

Mary Yeager
Corporate Secretary



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Sent via rules-comment@sec.gov

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

**Re: Comments by ArcaEdge in Response to Release No. 34-56096;
File No. SR-NASDAQ-2007-037**

Dear Ms. Morris:

Archipelago Securities, L.L.C. ("ArcaSec") submits this comment letter in response to Securities and Exchange Commission ("SEC" or "Commission") Release No. 34-56096 concerning the recent filing by, and subsequent approval for, the NASDAQ Stock Market, L.L.C. ("Nasdaq"), file number SR-NASDAQ-2007-037, and Amendments No. 1 and No. 2 thereto ("Rule Filing"). ArcaSec generally supports the Rule Filing and the Commission's agreement with the underlying proposition that the requirement for member firms that do not handle, or would not otherwise contribute to the audit trail for, customer orders to transmit all order data information is onerous and not offset by an equivalent regulatory benefit. In consideration of the Rule Filing, ArcaSec requests that the changes proposed by Nasdaq be amended to include a category of "Order Routing Firm" based on similar reasoning for the adoption of "Proprietary Trading Firm." Additionally, in order that this proposal not fall short of its goal, we request that the Commission address the differences that the approval of the Rule Filing will create between the Order Audit Trail System ("OATS")¹ requirements of Nasdaq and The Financial Industry Regulatory Authority ("FINRA") (f/k/a the National Association of Securities Dealers, Inc. or NASD), namely how information from certain Nasdaq members does not further the intentions of OATS, yet when submitted by similar FINRA members, it is assumed that this information does benefit the audit trail of information and should continue to be required on a daily basis.

¹ OATS is an integrated audit trail of order, quote, and trade information for Nasdaq securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of FINRA and Nasdaq member firms.

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Background

As you are aware, ArcaSec is a facility, as that term is defined within the Securities Exchange Act of 1934 (“Exchange Act”), of the New York Stock Exchange, L.L.C. and NYSE Arca, Inc. (“NYSE Arca”) (collectively referred to herein as the “Exchanges”). As a facility, ArcaSec acts as the agency-only outbound routing broker for the Exchanges, submitting member orders to away venues in accordance with the provisions and requirements of Regulation NMS.² For the purposes of this letter, only the relationship between ArcaSec and NYSE Arca will be discussed in detail.³

Member firms of NYSE Arca subject to OATS reporting requirements submit applicable information to FINRA and/or Nasdaq, noting within such order the contra party of NYSE Arca as “ARCX”⁴ and a destination code of “XP.” Member firm orders may execute within the systems of NYSE Arca, or they may be routed through ArcaSec to another venue for execution. Any events occurring on or through NYSE Arca will not be reported⁵ to FINRA for OATS purposes, as NYSE Arca is not individually subject to OATS reporting requirements.⁶ As a result, the order information trail is broken; there is a significant disconnect between the order information submitted by the originating broker-dealer and the order events submitted by ArcaSec and any subsequent reporting party. This disconnect is in direct contrast to the transparency of customer order flow sought by OATS.

Nasdaq Rule Proposal

In its rule filing, Nasdaq proposes to create the defined term of, and grant a limited exception to the OATS reporting requirements for, a “Proprietary Trading Firm.” Nasdaq defines this term as a: “Nasdaq member that trades its own capital with all the trading being done in the firm’s accounts by traders that are owners of, employees of, or contractors to the firm. Additionally, a Proprietary Trading Firm does not have ‘customers,’ as that term is defined in Nasdaq Rule 0120(g) and is not a member of [FINRA].” Member firms eligible to meet this definition will not be required to transmit order data information to Nasdaq unless requested, but “would be responsible for maintaining and retaining information in a format that could be easily integrated into [FINRA’s] OATS system in the event Nasdaq Regulation makes a request for such information.”

² See 17 C.F.R. §240.600 *et seq.*

³ Of course, the arguments apply equally to both facility relationships.

⁴ See email from OATS Announcements dated November 17, 2004 assigning the Market Participant Identifier (“MPID”) of “ARCX” for the Archipelago Exchange, L.L.C. (n/k/a NYSE Arca).

⁵ Section 4.2.5 of the OATS Technical Specifications, dated March 21, 2007, contains the note “When [a FINRA member] firm sends an order to another exchange for further handling or execution, [FINRA] considers the order routed. In these cases, the member must submit order route information and not order execution information to OATS.”

⁶ NYSE Arca maintains all relevant information comparable to OATS data within a separate, proprietary order/execution database known as ArcaVision[®]. Information from ArcaVision[®] is used for regulatory inquiries relating to NYSE Arca member firm activity.

In support of this limited exemption, the Commission stated in its notice and approval order that the principal objective of OATS is “customer protection through transparency of the executions of customer orders.” The Commission also explained that “OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution.” In its filing, Nasdaq assessed the benefits of OATS in the context of Proprietary Trading Firms and concluded that requiring OATS submissions by Proprietary Trading Firms was “onerous and not offset by an equivalent regulatory benefit.”

We believe the arguments presented by Nasdaq, and supported by the commenter,⁷ for the creation of the “Proprietary Trading Firm” category apply equally to the business of an order routing facility, such as ArcaSec, and its operations on behalf of one or more non-member exchanges. The disconnect of relevant OATS information, as described above, does not serve the intent to create an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the originating broker-dealer and its customer.

Request for Extension of Limited Exception

ArcaSec respectfully requests that: (1) Nasdaq amend its Rule Filing to include a similar exemption for the category of “Order Routing Firm,” and (2) the Commission require FINRA to amend its OATS requirements to include the same categories and exemptions.

As discussed above, ArcaSec does not conduct any customer business. Further, the information submitted by ArcaSec to OATS does not contribute to the time-sequenced record of customer orders and transactions intended for customer protection through transparency. Additionally, we believe the efforts of collecting, reporting, and resubmitting OATS information on behalf of ArcaSec is quite onerous and lacks any regulatory affect.

Therefore, it is for these similar reasons noted within the Commission’s approval order for the Rule Filing that we request Nasdaq to exempt member firms who qualify as an “Order Routing Firm” from the daily OATS reporting requirements in addition to members solely trading for their own account.

In addition, we believe the OATS reporting requirements of FINRA and Nasdaq, should be uniform. There is one reporting system for OTC securities—OATS—and it serves a singular purpose—immediate transparency of customer order flow. We believe any disparate treatment would be unduly burdensome to member organizations, and that continued requirements by FINRA to require same or similar members, that are otherwise exempted by Nasdaq, to continue to report OATS information on a daily basis would conflict with the cooperative effort required

⁷ See letter from Stephen Schuler, Managing Member, Global Electronic Trading Company, LLC to Nancy M. Morris, Secretary, Commission, dated July 3, 2007.

within Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.⁸ As the Commission has agreed that such information submitted by “Proprietary Trading Firms” and “Order Routing Firms,” as proposed herein, does not immediately serve the intentions of OATS, any exemption granted thereto should be uniform among all self-regulatory organizations in order to promote efficiency and competition⁹ among member firms subject to the same reporting mechanism.

Conclusion

For the foregoing reasons, we request that Nasdaq expand its limited exemption to its OATS reporting requirements to encompass both Proprietary Trading Firms and Order Routing Firms, and that the Commission require FINRA to amend its OATS requirements to include the same exemptions. Further, we believe it would be appropriate for FINRA and Nasdaq to amend their respective definitions¹⁰ of “customer” to also exclude exchanges, so as to properly address the relationships that may now exist between a broker-dealer member and a national stock exchange, such as the relationships that exist between ArcaSec and the Exchanges.

If you have any questions concerning our views, please contact the undersigned at (312) 442-7149 or Andrew Stevens at (312) 442-7632.

Regards,



Greg O'Connor
Chief Compliance Officer

⁸ Sections 6(b)(5) and 15A(b)(6) both require “[t]he rules of the [self-regulatory organization be] designed ... to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities...”

⁹ Footnote 7 of Release No. 34-56096 notes the Commission’s consideration of SR-NASDAQ-2007-037, and the amendments thereto for “the amended proposed rule change’s impact on efficiency [and] competition...”

¹⁰ See FINRA Rule 0120(g) and Nasdaq Rule 0120(g).