



February 14, 2007

**VIA EMAIL; CONFIRMATION
BY OVERNIGHT MAIL**

Ms. Nancy M. Morris
Secretary, Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

**Re: Comments by ArcaEdge in Response to Release No. 34-53024;
File No. SR-NASD-2005-095**

Dear Ms. Morris:

This is the second comment letter submitted by Archipelago Trading Services, Inc. (“ArcaEdge”), concerning Release No. 34-53024 filed with the Securities and Exchange Commission (“SEC” or “Commission”) by the NASD as Amendment No. 2 for file SR-NASD-2005-095 (“Amendment No. 2”). ArcaEdge submits this letter in an effort to respond to certain comments, place them in their relevant context, and request a timely approval of the NASD’s proposed rule change, originally posted for comment on December 27, 2005.¹ We believe that the NASD’s protracted and stalled response on this matter undercuts competition, runs counter to recent market center reforms such as Regulation NMS, and reinforces the dealer-driven nature of the over-the-counter bulletin board (“OTCBB”) market to the detriment of investors.

Executive Summary

As explained more fully below, NASD Rule 6540(c) prohibits an alternative trading system (“ATS”) from charging an access or post-transaction fee to non-subscribers unless such fee is included in the ATS’s posted quote. Including non-subscriber fees in the posted quote creates the false impression of an inferior price. The only viable alternative available to a registered ATS, such as ArcaEdge, seeking to remain active within the OTCBB market and provide liquidity to our subscribers is to offer non-subscribers free access to their quotes in the marketplace. The anti-competitive effect of this Rule is clear: most ECNs do not register as an ATS and do not enter the OTCBB market. Indeed, ArcaEdge is one of only three broker-dealers registered under Regulation ATS to participate within the OTCBB market and, of the three,

¹ Although this letter is submitted after the close of the comment period, ArcaEdge hopes this response will further inform the Commission’s review and serve as a call to action.

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ArcaEdge is uniquely penalized by Rule 6540(c). Simply stated, Rule 6540(c) limits competition and artificially supports a dealer-driven market to the detriment of investors. As it stands, this rule is the antithesis of Regulation NMS. Conversely, the repeal of Rule 65640(c) will foster a competitive and innovative OTCBB market, by: (i) emphasizing an order-driven market, (ii) encouraging increased competition among ECNs, and (iii) eliminating an unfair competitive advantage enjoyed by market makers by leveling the playing field amongst all market participants.

Background

With the adoption of Regulation ATS,² the Commission announced its intention “to strengthen the public markets for securities, while encouraging innovative new markets.” The Commission expressly understood that alternative trading systems “may become the primary market for some securities.” However, limitations such as Rule 6540(c) have prevented an ATS from offering what the Commission intended with Regulation ATS. In filing Amendment No. 2, the NASD recognized the conflict between certain of its rules that effectively discourage competition and counter-act the innovative spirit underlying Regulation ATS. As a result, in Amendment No. 2, the NASD proposes eliminating Rule 6540(c), which prohibits an ATS from charging an access or post-transaction fee to non-subscribers unless displayed in the ATS’s posted quote. Including non-subscriber fees in the posted quote creates an immediate and false impression of an inferior price and thereby disadvantages both subscribers and the marketplace, since including such fees is not required of other market participants that are not registered under Regulation ATS. As such, this rule prevents an ATS acting solely on an agency basis within the OTCBB market from being truly competitive with other such market participants, and thereby undermines the benefits of new market innovation.

At the time Rule 6540(c) was adopted,³ ArcaEdge, then known as GlobeNet Securities, Inc. (“GlobeNet”), submitted comments on the proposed rule, requesting that when the Commission reached a resolution on access fees charged in the Nasdaq market, it should apply the same approach to the OTCBB market. At the time, the ability of GlobeNet to participate in the OTCBB was of such paramount importance that it outweighed the anti-competitive impact of Rule 6540(c), and we chose to compete with market makers in the OTCBB despite the access fee restriction. ArcaEdge has been operating under this restriction, and thereby penalized for its decision to compete in this marketplace, for the last four years. Although Regulation NMS specifically addressed such fees in the Nasdaq market, the rule does not reach the OTCBB market. What remains, therefore, is a rule unique to the OTCBB market and unique in its impact upon ArcaEdge.

Currently, three broker-dealers registered under Regulation ATS participate within the OTCBB market: ArcaEdge, Direct Edge (owned by Knight Capital Group, Inc.), and Track ECN. For comparison purposes, during the month of December 2006, ArcaEdge reported

² See Exchange Act Release No. 34-40760 (December 8, 1998).

³ See Exchange Act Release No. 34-45915 (May 10, 2002).

approximately 373,059,447 shares or 1.4% within OTCBB securities, compared to that of 1,682,142 by Direct Edge and zero by Track ECN.⁴ What is not evidenced within these figures is the inter-related OTCBB market between Direct Edge and its affiliate, Knight Equity Markets, L.P., a registered market maker who reported approximately 20,287,035,841 shares or 75.1% within OTCBB securities for the month of December 2006.⁵ As these figures show, even though ArcaEdge is the leading ATS in the OTCBB market, its participation is eclipsed by the leading market maker as Rule 6540(c) inhibits the innovation and competition intended by Regulation ATS.

Based on the previous comments submitted by ArcaEdge, the NASD deemed it appropriate to repeal Rule 6540(c).⁶ Prior to, and following the conclusion of, the expiration of the comment period, nine comment letters were received by the Commission in relation to Release No. 34-53024. These comment letters were submitted by various interested parties, representing both individual members of the NASD as well as non-members and professional trade organizations.⁷ Generally, these commenters will be herein referred to as the "Interested Parties."

In general, the relevant arguments made by the Interested Parties may be summarized as follows, with ArcaEdge's response to each item included below.

Competitive Disadvantage

Comment: Market makers, by removal of 6540(c), would be placed at a competitive disadvantage.

The existence of Rule 6540(c) creates a unique disadvantage for ArcaEdge, a registered ATS, which conducts business solely within the OTCBB market. The rule exploits ArcaEdge by allowing non-subscribers to access the liquidity provided by our subscribers, without effectively permitting ArcaEdge to charge any access fees. These non-subscribers, in contrast, are permitted to charge fees or commissions for these same transactions with their customers. Repeal of this rule actually eliminates an unfair competitive advantage enjoyed by market makers and will level the playing field amongst all market participants.

⁴ To further illustrate the negative business impact of this rule, during the month of December 2006, approximately twenty percent of the volume executed on the ArcaEdge system was transacted by non-subscribers, to which ArcaEdge was unable to recapture any fees or revenue by providing such services.

⁵ See www.otcbb.com.

⁶ See Exchange Act Release No. 34-53024 (December 27, 2005).

⁷ See letter from Phylis M. Esposito of Ameritrade, Inc., dated October 31, 2005; letter from Michael Santucci, Kimberly Unger, and Stephen J. Nelson of the Security Traders Association of New York, Inc., dated January 24, 2006; letter from Leonard J. Amoruso of Knight Capital Group, Inc., dated January 24, 2006; letter from Phylis M. Esposito of Ameritrade, Inc., dated January 24, 2006; letter from R. Cromwell Coulson of Pink Sheets, LLC, dated January 24, 2006; letter from William Yancey of the Security Traders Association, dated February 8, 2006; letter from Jerry O'Connell of the Securities Industry Association, dated February 17, 2006; letter from Patrick E. Brake, Jr. of Hill, Thompson, Magid & Co., Inc., dated February 21, 2006; and letter from Pershing, LLC, dated March 6, 2006.

Locked or Crossed Markets

Comment: Removal of Rule 6540(c) would exacerbate the issue of locked or crossed markets.

Currently, NASD rules do not specifically prohibit locked or crossed markets within the OTCBB marketplace nor do we understand how repeal of this rule would increase their occurrence. Locked or crossed markets are the result of stale quotes and the byproduct of an antiquated market; Rule 6540(c) is not related in any way to locked or crossed markets.

Liquidity

Comment: Elimination of this requirement would reduce displayed liquidity.

ArcaEdge, as a participant within the marketplace, fosters competition, depth and liquidity; allowing buyers and sellers, subscribers and non-subscribers, an alternative venue for transactions with OTCBB securities. In addition to increased competition and liquidity, the obligation of an ATS such as ArcaEdge to operate with an unbiased, non-discretionary trading method supports the integrity of the marketplace often viewed as speculative. We believe our business model, which does not include acting as a dealer, provides a means to bring together buyers and sellers in a forum that is not compromised by an added incentive to disadvantage its customers, and stands in stark contrast to other participants who act as both broker and dealer. Eliminating Rule 6540(c) will not adversely affect liquidity or the market's integrity, rather it will likely enhance liquidity by fostering increased competition amongst additional ECNs who join the OTCBB marketplace, when they are no longer encumbered by the rule's restrictions.

Transparency

Comment: Fees not displayed within quotations hinder transparency.

ArcaEdge agrees that transparency offers greater security within the marketplace; however, we do not believe the ability of an ECN or an ATS to charge fees for the use of its services imply any impropriety. In an effort to ensure full and fair disclosure, we believe any ECN or ATS which would charge fees to non-subscribers if allowed should make such fee schedule available to the public. ArcaEdge intends to charge fees with non-subscribers in a manner consistent with its subscribers, and will publicly disclose all relevant non-subscriber access fees.

Fair Access Requirements

Comment: Safeguards, such as fair access, should be a requirement upon removal of Rule 6540(c).

ArcaEdge, as a registered ATS, is subject to additional criteria and obligations, not applicable to general market makers or other entities not registered with the Commission in such capacity, or otherwise. For example, ArcaEdge operates its business in accordance with the provisions set forth in SEC Rule 301(b)(5)(ii),⁸ granting fair access to all market participants. Based on the nature of the securities which trade on the OTCBB marketplace, an ATS such as ArcaEdge, may frequently surpass the threshold requiring such access, and, therefore, may also be subject to the provisions set forth in SEC Rule 301(b)(4)⁹ in relation to its assessment of fees.

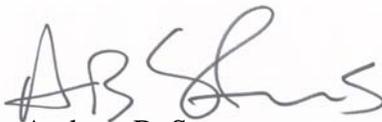
Conclusion

As cited within our original letter,¹⁰ Section 15A(b)(6) of the Securities Exchange Act of 1934 requires the Commission to ensure that the rules of a national securities association “are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the association.” NASD Rule 6540(c), with its uniquely discriminatory and punitive impact upon ArcaEdge, violates this section.

We commend the Commission for modernizing the securities marketplace with the implementation of Regulation NMS, and welcome the same or similar provisions to be expanded to the OTCBB market. Generally, we agree with the comments made by the Interested Parties to further improve transparency and investor protection, and that enhancement to Regulation NMS, Regulation ATS, or the rules of the self-regulatory organizations of which participants such as ArcaEdge are members would modernize the OTCBB marketplace. However, we do not believe the continuance of Rule 6540(c) serves this purpose. Based on the NASD’s protracted delay in implementing Amendment No. 2, we request that the Commission approve the proposed rule filing, including the repeal of Rule 6540(c), without further delay.

If you have any questions concerning our views, please contact me Andrew Stevens at (312) 442-7632 or Greg O’Connor at (312) 442-7149.

Regards,



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Assistant General Counsel
NYSE Group, Inc.



Greg O’Connor
Director of Compliance
Archipelago Trading Services, Inc.

⁸ 17 CFR 240.301(b)(5)(ii).

⁹ 17 CFR 240.301(b)(4).

¹⁰ See letter from Kevin J.P. O’Hara of Archipelago Trading Services, dated September 23, 2005.