



# The Security Traders Association of New York, Inc.

Members of the Security Traders Association

39 Broadway, Suite 1840 New York, NY 10006 • (212) 344-0410 • Fax (212) 943-8478

E-mail - [stany@stany.org](mailto:stany@stany.org) website - [www.stany.org](http://www.stany.org)

## OFFICERS

MICHAEL SANTUCCI  
Vandham Securities  
President

STEPHEN KAY  
Knight Capital Group  
First Vice President

ROBERT ARANCIO  
Lehman Brothers  
Second Vice President

CHARLES M. PADALA  
SunTrust Robinson-Humphrey  
Secretary

ALEXIS STERN CRESPIN  
UBS Capital Markets  
Treasurer

WILLIAM A. VANCE  
Prudential Equity Group  
Past President

KIMBERLY UNGER, ESQ.  
Executive Director

---

## DIRECTORS

THOMAS A. CESARE  
HSBC Securities (USA) Inc.

GERARD F. DE CARO  
Domestic Securities, Inc.

GARY DISTELL, ESQ.  
Bear, Stearns & Co., Inc.

GREGG A. DUDZINSKI  
Hudson Securities, Inc.

DEBORAH M. KASE  
BNY Brokerage

CHADD C. KIRK  
Oppenheimer Asset  
Management, Inc.

VAL J. KOSMIDER  
Val J. Kosmider, Inc.

STEPHEN J. NELSON, ESQ.  
The Nelson Law Firm, LLC.

C. THOMAS RICHARDSON  
Citigroup

DANIEL W. TANDY  
Prime Executions, Inc.

BRUCE C. TURNER  
CIBC World Market

---

## CONSULTANTS

BRETT REDFEARN  
Bear, Stearns & Co., Inc.

January 24, 2006

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-2001

**RE: Release No. 34-53024; File No. SR-NASD- 2005-095  
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**

Dear Ms. Morris:

The Security Traders Association of New York, Inc. ("STANY")<sup>1</sup> appreciates the opportunity to comment on Release No 34-53024 filed with the Securities and Exchange Commission ("SEC" or "the Commission") by the National Association of Securities Dealers, Inc. ("NASD"). The filing reflects the NASD's proposed amendment to NASD Rule 6750 to impose restrictions on the display of quotations and orders in sub-penny increments for non-Nasdaq OTC Equity Securities. In Amendment No. 2 the NASD proposes to delete the access fee display requirement of NASD Rule 6540 (c). STANY is opposed to Amendment No. 2.

In principle, STANY has generally supported the elimination of sub-penny quoting. Likewise, we can appreciate the fact that the elimination of sub-penny quoting would cause a conflict with the NASD's requirements in Rule 6540 (c) that alternative trading systems ("ATs") and electronic communication networks ("ECNs") reflect non-subscriber access or post-transaction fees in their posted quote in the Over-the Counter Bulletin Board ("OTCBB") montage. However, eliminating the access fee display requirement in Rule 6540 (c) - is not an effective solution and would raise a host of other problems.

Elimination of the access fee display requirements would permit ECNs and ATs to charge access fees for OTC Equity Securities without those fees being reflected in the displayed quote.

The change proposed by the NASD is inconsistent with the Commission's emphasis on clearer disclosure of transaction costs and conflicts of interest. For example, the NASD's proposal runs counter to the philosophy of the Commission in proposing point of sale disclosure rules for mutual funds, interest issues by unit investment trusts, and insurance company separate accounts that offer variable annuity contracts and variable life insurance policies in order to allow investors to better understand the real costs associated with transactions<sup>2</sup>. STANY agrees that it is in the best interests of public customers as well as all market participants that it be easy to gauge true transaction costs. Eliminating the access fee display requirement in OTC Equity Securities would obscure, as opposed to illuminate, transaction costs associated with OTCBB securities.

---

<sup>1</sup> The Security Traders Association of New York, Inc. (STANY), established in 1937, represents the shared interests of over 1,500 trading professionals from over 200 firms in New York, New Jersey and Southern Connecticut. STANY is the largest Affiliate of The Security Traders Association (STA). STANY's membership includes individuals employed by order execution facilities, national securities exchanges, national securities associations, ECNs, buy and sell-side trading firms, and national and international banks.

<sup>2</sup> Release Nos. 33-8544; 34-51274; IC-26778; File No. S7-06-04

In proposing the elimination of the access fee display requirement, the NASD appears to be applying to the OTCBB those Reg. NMS standards which permit market participants to charge non-subscriber access fees on NMS securities without reflecting those fees in their quotes. To achieve the goal of elimination of sub-penny quoting the NASD is, however, relying on only one component of Reg NMS without any of the "safeguards" that the Commission built into Reg. NMS. These safeguards were meant to correct disruptive behavior that had developed over several years such as locked/crossed markets, rebate trading, high ECN access costs, and lack of transparency. Additionally, Reg. NMS attempts to "level the field" by allowing all market participants to charge for access to their quotes. The instant proposal makes no such provision. In seeking to eliminate sub-penny quoting, the NASD has failed to take into consideration the different rules governing the OTCBB and the NMS and the relative significance of hidden sub-penny access fees in OTCBB quotes.

STANY has repeatedly opposed non-subscriber access fees and the unfair advantage created by these fees for a select group of market participants. We have consistently argued for the elimination of these fees and the leveling of the playing field for market participants. Although the Commission has declined to eliminate non-subscriber access fees, such fees are addressed in Reg. NMS. Reg. NMS is tolerable only because all market participants are permitted to charge access fees and because the amounts of those fees are limited. However, as Reg. NMS is not applicable to OTC Equity Securities, none of the Reg. NMS limits/protections will apply to OTC Equity Securities under the instant proposal. Likewise, it is unclear whether market makers in OTCBB securities will be permitted to charge access fees.

Allowing ECNs to charge access fees, but not permitting other market participants to charge such fees, is simply anti-competitive. This practice has permitted ECNs to finance their business from fees charged to competitors, rather than customers. This strategy only works because the best execution responsibilities of ECN competitors (other market participants) require them to access these ECN quotes. Accordingly, ECNs derive a competitive advantage, not by providing the best service or being the lowest cost provider, but by the unfair exploitation of a regulatory handicap. STANY was heartened to see this unfair competitive advantage eliminated in the NMS market by Reg. NMS. We are loath to see it now introduced into the OTC Equity market.

In considering the issue of sub-penny quoting in relation to Reg. NMS, STANY supported the exclusion of low-priced securities from the ban on sub-penny quoting<sup>3</sup>. Because sub-pennies represent a smaller percentage of the total cost of low priced securities, we believe that sub-penny quoting is appropriate in securities that trade below \$1.00. STANY also suggested that in general and especially in lower priced securities, a limited use of sub-penny quoting to reflect access fees might be preferable to undisclosed fees

STANY has historically opposed access fees that are not reflected in the quote for the reason that market participants are not able to determine the cost of the trade. In deciding to eliminate sub-penny quoting of access fees in the NMS, the Commission wisely placed limitations on the access fees that may be charged. These limitations were intended to provide market participants with a way to determine the ultimate cost of a trade and therefore mitigate the need for fees to be reflected in the quote. Without limitations, as in the current NASD proposal, market participants will be unable to accurately calculate the relative costs of various quotes.

In the lowest priced OTCBB securities access fees can be a significant percentage of the cost of the security. An access fee of \$0.0003 or \$0.0005 is clearly more significant the lower the price of the quoted security. In sub-penny securities you could actually pay more in access fees than the price of the security- for example you might pay a \$.003 access fee on a \$.0025 stock. It is only by inclusion of access fees in the published quotes, that a market participant can adequately evaluate the costs of such low priced securities. The effect of unpublished access fees in these securities could potentially be astronomical. As OTCBB securities priced below \$1.00 will be able to be quoted in sub-pennies to four decimal points, there appears to be no valid reason for excluding access fees from the quotations for these securities.

Rather than permit unquoted access fees with no limitations, sub-penny quotes should be permitted in non-Nasdaq OTC Equity Securities. In the alternative, we would ask that the NASD impose a cap on access fees similar to the caps imposed by Reg. NMS and that all market participants who are permitted to charge access fees in the NMS also be permitted to do so in the OTCBB.

---

<sup>3</sup> STANY letter to SEC Secretary, Jonathan Katz, June 30, 2004, at page 13

Finally, we see no benefit to the investing public, or anyone else, in prohibiting the denomination of orders that may be accepted by a market participant. A market maker or ECN ought to be able to accept an order in sub-pennies, or Euros, or any other denomination that is satisfactory to it as a business matter. Market regulation should only be concerned with the display of orders for execution in a public market. Otherwise, useful innovation may be stifled by unnecessary regulation.

We appreciate the opportunity to provide our opinions and comments. Should the Commission have any questions about STANY's position, we hope that you do not hesitate to call upon us.

Respectfully submitted,

Michael Santucci  
President

Kimberly Unger, Esq.  
Executive Director

Stephen J. Nelson, Esq.  
Co-Chair STANY  
Trading Issues Committee

cc: Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Cynthia A. Glassman  
Commissioner Annette L. Nazareth  
Robert L.D. Colby, Deputy Director, Division of Market Regulation  
Robert R. Glauber, NASD Chairman and CEO  
Mary L. Schapiro, NASD Vice Chairman