TD AMERITRADE Holding Corporation

June 1, 2007

VIA ELECTRONIC MAIL

Nancy M. Morris
Secretary
United States Securities and Exchange Commission
Station Place, 100 F Street, NE.
Washington, DC 20549-1090

Re: *Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Access Fee Display Requirements for the OTCBB (File No. SR-NASD-2007-029)*

Dear Ms Morris:

TD AMERITRADE, Inc. [1] ("TD AMERITRADE" or "the Firm") appreciates the opportunity to comment on the proposal by the NASD to amend NASD Rule 6540(c) to exclude from the access fee display requirements access fees below a specified level. TD AMERITRADE strongly opposes the NASD proposal as it will have a deleterious impact on transparency and will harm investors and brokerage firms. As such, TD AMERITRADE requests that the Securities and Exchange Commission ("Commission") reject the NASD's proposal.

This rule filing is in essence another iteration of NASD's original proposal in 2005 (SR-NASD-2005-095) relating to restrictions on sub-penny quoting. In the 2005 proposal, NASD proposed to amend Rule 6750 to prohibit sub-penny for OTCBB securities priced at or greater than $1.00 per share. Ameritrade, Inc. ("Ameritrade")[2] opposed the NASD proposal because certain important protections in place for the trading of National Market System securities did not exist for the OTCBB market, and implementing a sub-penny quoting ban in the OTCBB market before other protections were in place, namely Limit Order Display, would not result in any real benefits for investors.

NASD's Amendment No. 2 to the filing SR-NASD-2005-095 proposal involved the elimination Rule 6540(c) as it conflicted with Rule 6750. Ameritrade and other commenters urged rejection of Amendment No. 2 and NASD withdrew the proposal in April 2007.

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1 TD AMERITRADE is a wholly owned broker-dealer subsidiary of TD AMERITRADE Holding Corporation ("TD AMERITRADE Holding"). TD AMERITRADE Holding has a 30-year history of providing financial services to self-directed investors. TD AMERITRADE Holding's wholly owned broker-dealer subsidiary, TD AMERITRADE serves an investor base comprised of over 6.2 million client accounts with approximately $292 billion in assets.

2 In January 2006, TD AMERITRADE Holding purchased the TD Waterhouse Group, Inc. Because of this combination, Ameritrade is now the clearing broker for TD AMERITRADE and Ameritrade is now known as TD AMERITRADE Clearing, Inc.

In this latest proposal, NASD rule changes would allow an ATS or ECN to not display its access fee in its published quotation on the OTCBB if the fee is $0.003 per share or less for a published quotation that is $1.00 or greater and less than 0.3% of the published quotation on a per share basis if the published quotation is less than $1.00

TD AMERITRADE respectfully opposes the access fee proposal as it is not in the best interests of the investing public. TD AMERITRADE believes that it is uniquely qualified to speak for such investors as its clients currently comprise approximately 35% of the trading volume in the OTCBB/Pink Sheet market.

First, the access fee proposal fails to account for the rampant locked and crossed markets that this proposal will cause. Specifically, if the access fee were not reflected in an ATS/ECN quote, a professional trader would have the ability to profit by using a rebate arbitrage trading strategy. The following example suffices:

- Assume NASD proposal to allow ATSs/ECNs not to display an access fee is approved.
- Assume ECN A charges a $.003 per share fee for orders removing liquidity from its books and pays a $.002 per share rebate for orders residing on its books that execute against incoming orders.
- Professional Trader ("PT") places a large order for an OTCBB security prices at better than the best bid or offer on ECN A.
- PT then submits the same size order in the same security at the same price on the opposite side but submits the order via an unaffiliated brokerage firm or market maker.
- In the absence of any locked or crossed trading rules, PT's bid is represented on an ECN and PT's offer is represented on an unaffiliated brokerage firm or market maker creating a bid/ask that is equal or a locked market condition.
- In order for the execution to occur the unaffiliated brokerage firm or market maker forwards PT's order to ECN A where the two orders meet and execute. In this case, the PT is paid the $.002 per share rebate and the unaffiliated brokerage firm or market maker will be charged the $.003 per share fee for routing the order to the ATS/ECN and removing the liquidity.

In the above scenario, PT arguably has placed a manipulative trade solely for obtaining the rebate. On the other side of the trade, the brokerage firm or market maker is left paying the fee for removing liquidity. Although firms ultimately identify this type of trading, it is caught after the fact and may be caught only after thousands, if not millions, of dollars in losses are incurred. Most important is that the investing public is harmed by an increased incidence of locked and crossed markets and the overall damage that manipulative trading causes to the markets. The above is just one example of why the SEC enacted provisions within Regulation NMS to prevent this sort of manipulative activity from occurring.

Second, investors will be harmed by a lack of transparency in the quotes they access. The inclusion of access fees in ATS/ECN OTCBB quotations informs non-subscribers of the true cost of executing a trade. In fact, not including the access fee is necessarily ***misleading*** to these investors. TD AMERITRADE's experience is that investor confusion will occur as investors will see best bids and offers that may not be accessible to firms due to the costs of execution. That is, once a firm experiences losses due to manipulative rebate arbitrage trading, it may take actions to reduce the likelihood that it will be the victim of further trading. In such case, while an investor may be displayed the best price, a firm may take actions to ensure an order is not routed to certain ATSs/ECNs displaying such price based on the cost of execution.[3] As a result, allowing for this type of rebate arbitrage damages investor confidence in the markets as the investor cannot access the quote they see. If the rule proposal is approved, TD AMERITRADE representatives likely will spend great deals of time explaining to retail investors that they did not receive the price they thought they were going to receive due to rule changes meant to benefit certain market centers and professional traders seeking rebate arbitrage.

As noted in the prior Ameritrade comment letters, TD AMERITRADE strongly believes the NASD should focus on the establishing the regulatory framework upon which Regulation NMS was built upon. Specifically, the Firm believes that NASD efforts would be better directed at imposing a Limit Order Display requirement for OTCBB securities. As occurred over 10 years ago with the Commission's Order Handling Rules, TD AMERITRADE believes investors would reap enormous benefits of added transparency if market centers were required to display limit orders that were better than that market center's current best bid or offer.

In conclusion, TD AMERITRADE respectfully opposes the NASD's proposal to exclude the access fee display requirements as it will create incentives for professional traders to rebate arbitrage trade that will harm market participants and damage investor confidence. At the very least, if the NASD proceeds with its proposal it also should include a Limit Order Display requirement and a rule applicable to the OTCBB that prohibits participants from locking and crossing markets.

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TD AMERITRADE appreciates the opportunity to comment. Please contact me at 402/970-7007 or Christopher Nagy at 402/970-5656 if you have any questions regarding our comments.

Respectfully Submitted,

/S/

Bryce Engel
Chief Brokerage Operations Officer

cc: Erik R. Sirri, Director, Division of Market Regulation, SEC
Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC
Thomas R. Gira, Executive Vice President and Deputy, NASD
Stephanie Dumont, Vice President and Associate General Counsel, NASD

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3 Regulation NMS makes clear that a broker may consider cost of execution in satisfying its best execution obligations. *Regulation NMS Adopting Release*, 34-51808 (June 29, 2005).