OTC Markets

April 14, 2017

The Honorable Michael Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
Senate Committee on Banking, Housing, and Urban Affiars
United States Senate
Room 534 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

OTC Markets Group Inc. ("OTC Markets Group") appreciates this opportunity to submit to the Senate Banking Committee proposals to promote economic growth. We believe the Committee should consider legislation to require the Securities and Exchange Commission ("SEC" or "Commission") to implement amendments to Regulation A, commonly referred to as "Regulation A+," to: (i) allow issuers reporting under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") to raise capital using Regulation A+; and (ii) modify the provisions of Regulation A+ to permit "at the market offerings" by these issuers.

OTC Markets Group Inc. (OTCQX: OTCM) operates the OTCQX® Best Market, the OTCQB® Venture Market, and the Pink® Open Market for approximately 10,000 U.S. and global securities.

Companies that trade on our markets span a broad range of sectors, from the American Depositary Receipts, or ADRs of multi-billion dollar conglomerates to small, venture and micro-cap growth companies, SEC reporting companies and community banks; and across all major industries. To help inform investors, we organize these securities into three tiered markets - OTCQX, OTCQB and Pink - based primarily on the quality and quantity of information companies make publicly available.

Our OTC Link® ATS links 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. OTC Link ATS is operated by OTC Link LLC, a FINRA/SIPC member and SEC regulated Alternative Trading System ("ATS").

Over 800 SEC reporting companies trade on our OTCQX and OTCQB markets. OTCQX, our highest level market, is home of the first company, Elio Motors (OTCQX: ELIO), to go public under a Regulation A+ offering.

Brief Description of the Proposal

Through the JOBS Act, Congress created Regulation A+, a vital exemption that permits small companies to raise up to $50 million online, transparently and directly from the public. Congress did not limit the types of eligible companies; however, the SEC's final rules for Regulation A+ exclude SEC reporting companies. As a result, thousands of SEC reporting companies are ineligible to use Regulation A+.

More than 1,500 companies current in their SEC reporting trade on the OTC market. These companies already meet the SEC's high disclosure requirements and should not be denied access to the advantages of Regulation A+. Under current rules, SEC reporting companies seeking to raise capital using Regulation A+ are forced to de-register with the SEC and cease making required SEC filings in order to access capital under Regulation A+.

Regulation A+ also prohibits "at the market" offerings. Though this might be appropriate for a company with no prior secondary market for its securities, this limitation may effectively preclude the use of Regulation A+ by fully reporting companies with existing public trading markets. The secondary market can and will react to offering activity. The inability of an issuer to reprice the offering from time to time in response to market conditions may impede the use of Regulation A+ for fully reporting issuers. Therefore, we recommend that the expansion of Regulation A+ to smaller reporting companies should also allow these issuers to conduct an "at the market" offering. We recommend that the Commission be instructed to review whether additional protections or disclosure should be required in instances of excessive discounts or dilution related to any offering.

Congress can implement this proposal by amending Section 3(b)(2) of the Securities Act of 1933 (the "Securities Act") and mandating that the SEC delete Rule 251(b)(2) under the Securities Act, thereby making SEC reporting companies eligible for Regulation A+.

Impact on Economic Growth

Regulation A+ recognizes that there is no single path to the public markets. A traditional IPO to a national securities exchange can be a costly and burdensome experience. Regulation A+ helps facilitate an incremental pathway for growth-stage companies that embrace direct communication with their investors.

In particular, Tier 2 offerings under Regulation A+ make public offerings more efficient. Regulation A+ Tier 2 provides preemption from state Blue Sky laws without imposing on the issuer the cost and complexity of an exchange listing. Tier 2 also allows non-accredited investors to participate in a federally-exempt offering, with thoughtful provisions to limit their risk. The Tier 2 rules also wisely require companies to provide more detailed information about their businesses, as well as ongoing disclosure to federal regulators, which in conjunction help to ensure that investors have the information available to understand the risks so markets can price them accordingly.

We believe that modest changes to allow current SEC reporting companies to avail themselves of Regulation A+ would greatly enhance the ability of those companies to raise capital in the public markets, better enabling them to grow, expand and add jobs. While Regulation A+ offerings still undergo SEC review, they help small companies avoid the unnecessary resource drain, expense and pain of the traditional public offering process.

This proposal has the potential to help the more than 800 SEC reporting companies trading on the OTCQX and OTCQB markets to avoid the counterintuitive and unfortunate choice between: (i) de-registering as a fully reporting company and ceasing to make their frequent and detailed periodic reporting available to investors; or (ii) being forced to pursue other capital raising options, such as a costly Form S-1 or S-3 registration or a private placement under Regulation D, the latter of which restricts the eligible investor pool. Without access to Regulation A+, smaller SEC reporting companies are often forced to go to the private market to raise capital, frequently resulting in deals with little transparency and suboptimal terms.

Impact on the Ability of Consumers, Market Participants and Financial Companies to Participate in the Economy

As described above, expanding Regulation A+ to current SEC reporting companies improves their funding prospects, enabling them to grow and add jobs. It allows more individual investors to participate in the growth of companies that already publicly disclose robust financial and other information required by the SEC, and would also increase small company liquidity in the secondary market.

Legislative language

Legislative language to accomplish the changes suggested above is available in the Appendix.

Other background material

OTC Markets Group filed a Petition for Rulemaking with the SEC in June 2016, requesting an amendment to Regulation A+ to include SEC reporting companies. The Petition is available at https://www.sec.gov/rules/petitions/2016/petn4-699.pdf.

The Petition received numerous comments in support. Comment letters are available for review on the SEC website at https://www.sec.gov/comments/4-699/4-699.shtml.

Conclusion

Thank you for considering these important proposals, which, if implemented, will allow more companies to raise capital in a transparent, cost effective and efficient manner through Regulation A+ while maintaining the high standard of SEC reporting.

Please contact me at (212) 896-4413 or dan@otcmarkets.com with any questions or to request additional information.

Sincerely,

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APPENDIX

SEC. ___. EXPANSION OF REGULATION A OFFERING EXEMPTION TO SEC REPORTING COMPANIES

(a) Securities Act of 1933. Section 3(b)(2) of the Securities Act of 1933 (15 U.S.C. 77c(b)(2)) is amended by --

(1) Renaming subparagraph (G) as subparagraph (H);

(2) Adding new subparagraph (G), to read in its entirety as follows:

"(G) An issuer subject to and current with its periodic reporting requirements pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 immediately prior to the offering shall be eligible to--

(i) Offer and sell securities in reliance on the exemption added in accordance with this Section 3(b)(2); and

(ii) Sell such securities, or have such securities sold on its behalf, in an at the market offering. As used in this paragraph, the term *at the market offering* means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.

(b) Rule 251 promulgated under the Securities Act of 1933. The Securities and Exchange Commission ("Commission") is directed to --

(1) delete paragraph (b)(2) of Rule 251 promulgated under the Securities Act of 1933 (17 C.F.R. 230.251(b)(2);

(2) amend paragraph (d)(3)(ii) to read in its entirely as follows:

"(ii) At the market offerings, by or on behalf of an issuer that is subject to Section 13 or 15(d) of the Exchange Act immediately prior to the offering, are permitted under this Regulation A. As used in this paragraph (d)(3)(ii), the term *at the market offering* means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price."

(c) EFFECTIVENESS OF ADDITIONAL ISSUES EXEMPTION. – From and after the 180-day period beginning on the date of enactment of this Act, if the Commission has not met its obligations to adopt the provisions set forth in subsection (2)(b) hereof, and until such time as the Commission has done so, such provisions shall become effective as if adopted in accordance with subsection (2)(b).