

September 23, 2009

**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-FINRA-2009-054**

Dear Ms. Morris:

Archipelago Trading Services, Inc. (“ArcaEdge”), a wholly owned subsidiary of NYSE Euronext, appreciates the opportunity to comment on Release No. 34-60515 filed with the Securities and Exchange Commission (“SEC” or “Commission”) by the Financial Industry Regulatory Authority (“FINRA”). In their filing, FINRA proposes to extend certain Regulation NMS protections to quoting and trading in the market for OTC equity securities, including: 1) restricting sub-penny quoting; 2) prohibiting locked and crossed markets; 3) implementing a cap on access fees; and 4) requiring the display of customer limit orders (collectively referred to as the “Proposal”).¹ As an operator of an Alternative Trading System (“ATS”) in the OTC marketplace, ArcaEdge applauds and overwhelmingly supports FINRA’s proposal to modernize and improve the OTC marketplace. ArcaEdge believes that these proposed amendments along with our additional recommendations will greatly modernize and enhance the quality of the OTC marketplace.

Restrict Sub-Penny Quoting

ArcaEdge supports FINRA’s proposal to establish restrictions on sub-penny quoting in conjunction with the removal of the requirement that ATSS include non-subscriber access fees within its quote. In 2005, when the NASD proposed restrictions on the display of orders and

¹ See Exchange Act Release No. 60515 (August 17, 2009) 74 FR 43207 (August 26, 2009) (Notice of filing of SR-FINRA-2009-054).



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quotes in sub-penny increments², ArcaEdge opposed such a restriction because of the requirement that ATSS display non-subscriber access fees in their quotes. Those access fees charged by ATSS to non-subscribers were often charged in sub-penny increments. ArcaEdge argued that banning sub-pennies and continuing to require ATSS to display access fees in their quote was anticompetitive and unfairly discriminatory. However, pursuant to the Proposal, FINRA properly addresses both issues by restricting sub-penny quoting in conjunction with removing the requirement that ATSS include non-subscriber access fees within its quote. Indeed, ArcaEdge agrees that restricting sub-penny quoting will help prevent the practice of stepping ahead of displayed limit orders by trivial amounts, thereby encouraging the display of limit orders and improving the depth and liquidity of the market.

While ArcaEdge supports restrictions on sub-penny quoting, we believe that the proposed minimum price variations (“MPV”) for securities priced under \$1.00 are too small. Under FINRA’s proposal, market participants will be able to quote in increments ranging from pennies to ten thousandths of a penny depending on the price of the security. ArcaEdge agrees with a MPV of \$0.01 if the bid or offer, order, or indication of interest is priced at \$1.00 or greater per share. However, for securities priced under \$1.00, an MPV of \$0.000001 will not prevent the practice of stepping ahead of customer orders or flickering quotes. ArcaEdge proposes that a more appropriate MPV is \$0.001 for securities priced between \$0.10 and \$1.00 per share, and \$0.0001 for securities priced below \$0.10 per share. ArcaEdge believes that these proposed MPVs create ample opportunities for executions in economically significant increments while reducing the incidence of market participants stepping ahead of customer limit orders.

Restrict Locked and Crossed Markets

ArcaEdge also supports FINRA’s proposal to require members to implement policies and procedures to avoid locking and crossing quotations and to enable the reconciliation of locked or crossed quotations. ArcaEdge agrees that displaying quotations that lock or cross previously displayed quotations is inconsistent with the maintenance of fair and orderly markets and prevents market efficiency. ArcaEdge believes the proposed ship and post provision provides enhanced investor protections by allowing a member firm to post an order after routing to the full displayed size.

² See Securities and Exchange Act Release No. 52280 (August 17, 2005), 70 FR 49959 (August 25, 2005) (Notice of filing of SR-NASD-2005-095).



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Going forward, ArcaEdge urges FINRA to consider additional rule amendments to address slow markets and their potential impact on market efficiency. We believe that FINRA should consider similar measures to those adopted by Reg NMS by excluding manual quotations from trade-through protection. In particular, ArcaEdge supports further amendments that allow a broker-dealer to reasonably determine, as part of its regular review of execution quality, to bypass such a market with manual quotations in the particular stock if its prior experience demonstrated that attempting to access the market would not be in its customers' best interest. In making its assessment, the broker-dealer would be entitled to consider both the likelihood of receiving an execution at displayed prices and the potential cost to its customers of failed attempts. Such an approach would vastly improve execution times and spreads for investors, creating a more efficient market with increased price rationality and ultimately increased liquidity in the OTC marketplace.

Implement a Cap on Access Fees

ArcaEdge strongly supports FINRA's proposal to allow access or post-transaction fees to be charged to non-subscribers. Under the current rule, an alternative trading system ("ATS") is prohibited from charging an access or post-transaction fee to non-subscribers unless such fee is included in the ATS's posted quote. Requiring ATSs to include fees within its quote is in direct conflict with the Interpositioning Rule and leaves the trade reporting obligations and Section 31(a) fees in question. Including non-subscriber fees in the posted quote also 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 has caused most ECNs not to register as an ATS and not to enter the OTCBB market. Further, over the past two years all other previously registered ATS' have abandoned the OTCBB marketplace. ArcaEdge is currently the only broker-dealer registered under Regulation ATS to participate within the OTCBB market and has long been penalized by the prohibition on non-subscriber access fees. This prohibition has limited competition and artificially supported a dealer-driven market to the detriment of investors. FINRA's proposed elimination of the requirement to reflect access fees in OTCBB posted quotes will foster a competitive and innovative market, by emphasizing an order-driven market, encouraging increased competition among ECNs, and eliminating an unfair competitive imbalance by leveling the playing field amongst all market participants. If in fact FINRA's proposal is not enacted, ArcaEdge respectfully requests that an interpretation be given as to how ATSs are able to include fees in their posted quotes without violating other FINRA rules.



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ArcaEdge further supports a uniform fee cap. FINRA's proposal sets the fee cap at \$0.003 per share for securities priced above \$1.00 and .3% of the quote for securities priced below \$1.00, consistent with Rule 610(c) of Reg NMS. ArcaEdge believes that a more appropriate fee cap is 30% of the MPV's that we have proposed above. This proposed fee cap is generally consistent with FINRA's proposal, but will also eliminate the potential for access fee gaming in securities priced below \$1.00. ArcaEdge believes this proposal represents a fair and appropriate resolution to the pending access fee issue. The cap will not materially interfere with current practices and should serve to establish equal regulatory structure across different trading systems, whereas currently some are permitted to charge fees while others are not.

In addition to the proposed fee cap, ArcaEdge urges FINRA to consider additional protections in the near future designed to support the principle of non-discriminatory pricing. Specifically, ArcaEdge suggests that FINRA consider rules designed to require broker-dealers to charge equal access or post transaction fees to all non-subscribers. ArcaEdge further believes such access fees should be required to be publically available. The proposed uniform fee cap combined with these additional investor protections would foster greater transparency and would prevent access fee gaming. Further, these proposed amendments provide for the equitable allocation of reasonable dues, fees, and other charges among OTC participants, thereby enhancing investor confidence in this marketplace.

Require the Display of Customer Limit Orders

Finally, ArcaEdge supports FINRA's limit order display proposal, which will promote competition, provide increased liquidity, and increase transparency. Under the proposal, a market maker displaying a priced quote must immediately display customer limit orders that better the market maker's displayed price and/or size. Publicizing accurate market interest increases transparency thereby increasing investor confidence. Currently potential investors in the OTC market sit on the sidelines due to wide spreads displayed at the minimum size. The requirement to display customer limit orders will foster increased quote competition and ultimately narrow the spreads, promote greater depth and liquidity, and minimize investor transaction costs.

Conclusion

The differences that currently exist between quoting and trading in OTC Equity Securities as compared to NMS securities are largely perpetuated by an outdated rule set. FINRA's proposal to restrict sub-penny quoting, generally prohibit locked and crossed markets,



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implement a cap on access fees and require the display of customer limit orders is a positive advancement, which will modernize and enhance the rules governing the OTC marketplace. ArcaEdge urges the Commission to approve SR-FINRA-2009-54, with certain revisions contained herein. ArcaEdge also respectfully urges FINRA to consider additional measures (as briefly outlined herein) designed to offer even greater investor protection by fostering a fair and orderly marketplace.

If you have any questions, please contact Matt Vaughn at (312) 442-7149 or Barry Scadden at (312) 442-7671.

Regards,

A handwritten signature in black ink, appearing to read "Janet McKissack". The signature is written in a cursive style with a large, looped initial "J".