

**MEMORANDUM**

**TO:** File Nos. SR-NASDAQ-2006-01<sup>0 26</sup> and SR-NASD-2006-48<sup>0 -16</sup>

**FROM:** Jon Kroeper  
Office of the Chairman

**RE:** Meeting with Representatives of Bloomberg Tradebook, Independent ECNs, and the National Stock Exchange

**DATE:** July 11, 2006

On July 11, 2006, I met with Bruce Garland and Greg Babyak of Bloomberg Tradebook LLC; Roger Blanc of Willkie Farr & Gallagher, representing Bloomberg Tradebook; David Franaziak, representing the Association of Independent ECNs (Direct Edge ECN LLC; Track ECN; and BATS Trading, Inc. and Bloomberg Tradebook); and Joseph Rizzello and Michael Boland, representing the National Stock Exchange. Messrs. Garland, Babyak, Blanc, Franaziak, Rizzello and Boland discussed the views expressed in their comments on the above-referenced proposed rule changes, including those set out in the attached document.

## Association of Independent ECNs and NASDAQ's Proposals

### Background:

- The Nasdaq Stock Market ("Nasdaq") has submitted two rule filings that would: (a) shift onto ECNs the fees currently charged to order-entry firms for delivery of orders to the ECNs via the Nasdaq Stock Market (File No. SR-NASDAQ-2006-048); and (b) eliminate Nasdaq's order-delivery function (File No. SR-NASDAQ-2006-001).
- These Nasdaq proposals, if adopted immediately, would have significant adverse market structure consequences, reducing liquidity and competition in the markets, with particular impact on ECNs.

### Association of Independent ECNs:

- The Association of Independent ECNs is in contact with all ECNs in the industry and specifically represents TRACK ECN, Direct Edge ECN, LLC, BATS Trading, Inc., and Bloomberg Tradebook, LLC.
- The Association of Independent ECNs reiterates the criticisms of the Nasdaq proposals previously made in a joint letter dated March 21, 2006, with BATS Trading, Inc., TRACK ECN, Direct Edge LLC, and Bloomberg Tradebook, as well as in our own separate comment letters dated May 5, 2006.
- The independent ECNs support the comments by Citigroup Global Markets Inc. and its affiliate OnTrade Inc. in their letter of May 17, 2006, and the comment letter by the U.S. Chamber of Commerce — the world's largest business federation — in its letter dated June 8, 2006. Additionally, the Association endorses the points Bloomberg Tradebook has been making in its letters, most recently its letter of June 23, 2006.

### Nasdaq's New Single Platform was Expected to be in December 2006:

- Nasdaq's filing proposes to expedite, by about five months earlier than initially expected, the integration of its trading platform. *Trader's Magazine* reported in a recent article that Nasdaq CEO Bob Greifeld, "told analysts last December that the integration [to a single trading platform] would be completed a year after closing on the INET acquisition, or December 7", which would be about "five months earlier than expected."<sup>1</sup> As this article illustrates, Nasdaq is attempting to

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<sup>1</sup> "Nasdaq Speeds Up U.S. Platform Integration," *Traders Magazine*, <http://www.tradersmagazine.com/articles.cfm?id=1&aid=2492&searchTerm=april%201,%202006>

roll-out its Single Book earlier than it previously announced, so the independent ECNs are not slowing down Nasdaq's initial timetable for a single platform.

- The expedited timing of this proposal was not anticipated by market participants, including ECNs that would be impacted most directly by the elimination of the order delivery functionality.

**There are no Immediately Viable Alternative Venues for ECNs, but ECNs are Cooperating and Focusing on Permanent Solutions:**

- The independent ECNs understand that they will eventually be required to move to another venue, but doing so immediately without a workable alternative will cause significant market dislocation, remove the economic viability of ECNs, and diminish the choices available to investors.
- This is not simply a dispute between Bloomberg Tradebook and Nasdaq, but it is an issue that will significantly disrupt the operations of all independent ECNs as well as the structure of the markets. The ECNs have sought other venues in anticipation of eventual adoption and roll-out of Single Book and we understand Bloomberg Tradebook is undertaking defensive measures as well.
- Only BATS Trading has migrated to the National Stock Exchange (NSX), but capacity and technological constraints limit the ability of additional independent ECNs to move to this venue at this time.
- There are currently no other viable alternative venues for ECNs in the near-term. However, the independent ECNs have been working with a regional stock exchange to allow for the migration of ECNs to its new trading platform after it has been beta tested and approved by the SEC, which is expected to take a total of approximately six months.
- Migration to a temporary venue, such as the Alternative Display Facility (ADF), is also unworkable, as it lacks a link to an execution facility. ADF connectivity costs are higher since there is no single connection to ADF participants; instead, connections to each ECN would have to be made separately. In addition, if ECNs were required to go to a temporary venue, all market participants would be required to devote programming resources to reach these temporary locations so as to fulfill best execution obligations, only to later expend additional resources and reprogram to reach the permanent locations.

**National Stock Exchange Capacity Issues Stem from Nasdaq Actions:**

- In a June 20, 2006, letter to Chairman Christopher Cox and the Commission, the National Stock Exchange clarifies the reasons for the capacity issues associated

with the NSX platform. In response to Nasdaq's assertion in its June 9 letter that Single Book should be approved to avoid "serious technology failure", NSX points out that the capacity issues were largely a result of Nasdaq's internal systems delays.

**Additional Time is Necessary to Promote a Competitive Marketplace:**

- Due to the lack of immediate viable alternatives, as referenced above, sufficient time is necessary for ECNs to migrate to a new venue. A reasonable delay of the Nasdaq proposals of about six months would provide an appropriate timeframe for a regional stock exchange to become operational, beta tested, and approved by the SEC. Such a timeframe would give the independent ECNs and the National Stock Exchange an opportunity to compete.
- We understand that the new NSX Blade platform, which will support ECNs in a "supermontage-type" fashion, is expected to be running by late August or early September. Based upon such a schedule and SEC approval, we anticipate the following timeline:
  - Late August / Early September – NSX Blade platform is launched.
  - Late September / Early October – Only until the platform is up and running can participants code into the new system, which is expected to take approximately 30 days. If all goes as planned, this would allow for the NSX Blade to be operational in early October.
  - October / November / December – NSX Blade is expected to become operational in October, however, beta testing would require additional time, which would be dependent upon the number of technological issues that may arise. When analyzing this timeframe it should be noted that the new NSX Blade system would represent the first time that a new platform would be set up that would attempt a full-scale launch into Nasdaq.