

**ORDER EXECUTION SERVICES HOLDINGS, INC.**  
194 Nassau Street, Suite 30, Princeton, NJ 08542

August 25, 2006

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-CHX-2006-05

Dear Ms. Morris:

Order Execution Services Holdings, Inc. (“OES”) submits to the Securities and Exchange Commission (“Commission”) this comment letter regarding the Chicago Stock Exchange Inc.’s (“CHX”) proposed rule change, SR-CHX-2006-05, to amend its rules in order to implement a new trading model. As part of its filing the CHX proposes to establish services that will route orders to other market centers. OES believes that the routing services provided by the broker-dealer that are uniquely endorsed and linked with the CHX should be designated as an exchange facility, as defined in Section 3(a)(2) of the Exchange Act.

The CHX describes that its routing services will be based on a series of agreements between its participants, a “specified third-party broker-dealer,” and the exchange:

*The Exchange will provide these routing services pursuant to the terms of three separate agreements, to the extent that they are applicable to a specific routing decision: (1) an agreement between the Exchange and each Participant on whose behalf orders will be routed (“Participant-Exchange Agreement”); (2) an agreement between each Participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and serve as a “give-up” in those markets (“Give-Up Agreement”); and (3) an agreement between the Exchange and the specified third-party broker-dealer (“Routing Connectivity Agreement”) pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a “give-up” for the Exchange’s Participants in other markets.<sup>1</sup>*

The CHX appears to intend to characterize the routing services as a vendor relationship defined by agreements rather than an exchange facility. An exchange facility is defined under Section 3(a)(2) of the Exchange Act as:

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<sup>1</sup> Release No. 34-54301, Page 21

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
August 25, 2006

*The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on the exchange (including, among other things, any system of communication to or from the exchange, by ticket or otherwise maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. (Emphasis added by OES.)*

OES asserts that based on the definition of an exchange facility the order routing services of the “specified third-party broker-dealer” should be a facility of the CHX. The third-party broker-dealer will be functioning as an order routing mechanism for the CHX, and will operate as a system of communication of the CHX for the purpose of executing transactions.

In its October 25, 2001 Approval Order of the Pacific Exchange’s rules establishing the Archipelago Exchange, the Commission set precedent on requiring an exchange facility in similar circumstances related to establishing order routing services to exchanges. In this Order the Commission described in two sections some of the basis for their determination that an exchange facility was required, and OES wants to note that these factors are relevant with respect to the CHX proposal:

*The Commission believes that, although Wave’s routing services are optional, Wave’s order-routing function occupies a special position with respect to ArcaEx. In the Commission’s view, Wave is uniquely linked to and endorsed by ArcaEx to provide its outbound routing functionality. Therefore, the Commission believes, and the PCX agrees, that the PCX application of the Wave order-routing function falls within the definition of a facility under the Act.*

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*In the Commission’s view, by functioning as an order routing mechanism for ArcaEx, Wave would operate as a “system of communication” to or from the PCX for the purpose of effecting a transaction on the exchange. Specifically, pursuant to contract, Wave would receive instructions from ArcaEx, would route orders away in accordance with those instructions, and would be responsible for reporting resulting executions back to ArcaEx.*

OES believes that the Commission’s previous decisions support the requirement to designate the routing services provided by a third-party broker-dealer as an exchange facility because: (1) the “specified third-party broker-dealer” occupies a special position with respect to CHX; (2) the “specified third-party broker-dealer” is uniquely linked to and endorsed by CHX; and, (3) the “specified third-party broker-dealer” would operate as a system of communication to or from the CHX.

Ms. Nancy M. Morris  
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The preceding facts establishes that order routing services provided by broker-dealers that are endorsed and linked to exchanges have historically been required to be exchange facilities, and as a consequence it is OES' position that the CHX needs to establish its largely-identical services as an exchange facility.

OES appreciates this opportunity to submit to the Commission our views on this filing, and we welcome the ability to further participate in future discussions or deliberations related to the Commission's decision on this matter. Please feel free to contact me at (609) 430-4979, or by email at [mbarth@tradeoes.com](mailto:mbarth@tradeoes.com).

Sincerely,

Michael A. Barth  
Senior Vice President  
Exchanges and Market Centers  
Order Execution Services Holdings, Inc.