



## Regulatory Circular 06-03

**Date:** January 26, 2006  
**To:** Members  
**From:** Regulatory Services Division  
**Re:** Regulation NMS  
Sub-Penny Trading  
***This Circular Replaces Regulatory Circular 06-01***

On April 6, 2005, the Securities and Exchange Commission (the "Commission") adopted Regulation NMS ("Reg NMS"). One part of Reg NMS is Rule 612, which specifies minimum pricing increments for NMS stocks and has a compliance date of January 31, 2006.<sup>1</sup> In general, the Rule prohibits market participants from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than \$0.01 if the quotation, order, or indication of interest is priced equal to or greater than \$1.00 per share. If the quotation, order, or indication of interest is priced less than \$1.00 per share, the increment cannot be smaller than \$0.0001.

In conjunction with the compliance date for Reg NMS, the National Stock Exchange ("NSX" or the "Exchange") will file a rule change, amending its Rule 11.3 (Price Variations) so that NSX may accept, rank, execute and disseminate all sub-penny orders and quotes when the orders are priced at less than \$1.00 and the security is listed on the NASDAQ Stock Market, with an effective date of January 31, 2006. Due to programming issues related to the Intermarket Trading System ("ITS") in other markets, the Exchange is **not** amending Rule 11.3 to permit sub-penny quoting below \$1.00 in issues listed on the American Stock Exchange or the New York Stock Exchange.

### **Operational Issues**

In order to comply with the sub-penny regulation, NSX will be making the following changes to its National Securities Trading System ("NSTS"), **effective January 31, 2006**:

- NSTS will **reject** all sub-penny orders and quotes that are priced at \$1.00 or greater. NSX's rules currently prohibit sub-penny orders and quotes in any issue over \$1.00.
- While NSTS will accept sub-penny quotes priced at less than \$1.00 in all issues temporarily, please be advised that any submission of a sub-penny bid, offer, order or indication of interest that is less than \$1.00 on a security that is **not** listed on the Nasdaq Stock Market will subject the Member to disciplinary procedures for violations of NSX Rule 11.3 (as amended by the NSX Rule Filing). See Compliance Issues below.
- NSX also plans to support sub-penny quoting and trading in any security that may be granted an exemption by the Commission and will modify NSTS to allow input of orders and quotations at the minimum price increment that is approved by the Commission in

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<sup>1</sup> The Commission has extended the initial compliance date for the Rule from August 29, 2005 until January 31, 2006 in Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

connection with the exemption granted to such security. As of the date of this Regulatory Circular, the Commission had not granted any such exemption.

### **Intermarket Trading System ("ITS")**

NSX will route commitments via ITS as entered by the NSX member. Since no market centers will quote in sub-pennies in ITS eligible issues, all commitments must be sent in full penny increments.

### **Compliance Issues**

Members should be aware that submitting a bid, offer, order or indication of interest to the Exchange priced at \$1.00 or greater with a sub-penny increment in any security not specifically exempted by the Commission is a violation of NSX Rule 11.3 and will be subject to disciplinary action by the Exchange. Further, Members should be aware that the submission of a sub-penny bid, offer, order or indication of interest to the Exchange at a price less than \$1.00 in any security other than an issue listed on the Nasdaq Stock Market is also a violation of NSX Rule 11.3 and will be subject to disciplinary action by the Exchange.

Any questions respecting this Regulatory Circular should be addressed to Paul Smith, Vice President of Regulations, at 312.786.7562 or James C. Yong, Chief Regulatory Officer, at 312.786.8893.