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Via Email to rule-comments@sec.gov

Nancy M. Morris, Secretary
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Re: File No. SR-NASD-2005-095

Ladies and Gentlemen:

On behalf of Pershing LLC (“Pershing”), we appreciate the opportunity to comment on the recent rule filing of the National Association of Securities Dealers, Inc. (“NASD”) in which the NASD proposes to eliminate NASD Rule 6540(c). Rule 6540(c) currently requires that a participant ATS or ECN reflect non-subscriber access or post-transaction fees in their posted quotes on the OTC Bulletin Board (“OTCBB”).¹ Pershing is a leading global provider of correspondent-clearing and order-execution services.

In its original proposal, NASD proposed amending NASD Rule 6750 to prohibit NASD members from quoting non-Nasdaq OTC equity securities in increments smaller than \$0.01 if priced equal to or greater than \$1.00 per share.² In response to commenter concerns regarding the conflict between the proposed amendment to NASD Rule 6750 and existing NASD Rule 6540(c), the NASD subsequently filed Amendment No. 2 in which NASD proposes eliminating NASD Rule 6540(c). Although Pershing notes the conflict between Rule 6540(c) and the

¹ National Association of Securities Dealers Inc., Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity Securities, Exchange Act Release No. 53024 (December 27, 2005).

² National Association of Securities Dealers Inc., Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity Securities, Exchange Act Release No. 52280 (August 17, 2005).

Nancy M. Morris, Secretary
March 6, 2006
Page 2

proposed elimination of sub-penny prices in the non-Nasdaq OTC market, Pershing respectfully opposes the proposed elimination of Rule 6540(c) and requests that the Commission reject Amendment No. 2.

The adoption of Amendment No. 2 would allow ECNs and ATNs to charge hidden access and post-transaction fees to non-subscribers. Rule 6540(c) was originally adopted in order to provide transparency to the marketplace. Eliminating this rule is not in the best interests of investors as it hinders transparency. This amendment could also potentially cause access fee gaming and locked and crossed markets. Additionally, the elimination of this rule would place market makers at a competitive disadvantage to ECNs and ATNs, as market makers would not be able to charge such undisclosed fees.

In light of the possible harm that may be caused by eliminating Rule 6540(c), perhaps the NASD should first determine the extent to which the elimination of sub-pennies in the non-Nasdaq OTC market is truly necessary. In connection with the Commission's adoption of Rule 612 of Regulation NMS, the Commission extensively studied the impact of sub-pennies on NMS securities. The NASD's proposed elimination of sub-pennies in the non-Nasdaq OTC market, to the contrary, appears to have been made without the benefit of any study, but rather is based merely upon the NASD's conclusion that "in NASD's view, essentially the same potential problems [that may exist with respect to sub-pennies in NMS securities] exist with respect to OTC equity securities."³

Pershing believes that current Rule 6540(c) provides investors with a valuable benefit by promoting price transparency in the marketplace while also leveling the playing field between market makers and ECNs and ATNs. Even if upon further study, the NASD has reason to conclude the elimination of sub-pennies would be a benefit to the market, Pershing still believes that Rule 6540(c) should be retained and that the NASD should explore other options to resolve the conflict between this rule and the NASD's proposed elimination of sub-penny prices since the benefit of price transparency outweighs any potential benefit in eliminating sub-penny prices. Perhaps, as suggested by one of the commenters on the Regulation NMS proposal, the NASD and Commission should consider prohibiting sub-penny prices except to the extent necessary to reflect ECN/ATN fees that would otherwise be hidden.

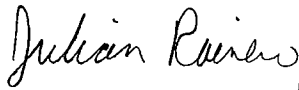
³ Exchange Act Release No. 52280.

Nancy M. Morris, Secretary
March 6, 2006
Page 3

Thank you again for providing us with the opportunity to comment on this rule proposal. Please contact me at 202.373.6085 or Michael Trocchio at 202.373.6167 with any questions you may have.

Sincerely yours,

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