and a publicly traded company ourselves, on the benefits of being a public company and the importance of a vibrant secondary trading market to the small company capital formation process.

The Benefits of Public Trading

We are firm supporters of the value proposition behind companies aspiring to be publicly traded, as it generally creates the most successful and sustainable enterprises over the long term. Being publicly traded provides companies with several important benefits that cannot be found by remaining private:

- **Visibility** – Being publicly traded, having a stock symbol next to your company name and making disclosure publicly available provides a company with a level of visibility that is tougher to achieve if it is private. The media is much more likely to pay attention to a company that is publicly-traded – and public with its information – than one that is private. Public company status also creates a connection with investors, employees, strategic partners and customers that is invaluable to a growing organization.

- **Liquidity** – Public trading allows management to provide their shareholders with maximum liquidity for their shares without having to sell control of the company. Investors in public companies trading on NYSE, Nasdaq, OTCQX, OTCQB and OTC Pink can trade securities through any broker, and property is more valuable if it is transferable. Liquidity gives investors a choice and a realizable value for their shares, and allows shares to be used as collateral.

- **Valuation** – Public trading creates the best valuation for individual shareholders, other than a complete sale of the company. By making shares publicly traded, in a continuous market accessible through any broker, companies create a huge wealth effect as their investors have a readily transferable asset that can be deposited in brokerage accounts. It is much easier to value a company when it is publicly traded, with widely disseminated, easily accessible quote and trade data, and publicly disclosed financial information. A public valuation also gives a company an accurate portrayal of its overall worth, and provides real-time feedback as the market reacts to company news and disclosure.

Public valuation gives investors confidence in the value of the shares they hold, allowing them to accurately assess their personal finances and to trade their shares with confidence.

- **Capital** – Access to capital is perhaps the most obvious reason companies go public. Investors are much more comfortable investing in a publicly-traded company that provides public disclosure than one that is private, because public companies are easier to value and because outside investors know they can sell their shares at any time.

- **Trust** – Finally, publicly-traded companies can more easily convey their reputations and build trust with their various stakeholders. That includes investors, as well as employees, customers, suppliers, strategic partners, the media, regulators and the public. Public disclosure of company financial and other material information breeds trust in potential employees, vendors and customers, and public price discovery does the same for investors. The trust that public companies engender also makes them more sustainable and enduring than private companies, and public companies have built sustainable businesses because they are trusted and transparent, not in spite of it.

We are testifying here because we support changes to regulation that would jumpstart the small-cap initial public offering (IPO) market, however we also know that a traditional IPO, or a reverse takeover (RTO) are not the only ways for a company to enter the public markets and reap the benefits of public trading. We refer to an alternative public offering (APO) that we call the "Slow PO." With a Slow PO, a seasoned company with an established investor base can slowly start to provide liquidity to its shareholders by making previously restricted shares available for trading in compliance with Securities Act Rule 144 or filing a Form 10 with the SEC. Capital raised through private placements to angel investors, private equity firms, and venture capital has created a huge pool of value that can be unlocked and used by companies to build an informed and efficient public market.

In fact, Nasdaq went public via a Slow PO. In 2000, Nasdaq did a private placement offering to NASD members. When the Rule 144 holding period expired, broker-dealers began trading those shares on the public markets. Three years later, Nasdaq did a secondary share offering at $9 a share and up-listed its shares on its own market. OTC Markets Group did our own Slow PO in September 2009, when our previously restricted stock issued in private transactions

became available for trading under Rule 144. A few months later, we qualified for the OTCQX marketplace where our shares now trade under the ticker “OTCM.”

For a company that is serious about maximizing its visibility, raising capital, recruiting top-quality talent and building trust, being publicly traded can provide significant value to its business and its shareholders, which in turn also benefits our economy. But we must make sure that the costs and burdens we put on public companies do not outweigh those benefits.

Capital Formation Relies on Investor Access to Vibrant Secondary Markets

Public companies require informed secondary markets that allow investors to efficiently trade securities. Our OTCQX, OTCQB and OTC Pink marketplaces, much like NYSE and Nasdaq, facilitate secondary trading in securities by regulated broker-dealers. Before a company can effectively raise capital, potential investors need assurance that the securities they purchase will eventually have a value. The value of a security comes from income, appreciation potential and transferability. Transferability of securities is driven by liquidity, or how efficiently they can be analyzed, valued and traded in a secondary market.

Once an investor buys a share of stock, they have a property right in that share just like an individual owner has in an iPod or a car. And just as an iPod can be sold on eBay and a car can be sold “pre-owned”, shareholders have the right to sell their stock. A car, for example, is worth considerably more if it has an easily ascertainable public resale value. Similarly, an active secondary market in stock increases the value of that stock and makes it a more attractive investment.

A quick aside into the history books will bring context to this issue. The model for modern secondary markets dates back to the Dutch East India Company’s initial capitalization in the Netherlands in the early 1600s as the first company with perpetual shares. Since investors needed to realize value, a limited secondary market arose to handle buyers and sellers. However, transfer of Dutch shares was restricted by the company and limited to certain investors. When London traders later adopted the Dutch share markets in a more pure and unfettered form, the English allowed regular trading and share transfers among all investors

daily.[7] The resulting value creation resonated with investors and companies alike, and London has been the center of Europe's financial markets ever since.

Trading models that focus on making trading of shares more restricted, keeping company information private and limiting trading to specified dates and a limited group of investors ignore the lessons learned through hundreds of years of secondary trading. Devaluing the property rights of investors and impeding the utility of their investments is not a path to vibrant capital markets, instead it unnecessarily limits the property rights of shareholders and the value of each investment, and makes it harder for companies to raise the capital they need to grow.

Adequate Current Information is a Foundation of Informed Secondary Markets

Of course, as public secondary markets become more inclusive, investors must still be protected. As operator of the primary public marketplaces in the smallest company space, we understand the importance of public disclosure and in ensuring that company insiders and affiliates cannot use their informational advantage to manipulate outside investors.

We have repeatedly advocated for regulation that would increase the transparency of trading by insiders, affiliates and promoters, and restrict the ability of insiders to trade unless adequate current information, as that term is defined in the federal securities laws, is made publicly available. That said, the complex system of SEC reporting is not and should not be the only path to making high quality information publicly available.

Our OTCQX, OTCQB and OTC Pink marketplace designations already incentivize disclosure by making it easy for investors to identify companies that make current disclosure available. Companies may choose how they make information publicly available and securities are clearly labeled by the marketplace they qualified for and the reporting standard they follow. The results are overwhelmingly positive for public disclosure, in that vast majority of trading takes place in companies that make current information publicly available, as noted in the table below.

[7] *The Origins of Value: The Financial Innovations that Created Modern Capital Markets*, Chapter 9, Larry Neal, author, William N. Goetzmann & K. Geert Rouwenhorst, editors, (2005).

OTC Marketplace	# of securities	2012 $ Volume	% of Total $ Volume	Total Market Capitalization (in millions)*	Avg. $ Volume per Security
OTCQX®	400	$22,944,077,658	16.92%	$1,298,150	$57,630,194
OTCQB®	3,401	$31,473,130,100	23.21%	$185,910	9,254,081
OTC Pink® Current Information	2,499	$74,373,618,933	54.84%	$10,160,632	$29,761,352
OTC Pink® Limited Information	609	$3,802,790,602	2.80%	$8,500	$6,244,320
OTC Pink® No Information	3,065	$3,028,535,649	2.23%	$26,498	$988,103
Totals	**9,974**	**$135,622,152,942**	**100.00%**	**$11,679,689**	**$13,597,569**
* Selected data as of December 31, 2012					

In 2012, the 10,000 securities on our marketplaces traded over $135 billion in dollar volume. Over 95% of dollar volume traded, representing more than $128 billion, took place in securities that made current information publicly available and were therefore identified on our OTCQX and OTCQB marketplaces or on our OTC Pink Current Information tier. Companies making limited information available represented nearly 3% of total dollar volume, leaving just over 2% of dollar volume represented by companies in the OTC Pink No Information category.
This is not to say that the OTC Pink No Info companies should not trade. In fact, some are quite successful operations, but they may have management teams who are not aligned with shareholder interests. The clearly labeled secondary trading marketplaces, where, for example, OTC Pink No Information companies have a stop sign next to their quotes, help warn all investors if the security is a speculation at best and give outside shareholders a choice to sell their shares to someone besides the company.

Capital formation requires investor confidence in the issuers and in the secondary trading market. The investor sentiment is clear – disclosure of adequate current information protects investors, drives confidence, and ultimately leads to more robust capital markets. This must be balanced by protecting the property rights of outside shareholders to be able to transfer their shares in an efficient manner through a regulated broker-dealer.

The JOBS Act

We commend Congress on its bipartisan efforts to pass the JOBS Act. As an operator of Open, Transparent and Connected financial marketplaces, we support this modernization of our securities laws that will add transparency to the capital raising process. Transparency of information makes markets better informed and more efficient.

The JOBS Act rejects the theory that private capital raising should be hidden from the public and adapts U.S. securities law to our interconnected world in which information can easily travel across the Internet and market data networks. The JOBS Act affirms that investors should be

protected based on their level of sophistication and wealth at the point of sale, but that all investors benefit from public availability of information about companies and the trading of their securities.

These important changes are going to bring sunlight into the previously dark worlds of private securities offerings under the SEC's Regulation D and Rule 144A, while creating new opportunities for transparent capital raising by U.S. and global companies. Lifting restrictions on the distribution of information regarding 144A securities also means these securities may be transparently traded on our marketplaces by broker-dealers, for their own accounts and on behalf of other Qualified Institutional Buyers (QIBs), leading to improved price formation and greater secondary liquidity. The JOBS Act will allow more companies to make more disclosure publicly available. Where before a company raising capital under Reg. D, would have been restricted from posting their annual report on their website due to general solicitation concerns, the JOBS Act making available general solicitation, Regulation A+ (Reg. A+) and crowdfunding will incentivize companies to make their disclosure publicly available to access capital.

The JOBS Act has already had a significant impact for some companies, such as community and regional banks, and we're hearing from others in our community that are looking to take advantage of future rulemaking when it is complete.

For example, since the passage of the JOBS Act, over 100 community and regional banks have taken advantage of the higher shareholder threshold to deregister with the SEC, resulting in significant cost savings and the elimination of duplicative reporting for many. Paul Garrigues, CFO of Coastal Banking Company , Inc., a $475 million Florida-based bank with 2.6 million shares outstanding and 622 shareholders, estimates that his bank is saving $150,000 to $200,000 a year in attorney's fees and other costs as a result of its deregistration and delisting from Nasdaq in May.[8] The company now trades on our OTCQB marketplace, and has elected to continue publishing its quarterly and annual audited financial statements on our website, www.otcmarkets.com, and for distribution to investors, market data providers and broker-dealers who trade OTCQX, OTCQB and OTC Pink securities. Meanwhile, Coastal Banking's stock price has risen from $4.50 to $7.00 and its average daily trading volume has increased

[8] "Deregistered and Delisted? No Worries," *CFO Magazine*, April 2013, http://www3.cfo.com/article/2013/3/capital-markets_jobs-act-otc-stock-markets-deregister-delisting-sec.

from 400 to 2,000 shares year-over-year. Other banks report similar positive results, and OTC Markets Group is working with them to make sure that when they deregister they continue to make publicly available the quality company information, audited financial statements and transparent trading to which their investors have become accustomed.

That said, we do think it is important for the SEC to hasten its work on writing the remaining rules, particularly relating to Title II, general solicitation and advertising in certain private offerings, Title III, crowdfunding, and Title IV, the offering exemption known as Reg. A+. While we understand the need to balance haste with thoughtful consideration in rulemaking, in this case of Title II, the SEC has received many thoughtful comments and it is time to make decisions and publish final rules. Time is of the essence in this matter as the delay is restricting access to capital. Numerous companies on our marketplaces have said they are urgently awaiting this rulemaking so they can make important financing decisions in their businesses.

Since the changes to capital raising are significant, the final rule will need to allow for adjustments with the benefit of time and experience. These changes will present a risk of abuse, just as with any new rulemaking. That risk can be addressed when it arises, particularly since most potential abuses are already illegal under the numerous other anti-fraud provisions within SEC rules. Meanwhile, it is the SEC's responsibility – and its mandate – to write a rule as soon as possible.

We would like to reiterate recommendations we made in our comment letter to the SEC, dated October 8, 2012[9], relating to the need for publicly available price information on securities for which general solicitation and advertising is permitted. We proposed that the Commission make two additional steps: 1) Require that when conducting capital raising under Rule 506 using general solicitation, the company must directly or indirectly make adequate information publicly available in accordance with the standard under Securities Act Rule 144.
As we stated in our letter:

> *"Rule 144 includes a definition of adequate current public information that would be appropriate for use in conjunction with trading of Rule 144A, Rule 506 and other private securities by affiliates of the issuer. Such a requirement would incentivize disclosure by non-reporting issuers, and would dramatically increase*

[9] http://www.sec.gov/comments/s7-07-`12/s70712-149.pdf.

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 1Ob-5, which applies to the purchase and sale of any security.

Under Rule 144, issuers not reporting to the SEC must make publicly available basic financial information. This standard requires disclosure of essential information regarding the issuer and its securities, including the issuer's current financial statements and capital structure. The simplified Rule 144 disclosure provides the basic information and transparency that allows all potential investors to easily analyze a company's general financial condition before engaging in further diligence or a transaction.

When a security trading on the OTC Markets Group platform participates in active promotion without having adequate current information disclosed to the market, we flag it with a skull and crossbones symbol to warn investors of a potential public interest concern. Investors armed with current public information are not only in a better position to analyze, value and trade securities, they are also less susceptible to fraud. With the end of the prohibition on general solicitation, the mandatory public disclosure of the information required under Rule 144 would protect the additional investors that may be presented with the issuer's offering information."

2) Extend the SEC's implicit approval of price dissemination in Rule 144A securities to Rule 506 and to other security types. Again, as we stated in our letter:

"The widespread dissemination of prices for Rule 144A, Rule 506 and other private securities supports capital formation, better informs investors and provides the Commission and other securities regulators with a valuable tool to fight fraud. Widespread transparency of prices and basic current information regarding the issuer empowers investors, analysts, the press and regulators with information on current valuations and trading activity. This openness creates a more efficient and reliable capital formation process. By enacting the JOBS Act, Congress recognized the importance of public availability of information to the capital raising process and the value of increased transparency in the operation of healthy capital markets."

As a final point on the JOBS Act, I want to reinforce the value of Title IV, Reg. A+, to many of the small companies that trade on our marketplaces. The current Regulation A (Reg. A) provides an exemption from SEC reporting requirements for certain public offerings of up to $5 million. With the rising costs of preparing the disclosure required for a Reg. A offering and bringing the offering to investors, the $5 million limit has proven to be a nearly universal deterrent. With Reg. A+ raising the exempted offering limit to $50 million, many more companies will reap a direct capital raising benefit. This will include many of the community banks traded on our marketplaces and smaller companies disclosing audited financial

statements. The immediate tradability of the shares issued in a Reg. A+ offering is a big benefit that will increase the valuations at which companies can raise capital and provide a path to public trading.

The implementation of Reg. A+ is about more than just the offering limit, however. "Blue Sky" laws that govern offering restrictions in each U.S. state and jurisdiction are uncoordinated and can present a significant roadblock to capital formation using Reg. A+. Subjecting companies to Blue Sky laws will undermine and negate the benefits of Reg. A+. To ensure that Reg. A+ provides the path to capital that Congress clearly intended in the JOBS Act, it must also provide that Reg. A+ offerings are not subject to state Blue Sky laws. Similarly, the success of Reg. A+ depends on the SEC defining the term "qualified purchasers" to be more inclusive than the current definition of "accredited investors." Qualified purchasers should include financially sophisticated individuals that may not have obtained the wealth to be accredited investors, such as employees of the issuer and those that meet the current requirements applied to broker-dealer customers trading stock options. A Reg. A+ prospectus will require audited financials and be subject to SEC review, which makes it inherently more transparent and more regulated than a private offering and leads to the logical conclusion that a Reg. A+ offering should be available to at least as many, if not more, investors as a Rule 506 private offering.

Reducing Fraud in Small Company Trading

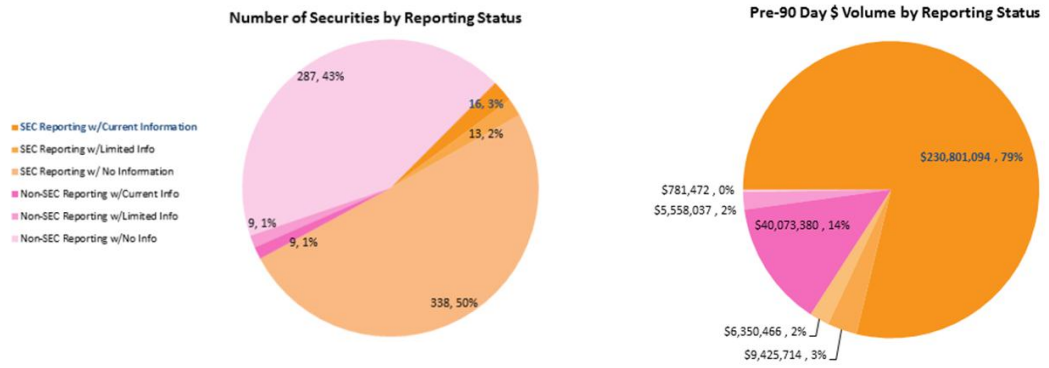
Our position in the market makes us hyper-aware of the risks of fraud, particularly in the microcap space. We applaud the SEC's past and recent efforts to suspend trading in microcap securities that present a heightened risk of fraud. Fraud in the trading of small company securities hurts investor confidence in small companies and ultimately impedes the capital formation process.

Last year, the SEC ordered 10-day suspensions on 672 microcap and shell[10] securities. We analyzed those suspensions focusing on the dollar volume of trading in each of the suspended securities for the 90 days leading up to their suspension. The suspensions included only 16 companies that were current in their reporting to the SEC. Yet, those 16 securities accounted

[10] Recent SEC suspensions of groups of shell companies have included operating companies with high stock prices that have chosen to go dark and disenfranchise outside shareholders. The SEC enforcement staff's lack of analysis and understanding will assist in these companies efforts, as removing the public trading will make shareholders dependent on the company as the only bidder. We would recommend the SEC enforcement staff engage in fundamental research and stock analysis before suspending any companies.

for the vast majority, nearly 80%, totaling $230 million, of the total dollar volume of all suspended securities in the 90 days prior to their suspensions. We urge the SEC staff, in seeking to demonstrate their enforcement oversight, to focus on the quality of enforcement actions and not just the total number of suspensions.

Analysis of SEC Suspensions



Clearly, the majority of the problem in the small/micro-cap fraud arena – in terms of dollar volume and, thus, investor losses – involves companies that are current in their reporting to the SEC. Unfortunately, a company with little revenue and no assets can be an SEC reporting company with minimal cost and effort. The SEC needs to recognize this all too easy path to fraud and take pro-active steps to focus on the companies that are causing the largest investor losses. We should encourage the SEC to focus their limited enforcement efforts on the most highly promoted SEC reporting micro-cap companies that are heavily advertised on the Internet. These companies and their brazen promotional activities make a mockery of the regulation of our securities markets.

In 2007 we instituted a “caveat emptor” policy under which we place a “Skull and Crossbones” icon next to the trading symbol of stocks for which unsolicited SPAM emails are sent or that have engaged in promoting their securities without making adequate current information available to investors. Since instituting the caveat emptor program, we have seen a clear reduction of promotion and spam in OTC Pink No Information companies, and this is one of the main reasons why the majority of promotion takes place in SEC reporting companies.

Focus on the People Behind SEC Reporting Companies

A logical place for the SEC to begin a ramped-up enforcement effort is with increased transparency and scrutiny of the officers, directors, affiliates and major shareholders of SEC reporting companies. This type of review would also allow the SEC to tie a shareholder list back to any future promotional or other potentially fraudulent activity in which those holders may engage. Currently, the SEC does not engage in background checks of company officers and major shareholders as part of the SEC registration process, or when reverse mergers are announced in 8K filings. Nor does the SEC request or review the shareholder lists of SEC reporting companies or the history of share issuances from SEC registered transfer agents, which leaves them limited in their ability to identify companies with questionable officers, directors, affiliates and shareholders for further scrutiny and monitoring.

Better Transparency of Promoters

In conjunction with increased focus on the shareholder lists of SEC registrants, we strongly support increased regulation to provide for better transparency of the people behind stock promotion activity. We submitted a rule proposal to the SEC several years ago that would require increased disclosure associated with any stock promotion material under SEC Rule 17b, with the goal of exposing and preventing unlawful and fraudulent activities by stock promoters and their sponsors.[11]

One example is the current 17b disclosure from one promotional website that advertises via links on major news and financial websites:

> *"TheAmericanSignal.com has been retained by an unrelated third party for promotional and advertising services intended to increase investor awareness of Nano Labs Corp. ("Nano"). The common shares of Nano trade on the OTC Bulletin Board under the ticker symbol "CTLE". As of the date of posting of this disclaimer, TheAmericanSignal.com has received six hundred fifty thousand US dollars from an unrelated third party for performing these services."*

This type of disclosure does not provide valuable information or serve to prevent fraud. This and other promotional web sites that widely advertise their links at the bottom of financial portals

[11] The Petition for Rulemaking, dated April 24, 2006, is available on the SEC's website at http://www.sec.gov/rules/petitions/petn4-519.pdf.
Public comments to our Petition for Rulemaking were overwhelmingly positive, and are also available on the SEC's website at http://www.sec.gov/comments/4-519/4-519.shtml.

and media web sites harm investors with their lack of useful disclosure. Investors should have the information to identify the people behind the promotional web site and those who are paying the website so much for promotion of this SEC reporting company.

I encourage you to ask the SEC why our rule proposal, or similar regulation, has not been enacted. Transparency of promoters will make it easier for investors to avoid questionable characters, broker-dealers to identify customers they should scrutinize and regulatory enforcement to target the bad guys. Lack of transparency and enforcement against highly visible internet-based promotions allows the image of our public markets and the capital raising process for all small companies to be harmed.

Better Regulation of Transfer Agents

Unlawful activity can also be curbed by better regulation of transfer agents and the share issuance process. Transfer agents can play a critical role as the caretakers of a company's shareholders and key gatekeepers against fraudulent issuances of securities. While the vast majority of transfer agents are lawful, there is a small subset that causes significant problems in the system. In the micro-cap market, problems are created when "clean" certificates are issued to insiders or promoters in violation of registration requirements and then the shares are illegally sold in the public market. Unfortunately, the licensing regime for SEC registered transfer agents, who supervise the share register, is nearly nonexistent. The only requirement to become a transfer agent for SEC-reporting companies is to register with the SEC or a bank regulatory agency[12] via a simple online form. The SEC form itself takes an estimated 1.5 hours to complete and asks only for the registrant's name, address, names of the control people and any regulatory actions against them. Once submitted, it is effective automatically after 30 days unless the SEC finds cause for concern. Compare this to the SEC's Form S-1 for registration of a class of securities, which takes an estimated 972.32 hours to complete and possibly months to approve, and you get some indication of the lack of scrutiny paid to the transfer agent role. Increased licensing requirements, background checks and inspections would likely root out those allowing many of the fraudulent stock issuances.

[12] From what we have seen, the problematic transfer agents register with the SEC. We suspect this is because bank regulators are typically more hands-on overseers of bank transfer agents.

The SEC should require transfer agents retain and provide to broker-dealers information on the issuance, ownership and transfer history of shares. Currently, transfer agents issue "clean" certificates that have no restrictive legend when directed by the company. They do not identify if the shares are currently owned, or were ever owned, by an affiliate of the issuer. Subsequently, the broker-dealer who receives those certificates from a customer has no indication if the holder is an affiliate of the issuer and no information regarding the issuance and transfer history of the shares. Placing information sharing requirements on transfer agents in these securities would allow broker-dealers and regulators to more quickly identify promoters and prevent this type of micro-cap fraud before investors are harmed.

The uncertainty created by the lack of regulation of transfer agents and inefficiency in the share issuance process are among the main reasons DTC has made it very hard for small companies to gain eligibility. The lack of available information regarding share history makes DTC uneasy about potential problems when it attempts to allocate shares among participant accounts following a transaction. This lack of clarity along with DTC's apparent disinterest in finding a solution has harmed numerous small companies. Many broker-dealers will not trade securities that are not DTC eligible, as they find it too arduous and cost-prohibitive to facilitate transactions in these shares. Investors in those shares are left without an efficient trading option, which devalues the company's shares in the market. With a devalued share base, companies face an uphill battle when seeking to raise capital from new investors or when borrowing against their market value. Transfer agent regulation and improved communication with DTC would rectify what has become a significant inefficiency in the market.

13(f) Disclosure of Securities Holdings

Another benefit of public secondary markets is the ability for companies and their investors to learn who has taken an interest in them. Section 13(f) of the Exchange Act protects that important benefit. Under Section 13(f), an institutional investment manager is required to disclose its holdings in securities listed on a national securities exchange. Unfortunately, 13(f) does not include a similar requirement relating to non-exchange listed securities. Institutional investment managers disclose these holdings only on a voluntary basis, leading to inconsistent, unreliable information being made available to the market.

In April, we submitted a comment letter to the SEC[13] in which we advocated amending Section 13(f) to require disclosure of holdings in all publicly traded securities. We noted that issuers of securities on our OTCQX, OTCQB and OTC Pink marketplaces are unable to determine which institutions hold their securities. With the JOBS Act increasing the number of shareholders of record a company must have before being subject to mandatory SEC reporting, disclosure of share ownership will become an increasingly important issue. Expanding the scope of Section 13(f) to require institutional investment managers to report holdings of all securities traded on the OTCQX, OTCQB and OTC Pink marketplaces would rectify existing problems and create a valuable pool of data for issuers, investors and regulators.

Disclosure of Insider Transactions

Insiders and affiliates transacting in non-SEC registered securities should be required to make timely public SEC filings of those transactions in a manner similar to the SEC's Forms 3, 4 and 5 when trading through a broker-dealer or engaging in private transactions involving publicly traded securities. Promoters should also be considered affiliates that need to file Forms 3, 4 and 5 when trading the securities of SEC reporting companies. Prior to depositing shares or initiating trades with a broker-dealer, insiders, affiliates and promoters should be required to provide written notification of their affiliation with the issuer or be liable for antifraud and recession of the transactions. This information will be useful for investors to understand when insiders are trading, for regulators to monitor markets and for broker-dealers to know their customers. Broker-dealers cannot fulfill their roles as gatekeepers if they do not have transparency into the identities of the affiliates of publicly traded companies.

II. CREATING MORE EFFICIENT PUBLIC MARKETS

Tick Size & Small Company Liquidity

Many securities regulators have interpreted the language and intent of the laws that created the national market system (NMS) as a mandate to favor agency trading by broker-dealers over principal trading with customers. The NMS laws passed by Congress include discussion of the opportunity for investors' orders to be executed without the participation of a dealer. This has led to regulations that continually undercut the profitability of market making and supplying liquidity as a service. It is no surprise that we now suffer from a lack of displayed liquidity in

[13] The full text of our comment letter is available at http://www.sec.gov/comments/4-659/4659-13.pdf.

many smaller companies and a perception that market makers are being regulated out of existence[14] by securities regulations.

Regulators often seem to forget that the NMS laws also asked the SEC to assure economically efficient execution of securities transactions and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. We strongly agree that regulation should not favor any business model. There should be no favoritism of brokers over dealers or exchanges over non-exchange markets. Instead, consumers of liquidity and execution services should make those choices.

The issue of decimalization, or tick size, is the perfect example of an issue that requires a balanced approach. Congress, through the decimalization study and solicitation of industry expertise mandated by the JOBS Act, clearly understands the need to review the effects of decimalization and to incentivize market makers to build liquidity in small and mid-cap company stocks.

We support the need for a pilot program implementing tick size reform, as it could help restore a balance that incentivizes market making to create more liquidity for investors. The pilot program must be structured properly in order to attain the desired results. We support proposals for a long-term pilot to allow for proper data collection and analysis, and the involvement of the SEC and the securities industry in evaluating the impact of such a pilot. Beyond those structural concerns are five main themes to a successful tick size pilot:

1. Any tick increment program should include securities traded on our OTCQX, OTCQB and OTC Pink marketplaces. Our marketplaces have thousands of small companies that can benefit from improvements in displayed market liquidity.

2. Tick increments should not artificially widen spreads. Many smaller, relatively illiquid companies are already subject to bid/ask spreads far above the one penny limit. A company with a natural 10 cent spread should not be forced to operate with a 20 or 25 cent spread just to push the outer boundaries of tick size on broker-dealer behavior. Securities at different price and trading activity levels tend to maintain similar natural tick

[14] The number of market makers has declined by approximately 1/3 since 2005.

sizes, making it possible to determine the appropriate tick size for each price and trade activity "band." Regulations should not create tick sizes that are unnaturally wide, frustrating investors and ultimately removing liquidity from the market. In the past, our OTC Link ATS had quote increments until changes in FINRA rules made them unworkable. What we observed when we had increments was increased display of larger sizes by broker-dealers. When increments are lowered, displayed size reduces as any display of size is easily out bid by a penny for 100 shares.

3. Broker-dealers should display greater proprietary liquidity to enhance the larger tick sizes. The implementation of tick size reform should come hand in hand with larger minimum displayed sizes for broker-dealer proprietary quotes. For example, at price points that currently require display of quotes for 100 shares[15] or more, broker-dealer proprietary quotes should be displayed only when they are for a minimum of 500 shares. Customer agency orders will glean the benefit of tick size reform, but the real impact on liquidity in small and mid-cap companies will come from increased broker-dealer proprietary quotes. FINRA is currently operating a tier size pilot program for securities traded in our marketplaces, which lowered the minimum displayed quote size at many price points in an effort to increase the display of customer limit orders. While FINRA has not yet released its academic study of the pilot program, it is clear from our data that broker-dealers have reduced displayed proprietary quote sizes in line with the new minimum tier sizes, resulting in a loss of liquidity in the affected securities. We have also seen broker-dealers displaying fewer priced quotes when they have no customer orders on their books because of increasing "air gaps" cause by smaller displayed sizes and lack of proprietary quotes. Tick size reform can easily remedy this problem by raising the minimum displayed size for broker-dealer proprietary quotes in securities with mandated larger tick sizes. Tick size reform on its own will be a valuable tool for increasing liquidity. Combining tick size reform with larger minimum displayed sizes for proprietary quotes would lead to a faster, tangible result for the small and mid-size companies that need it most.

4. Tick size reform should apply to quotes and orders, but not trades. Requiring trades to occur only at specific tick sizes could have several negative effects on investors and the

[15] To encourage the widest participation, smaller share sizes should remain for customer orders.

broker-dealers that these rules are intended to incentivize. Investors currently benefit from lower access fees and price improvement when there is choice on where trades are executed. This leads to lower costs for investors with marketable orders, incentivizing them to trade. Requiring trading only at specific price increments would harm investors by eliminating the possibility of price improvement. A rule requiring trading at specified tick sizes or a "trade at" rule that forces trades to go to the venue with displayed prices would limit competition for order flow and provide no corresponding benefit for consumers of liquidity, potentially negating the beneficial effects of a change in tick size policy. The taker of liquidity is the one who sets market prices, and we should not adopt a "trade at" rule that would regulate what bid or offer the taker must interact with.

5. The default market wide quote and order increments should be set by price and trading activity. Publicly traded companies should have a chance to opt out if they do not want tick increments or opt back in by notifying their primary national stock exchange or ATS market operator.

With tick size reform, we expect investors will see more displayed liquidity on the bid and offer. This will lead to a multiplier effect of competing liquidity providers willing to provide larger execution sizes at the bid and offer to attract order flow. Increased liquidity will lead to a higher willingness of many investors to trade and be filled on the bid and offer or better, leading to a higher quality investor experience.

Fragmentation is Good for Transparent and Connected Financial Markets

When the national stock exchanges discuss the increase in trading volume taking place on other venues, they use the term "fragmentation" to paint a picture of a broken marketplace in need of repair. In fact, "fragmentation" is just a spin-doctor's word used by those on the losing side of diverse choice and healthy competition. Trading on multiple broker-dealer internal systems, crossing networks and ATSs provides benefits to investors and actually drives liquidity.

The competition among trading venues in our financial markets mirrors a change taking place in every industry: the shift from a three-tier model of producer, distributor and retailer to a networked model where consumers and producers connect directly through public and private networks. The shift towards networks allows buyers and sellers to meet more easily. For

example, investors in Apple, Inc. stock can purchase shares from a broker who places traditional buy orders on an exchange. In addition, that broker may use a network to connect directly to brokers who are selling Apple stock, or it can internalize the order and provide liquidity directly to the investor without another intermediary. The network model creates efficiencies for investors by providing a choice of trading partners and forcing intermediaries to add value in price, speed or execution quality or potentially be left out of the trade. Market "fragmentation" has actually improved the market.

The trend towards networks has been enabled by the SEC's adoption of Regulation NMS, which allowed investors to shop for the best liquidity supplier and ensured that broker-dealers matched the best publicly displayed price. As a result, the U.S. financial markets support a wide variety of trading models that provide efficient service to institutional and retail investors. Attempts to curb this innovation, such as proposals for a "trade-at" rule, will remove tangible benefits from the market and ultimately harm the capital raising efforts of companies that seek to reach all types of investors.

As supporters of diverse choice and healthy competition for trade executions, we also strongly disagree with some suggestions by stock exchanges that trading in smaller companies should only take place on one exchange. Any attempt to create a monopoly on trading, through congressional mandate, SEC regulation or otherwise, is a restriction on the rights of shareholders to dispose of their property. The idea that we should mandate trading rights to one exchange, ATS or broker-dealer to improve liquidity is ludicrous and goes against all we have learned from history.

When Nasdaq was primarily a market for smaller companies, it was not a centralized stock exchange. In those days, Nasdaq was an automated quotation system and the quotes on it came from hundreds of OTC market makers across the country acting as individual market centers. Investors and broker-dealers benefitted from the fragmented Nasdaq network-based model, and that directly lead to Nasdaq successfully fostering small company trading.

We are strong believers in the network model for small company trading, and our OTC Link ATS has over 130 broker-dealers that act as market centers, providing diverse choice for buyers and sellers. As Nasdaq proved many years ago, the OTC network model promoting competition and

efficiency is what drives a successful small company marketplace, and it would be a step in the wrong direction to centralize all small company trading on one monopoly exchange.

Margin Eligibility

Any discussion of the value of efficient secondary markets requires an exploration of the different ways in which that value is created. One of those ways is margin eligibility, or the ability for securities to be used as collateral in a margin account. Margin eligibility creates a wealth effect for security holders. Holders of marginable securities can access the value of their holdings by borrowing against them, which increases the utility of owning those securities and ultimately encourages investors to purchase them. This creates a credit multiplier effect as more shares can be used to access credit, and shareholders are able to access capital without having to sell their shares. The effect of margin eligibility on an investor's willingness to purchase a security, particularly the smaller companies that trade on our marketplaces such as the 600 community banks, should not be understated. Employed properly, margin eligibility can have a direct impact on small company capital formation.

Again, a quick history of the issue will inform the discussion. Traditionally, the Board of Governors of the Federal Reserve System would publish a quarterly list of stocks trading on the OTC market that were deemed "marginable" based on certain standards. That practice ceased in 1999 when the Board determined that all stocks on the NASDAQ Stock Market were marginable. Since that time, the responsibility for determining margin eligibility of non-exchange listed shares has been abdicated by the Federal Reserve, and small companies have suffered from their securities not being an asset that brokers can lend against collateral. More recently, the SEC's Division of Trading and Markets has filled the void and provided guidance on the margin eligibility of certain foreign securities. The SEC, as the primary regulator of the securities markets, should in our view have authority over margin eligibility of equity and other classes of securities.

We propose that the SEC make marginable any equity security that is not a "Penny Stock" as that term is defined in Rule 3a51-1 under the Securities Exchange Act of 1934 (the "Exchange Act") for which the issuer makes adequate current information publicly available under Rule 144

and is actively traded on an established public market[16]. Adequate current information and active trading on an established public market will ensure that margin eligible securities are easily valued and traded. The Penny Stock standards include thresholds relating to stock price, net tangible assets and revenue. Instituting these standards would ensure that securities subject to the SEC's Penny Stock Rules do not inadvertently gain marginable status, while giving investors in qualified small companies access to the added value, and investment incentive, that margin eligibility provides.

It should be noted here that the definition of Penny Stock could also use some updating.
A company may be exempt from classification as a Penny Stock if it meets certain net tangible asset (NTA) thresholds, but only based on its most recently audited financial statements. Since most companies are audited only annually, the Penny Stock rules fail to take into account a company that does not meet the NTA threshold as of its audited year-end, but shortly thereafter completes a capital raise and increases its NTA significantly. Under the current rules, that company could remain classified as a Penny Stock until its next annual audit. Alternatively, if the Penny Stock rule allowed exemptions for NTA based on quarterly financial statements, a company that completes a capital raise and meets all of the required financial standards for exemption would not be forced to needlessly accept a misleading Penny Stock designation while it waits for the calendar to turn.

Thoughtful expansion of margin will increase the availability of credit for investors in small companies and the pool of capital for small companies. The 600 community banks on our marketplaces are a great example of companies that will benefit from margin eligibility.

State Blue Sky Secondary Trading Restrictions

Non-penny stocks that are actively traded on "established public markets" should be made exempt from state Blue Sky secondary trading restrictions. There is an antiquated patchwork of state restrictions for secondary trading that is a compliance nightmare for broker-dealers and smaller companies. While companies listed on exchanges are exempt from Blue Sky laws for both primary offerings and secondary trading, securities on our marketplaces are not. Many states have implemented the Uniform Securities Act of 2002[17] or its predecessor to a varying

[16] As noted above, our OTCQX and OTCQB marketplaces have been deemed established public markets by the SEC.
[17] See: http://uniformlaws.org/Act.aspx?title=Securities%20Act

extent, other states have developed their own set of requirements, and there are some states such as Alabama that have no process for an non-exchange traded issuer comply with Blue Sky laws for secondary trading without engaging in a primary offering. State Blue Sky restrictions create a complex web of compliance costs that add little to oversight of secondary trading and apply needless restrictions on investors who are trading through full service brokers and investment advisors.

Issuer Payments for Market Makers

The SEC is starting to approve exchange programs allowing payments by ETF issuers to market makers. This reverses a longstanding ban on these types of payments. However, the small companies that need it the most are still banned from contracting with market makers to provide more displayed liquidity and continuous bids and offers at an appropriate spread. These activities should be allowed as long as there is public disclosure and appropriate regulatory oversight.

The outright ban on payments to broker-dealers limits small company access to the public markets. SEC Rule 15c2-11 and FINRA Rule 6432 require that broker-dealers review and supply to FINRA certain information before initiating quotations in a new equity security. Broker-dealers have an economic incentive to initiate these filings if they have investor interest in trading the security, or a significant investment banking or advisory business with the issuer or major shareholders. However, since broker-dealers cannot be paid to perform due diligence and make these fillings with FINRA, smaller companies without these pre-existing relationships are often unable to find a broker-dealer willing to sponsor them. The outright ban on a service for which there is clearly a demand and need for has led to many small companies not being able to legally purchase these services, and a black market of secret payments to those that skirt the rule.

Restricting smaller companies access to public markets, harming the quality of their markets and incentivizing illegal activity should not be the goal of our securities laws. By allowing companies to pay for market making services, the quality of markets and the quality of review before initiating quotations can be improved. FINRA Rule 5250 Payments to Market Makers should be changed to remove the ban on payments and require they be publicly disclosed by the issuer and the company as well as reported to FINRA.

Delay XBRL Filing for Smaller Companies

We see vendors charging small companies $35,000 per year and up for XBRL conversion at SEC reporting companies. For smaller companies that amount of outside costs, plus the internal resources required to make accurate XBRL fillings is not worth the current benefit they receive, as their financial information is already in the vast majority of financial databases and portals. Until the cost and complexity is reduced, we propose that XBRL fillings not be required of SEC reporting companies traded on our marketplaces.

Remove Section 17B of the Exchange Act (or Modernize it to Include ATSs)

The venues available for the quoting and trading of penny stocks have drastically advanced in the nearly quarter-century since Congress enacted Section 17B of the Exchange Act in 1990 to create price transparency in penny stock trading. With the development and success of OTC Link ATS and the OTCQB and OTC Pink marketplaces, it no longer makes sense to require a regulator like FINRA or a national securities exchange to operate a penny stock marketplace.

When Section 17B was enacted, the market for penny stocks was disjointed at best, and commercial enterprises were not providing an electronic facility for publishing or disseminating quotes in those stocks. Congress correctly determined that the market for penny stocks suffered from a lack of reliable and accurate quotation and last sale information available to investors and regulators. Given the state of the penny stock market in 1990, Congress reasonably concluded that it was in the public interest to require the creation and operation of an “automated quotation system” for penny stocks, and that the system should be operated by a registered securities association or a national securities exchange. It should be noted that in 1990 the regulatory category of ATS did not exists and FINRA’s predecessor, the NASD, as still operating NASDAQ.

Fast forward to 2013. Over 99% of priced quotes, including nearly all priced quotes in penny stocks, take place on the OTC Link ATS trading system. The system created in response to Section 17B’s mandate, FINRA’s OTC Bulletin Board, is left with less than 1% of priced quotes. The information that Congress rightly sought access to in 1990 is now provided seamlessly and electronically to any investor or regulator with internet access. Market data from broker-dealer activity on OTC Link ATS is widely disseminated through a multitude of market data distributors, financial portals and the internet.

Moreover, OTC Link ATS is a highly regulated trading system. It is operated by OTC Link LLC, a FINRA member broker-dealer and SEC registered Alternative Trading System. NYSE's ArcaEdge ECN is also registered as and ATS, and many other ATSs are being created to trade private securities. Commercial enterprises have stepped in to provide this service and there is no need to

The private sector has stepped in and negated the need for Section 17B. Congress has an opportunity to remove this antiquated section of the Exchange Act or at least modernize it to be more inclusive of the systems that have and will provide innovation in the future. If FINRA wants to continue to operate the OTC Bulletin Board to provide an alternative choice to its member firms like they do with their Alternative Display Facility (ADF) that should be an option, but the time has passed and there is no longer a need for the Congressional mandate or the extra complexity that arises from Section 17B.

A Note on Taxes

While it is not this Committee's focus, I would like to share with you some data regarding the inherent expense and unfairness of the tax system for smaller U.S. based companies. According to the NY Times, the average S&P 500 Company pays a combined federal and state tax burden of 29.1%[18] (the average IT company pays 21%). OTC Markets Group paid a tax rate 39% last year. We also have costs of tax compliance; we pay more to our tax accountants at Grant Thornton LLP than we do in audit fees to our independent auditor Deloitte & Touche LLP. It is time we simplified the tax code and made the U.S. tax rate and complexity competitive with global tax rates. It is unfair that larger companies pay significantly lower tax rates than small companies and it is unsafe for our economy that we incentivize debt over equity with lower effective tax rates. We could easily incentivize smaller companies to go public in the U.S. if we allowed smaller publicly traded companies with over 100 shareholders to have a 25% tax rate and deduct dividends[19]. Tax efficiency has created an incentive for REITs to be public and we can do the same thing for America's smaller companies.

[18] http://www.nytimes.com/interactive/2013/05/25/sunday-review/corporate-taxes.html?_r=0

[19] Dividends should be deductible like interest payments and the receiver should be taxed at the same rate as interest payments. For more information about the debt bias see my Op Ed at Forbes.com: http://www.forbes.com/sites/greatspeculations/2012/12/07/tax-code-rewards-debt-penalizes-dividends/

Conclusion

The Dutch invented the modern corporation with perpetual capital and tradable shares, but it was the English who introduced fewer restrictions on transferability and took the lead in Europe and the world. There are vigorous and growing markets for small company shares in Canada, the United Kingdom and Australia. It has been reported that the China Securities Regulatory Commission (CSRC) has identified expanding the New Third Board, a nationwide OTC market, as its primary task this year.[20] While I cannot tell if the reports are true, I can confirm that I was invited to speak at a CSRC conference focused on creating a Chinese OTC market five years ago. There over 80 regulators peppered me with questions about how our marketplaces had developed. Today, American markets are the world leaders, but we cannot rest on our laurels. The competition for ideas, people, companies and capital is global.

Our public markets must be as open, transparent and connected as possible to deliver the value of being a public company to the largest number of companies and their investors.

Thank you again for inviting me to testify. While the issues I discussed may seem diverse, each is a vital component to reducing barriers to capital formation by creating better informed, more efficient marketplaces. I look forward to responding to your questions.

[20] http://www.marketwatch.com/story/excitement-over-new-china-stock-market-board-2013-05-20.

EXHIBIT 1

Overview of Trading Regulations

The OTCQX®, OTCQB® and OTC Pink® marketplaces consist of securities quoted and traded by broker-dealer subscribers on OTC Markets Group's OTC Link® ATS, a U.S. Securities and Exchange Commission (SEC) registered Alternative Trading System. Broker-dealer activities in the OTCQX, OTCQB and OTC Pink marketplaces are regulated by the Financial Industry Regulatory Authority (FINRA) and the U.S. Securities and Exchange Commission (SEC).

FINRA is the largest non-governmental regulator for broker-dealers doing business in the United States, overseeing nearly 5,100 broker-dealers, about 174,000 branch offices, and more than 672,000 registered securities representatives. FINRA touches every aspect of the securities business, from registering and educating industry participants, examining broker-dealers, and writing and enforcing rules and federal securities laws. FINRA informs and educates investors, provides trade reporting and other industry utilities, and administers the largest dispute resolution forum for investors and registered broker-dealers. Detailed information can be found on the website: www.finra.org

Alternative Trading System

OTC Link ATS is registered with the SEC as an Alternative Trading System (ATS). An ATS is a trading system that performs many of the functions normally performed by a stock exchange. Every ATS, including OTC Link ATS, is also required to be a FINRA regulated broker-dealer. OTC Link ATS was approved for FINRA membership on March 5, 2012, and began operating as an ATS on June 1, 2012

Best Execution of Customer Orders

FINRA Rule 5310: FINRA requires broker-dealers to use reasonable diligence to ascertain the best market to execute their customer orders. OTC Link ATS firm prices can be relied upon by electronic broker-dealers providing automated best execution. Last Updated May 31, 2012.

Limit Order Display

FINRA Rule 6460: Broker-dealers must immediately display the price and full size of customer limit orders that improve or are equal to the price of the broker-dealer's proprietary quote. Qualifying customer limit orders must be displayed when the size is at or above the minimum quote size prescribed by FINRA Rule 6433. Last updated May 9, 2011.

Market Order Protection

FINRA Rule 5320: Broker-dealers must give priority to customer orders. A broker-dealer holding a customer order may not trade for its own account at a price that would satisfy an existing customer order, unless immediately after the trade the broker-dealer executes the customer order at the same or a better price. Implemented for the OTCQX, OTCQB and OTC Pink marketplaces September 12, 2011. Last updated July 9, 2012.

Protection of Customer Limit Orders

FINRA Notice IM-2110-2: Broker-dealers may not trade for their own account at prices that are equal to or better than the prices of limit orders that they have received from their customers or from another broker-dealer on behalf of its customers. Protecting customer limit orders encourages the use of such orders by investors and results in more capital committed to securities trading in the secondary markets by a source other than broker-dealers.

OTCMarkets

Overview of Trading Regulations

Firm Quotes

FINRA Rule 5220 Offers at Stated Prices and 5220.01 Firmness of Quotations: To ensure the integrity of quotations, broker-dealers are required to trade at their publicly quoted prices. Integrity of quotes is essential to the normal operation of the market as the failure to honor quotations, also known as “backing away”, can be disruptive to a fair and orderly market. Last updated July 9, 2012

Minimum Quote Sizes

FINRA Rule 6433: Broker-dealers posting priced quotations on OTC Link ATS are firm for minimum sizes. Minimum quote sizes are based upon quote price. As the price of a quote decreases, the size associated with a price increases. Mandatory sizes assure a minimum amount of liquidity in the market and add weight to a broker-dealer’s quote obligation. Last updated November 12, 2012.

Real-Time Trade Reporting

FINRA Rule 6622: Within 30 seconds, broker-dealers must report their transactions to FINRA’s OTC Reporting Facility, which accommodates reporting and dissemination of last sale reports in all securities trading on the OTCQX, OTCQB, and OTC Pink marketplaces. The rule creates a uniform method of reporting obligations of broker-dealers, including who must report, when those reports are due, what must be reported, and how to cancel trades already reported. Last updated November 1, 2011.

Order Audit Trail Systems

FINRA Rules 7410 through 7470: FINRA has established OATS as an integrated audit trail of order, quote, and trade information for equity securities. FINRA uses this audit trail system to recreate events in the life cycle of orders and monitor more completely the trading practices of broker-dealers.

Short Position Disclosure

FINRA Rule 4560: FINRA broker-dealers must report their short interest positions in all securities on the OTCQX, OTCQB, and OTC Pink marketplaces, midmonth and end-of-month. Short interest reporting brings more transparency to the short selling activities, and reduces the possibility of manipulative behavior associated with naked short selling. Last updated November 30, 2012.

Recording and Retention of Quotes

FINRA Rule 6431 and Securities Exchange Act Rule 17a-4: Broker-dealers must record all displayed quotes and retain that information for at least three years. The information must be furnished to FINRA upon request. OTC Link ATS reports all quote activity to FINRA on a daily basis, and all subscribers to OTC Link ATS are subject to the provisions of these rules. Rule 6431 last updated February 11, 2011.

Established Public Trading Market

The OTCQX and OTCQB marketplaces are recognized by the SEC as “Established Public Markets.” Companies filing registration statements with the SEC to facilitate equity line financings can use quoted prices on the OTCQX and OTCQB marketplaces to establish the market value of their securities . Last updated May 16, 2013.