



Securities Industry Association

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February 17, 2006

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

Re: Release No. 34-53024; File No. SR-NASD-2005-095
Sub-Penny Restrictions for Non-Nasdaq Over-the-Counter Equity
Securities

Dear Ms. Morris:

The Trading Committee (the “Committee”) of the Securities Industry Association (“SIA”)¹ appreciates the opportunity to comment on the referenced National Association of Securities Dealers, Inc. (“NASD”) proposed rule change, which would amend 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 to the filing, the NASD proposes to eliminate the requirement in Rule 6540(c) that a participant ATS or ECN reflect non-subscriber access fees in their posted quotes on the OTC Bulletin Board (OTCBB). It is this amendment that causes concern for SIA member firms.

The Committee notes that the Securities and Exchange Commission (the “SEC” or “Commission”) specifically adopted Rule 610(b) under Regulation NMS to address one of the disruptive behaviors that they had identified in our marketplace – high ECN access costs. The Commission also addressed other patterns of disruptive behavior in Regulation NMS, including locked and crossed markets and rebate trading. The Committee commends the Commission for addressing these difficult issues by instituting certain safeguards in Regulation NMS. The Committee now recommends that the Commission reject this NASD rule proposal, as amended, for the following reasons.

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

The Committee agrees with the comments articulated by Knight Capital Group, Pink Sheets LLC, Ameritrade, and The Security Traders Association of New York, Inc. (“STANY”), in their letters filed on this proposal, that the Commission should not approve the elimination of this requirement in Rule 6540(c).² We recognize that the overall NASD rule proposal is attempting to bring the OTCBB market under the same Regulation NMS sub-penny standards as the rest of our equity markets, but do not believe that this Rule 6540(c) amendment is necessary or a positive step.

The Committee offers the following arguments for why this requirement should not be eliminated. These views are shared by other commenters as indicated in the footnotes.

- Elimination of this requirement would result in an unlevel playing field in the OTCBB market, if in fact only an ECN or ATS could charge access fees to non-subscribers in the OTCBB and not display that fee in their posted quotes on the OTCBB.³
- The current pricing practice should remain, as it offers greater transparency – what you see is what you get.⁴
- Access fees tend to be a larger problem with low-priced securities and, since there do not appear to be any sub-penny quoting issues with regard to including fees in the quote if the quote is below \$1.00, the status quo should remain.⁵
- Elimination of this requirement would distort the time/price auction with undue parity given to an inferior net price.⁶
- Elimination of this requirement would reduce displayed liquidity and encourage instead undisplaced sub-penny price jumping.⁷

² These comment letters can be found on the SEC website at:
<http://www.sec.gov/rules/sro/nasd/nasd2005095.shtml> .

³ Knight and Pink Sheets.

⁴ Knight, Pink Sheets and STANY.

⁵ Knight and STANY.

⁶ Knight.

⁷ Pink Sheets.

- Since no ECN or ATS currently charges a non-subscriber access fee, they must not be experiencing any adverse affect on their business model that needs addressing.⁸
- There would be no Regulation NMS safeguards in place for this market if the amendment were approved (such as fee caps, fair access requirements, or locked and crossed market protections).⁹

Because of the above reasons, the Committee strongly recommends that the Commission not approve the NASD's proposal to eliminate the requirement in Rule 6540(c) that a participant ATS or ECN reflect non-subscriber access fees in their posted quotes on the OTCBB.

We appreciate your consideration of these views, and would be pleased to discuss them further with you. If you have any questions or comments, please contact the undersigned or Ann Vlcek, Staff Advisor to the Trading Committee, at (202) 216-2000.

Sincerely,

Jerry O'Connell
Chairman
SIA Trading Committee

cc: Robert L.D. Colby, Esq., Acting Director, Division of Market Regulation
Robert Glauber, Chief Executive Officer and President, NASD
Mary Schapiro, President, NASDR

⁸ Knight and Pink Sheets.

⁹ Pink Sheets and Ameritrade.