October 31, 2005

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. 1 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.[1] ("Ameritrade" or "the Firm") appreciates the opportunity to 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. Nasdaq states that it is proposing the rule change to prevent the potential harm by creating a two-tiered market, one for ordinary investors and another for professionals, which undermines important Securities and Exchange Commission ("Commission") and self-regulatory organization policy objectives.

Ameritrade has been a vocal critic of regulatory structures that create two-tiered markets to the detriment of retail investors. In fact, Ameritrade commented to the Commission staff on the need for a sub-penny ban in April 2003, before proposed Regulation NMS, because the Firm had determined that investors were using sub-pennies to step ahead of resting limit orders and undermining the Manning provision. As a result, Ameritrade applauds NASD's efforts to ensure that such two-tiered markets do not disadvantage retail investors.

1 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.

Ameritrade, however, believes that NASD should approach the OTC equity security market in the same logical fashion the Commission addressed trading in National Market System securities. Specifically, the foundation of Regulation NMS was necessarily preceded by the adoption of the Order Handling Rules, issued in 1996, which resulted in enormous benefits for investors by requiring the public display of limit orders that better the specialist's or market maker's displayed price and/or size.[2] This precondition does not currently exist in the OTC market as there is no similar requirement in the OTC market.

Because there is no limit order display requirement for the OTC equities market, Ameritrade has not witnessed the type of abuse that NASD claims is the basis for its proposal. That is, the lack of transparency in the OTC equity securities market is the primary deficiency that harms retail investors. As a result, Ameritrade believes that it is more appropriate to first require limit order display in the OTC market, as the Firm believes investors would reap the enormous benefits of added transparency – far and away greater benefits than a sub-penny ban which will have little to no impact in a market that does not embrace order display.

Therefore, Ameritrade believes that NASD efforts would be better directed at developing rules that apply the principles identified almost 10 years ago by the Commission when it adopted the Order Handling Rules. In fact, given the Commission's experience with the Order Handling Rules and Regulation NMS, it would make logical sense for NASD to adopt both a limit order protection rule and a ban on subpenny quoting at the same time.

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, although Ameritrade agrees that a sub-penny ban may be appropriate in the OTC equity market, it is far more important that investors develop trust in knowing that their limit orders will either be executed or publicly displayed. Therefore, it is imperative that NASD consider either adopting limit order protection rules before, or contemporaneous with, a sub-penny ban.

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

Respectfully submitted,

Phylis M. Esposito

Phylis M. Esposito
Executive Vice President, Chief Strategy Officer

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2 *See* Regulation NMS; Proposed Rule, 69 Fed. Reg. 11126 at 11131 (March 9, 2004).