

January 24, 2006

**VIA ELECTRONIC MAIL**

Mr. Jonathan G. Katz  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NW  
Washington, DC 20549

Re: *Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 2 Thereto Relating to Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity Securities, SR-2005-95 (August 17, 2005)*

Dear Mr. Katz:

Ameritrade, Inc.<sup>1</sup> (“Ameritrade” or “the Firm”) appreciates the opportunity to again comment on NASD’s proposal to impose restrictions on the display of quotes and orders in sub-penny increments for non-Nasdaq OTC equity securities Amendment No. 2<sup>2</sup>. In its proposal, NASD cites that the elimination of Rule 6540(c) would conflict with the proposed enhancements to Rule 6750 and thus is recommending the elimination of Rule 6540(c).

While Ameritrade supports NASD’s efforts to enhance the transparency for investors in the OTC equity market, as proposed the elimination of the access fee display requirement would only serve to create a market structure that works directly against the provisions the Commission addressed with NMS securities in the adopting release of Regulation NMS<sup>3</sup>.

Ameritrade, notes that since Regulation NMS does not apply to the OTC equity market, Electronic Communications Networks “ECN’s” would be bound by no rules that limit the

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<sup>1</sup> Ameritrade Holding Corporation (“Ameritrade Holding”) has a 30-year history of providing financial services to self-directed investors. Ameritrade Holding’s wholly owned subsidiary, Ameritrade, Inc., acts as a self-directed broker serving an investor base comprised of over 3.7 million client accounts. Ameritrade does not solicit orders, make discretionary investments on behalf of our clients, or provide proprietary research or advice regarding securities. Rather, Ameritrade empowers the individual investor by providing them with tools they need to make their own investment decisions. In exchange for a low commission, we accept and deliver the order to buy or sell securities to the appropriate exchange, market maker, electronic communications network or other alternative market for execution. Ameritrade does not trade for its own account or make a market in any security.

<sup>2</sup> See Ameritrade comments on SR 2005-95 by Phylis Esposito dated October 31, 2005.

<sup>3</sup> See Regulation NMS; Final Rule, Rel No. 34-51808 File No. S7-10-04.

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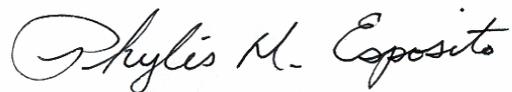
amounts levied for quote access, thus allowing the very issues Regulation NMS sought to address in the National markets to again be repeated in the OTC equity market. Further, and in addition to rampant quote taxation that would certainly ensue in the OTC equity market, and since the OTC equity market also contains no access provision, OTC equity securities would be stifled by locked and even crossed markets<sup>4</sup> as market centers would simply refuse to deal with each other on the basis of quote levies. For the very reasons the Commission enacted Regulation NMS, such regulation cannot be in the best interest of providing investor transparency and fair access and would undoubtedly lead to an erosion of investor confidence and increased investor confusion.

Ameritrade continues to believe that it is more appropriate to first require limit order display in the OTC market, followed by the implementation of rules that continue to increase transparency and fair access to all investors. Ameritrade further believes that if the access fee display requirements of Rule 6540(c) are lifted then further order handling rules designed to address access fees and fair access should also be adopted.

Ameritrade wants to make clear that it strongly supports NASD's efforts to ensure that securities markets operate so that retail and professional investors trade as equals. As noted above however, Ameritrade urges the Commission to reject the proposed elimination of the access fee requirement since it does not serve to create fair access. Ameritrade believes that NASD should further consider either adopting access fee limitations or access provisions before, or contemporaneous with, the removal of access fee display requirements.

Please contact me at 201/761-5570 if you have any questions regarding Ameritrade's comments.

Respectfully submitted,



Phylis M. Esposito  
Executive Vice President, Chief Strategy Officer

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<sup>4</sup> Locked markets are a condition with the Bid and Offer price are equal while Crossed markets are conditions represented by inverted bid/ask spreads.