

OES MarketGroup

August 20, 2007

Sent via rules-comment@sec.gov

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

**Re: Comments by Order Execution Services Holdings, Inc. in response to Release No. 34-56096; File No. SR-NASDAQ-2007-037**

Dear Ms. Morris:

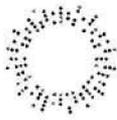
Order Execution Services Holdings, Inc. appreciates the opportunity to submit this comment letter in response to Securities and Exchange Commission (“SEC” or “Commission”) Release Number 34-56096 that pertains to the recent filing by, and subsequent approval for, the NASDAQ Stock Market, LLC (“Nasdaq”), file number SR-NASDAQ-2007-037, amendments Number 1 and Number 2 thereto (“Nasdaq Rule Filing”).

Order Execution Services Holdings, Inc. (“OES”) is the parent company of PRO Securities, LLC (“PRO”) and ISERoute, LLC (“ISERoute”), both members of The Financial Industry Regulatory Authority (“FINRA”) (f/k/a The National Association of Securities Dealers, Inc. or NASD). PRO and ISERoute are exchange facilities, as that term is defined within the Securities Exchange Act of 1934 (“Exchange Act”), acting as the outbound routing broker-dealer facility for the Philadelphia Stock Exchange, Inc. and the ISE Stock Exchange, LLC, respectively. As such, OES supports the premise of the comment letter submitted by Archipelago Securities, LLC (“ArcaSec”)<sup>1</sup> that the Nasdaq should expand its limited exemption to its OATS reporting requirements to include both Proprietary Trading Firms and Order Routing Firms, and that the Commission require FINRA to amend its OATS requirements to include the same exemptions. OES also generally supports the Nasdaq Rule Filing and the Commission’s agreement with the underlying proposition that requiring member firms that do not handle customer orders to transmit all order data information does not contribute regulatory benefit to the audit trail, and that this low value of regulatory benefit does not justify the onerous and burdensome efforts made by member firms to transmit the order data information.

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<sup>1</sup> See letter from Mr. Greg O’Connor, Chief Compliance Officer, to Ms. Nancy M. Morris, Secretary, SEC, dated July 30, 2007.

**All ways there.**



OES wishes to emphasize the need for the OATS reporting requirements of FINRA and Nasdaq to be uniform. We agree with ArcaSec's position that, "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 within Sections 6(b) and 15A(b)(6) of the Exchange Act."<sup>2</sup> PRO and ISERoute are members of FINRA and are not members of Nasdaq. Thus, without uniformity both firms may potentially be held to FINRA OATS reporting requirements that are not in sync with the OATS reporting requirements for Nasdaq members with similarly defined business operations.

OES notes that PRO and ISERoute operate consistent with the Commission's logic for issuing the approval order for the Nasdaq Rule Filing in that they do not conduct business with public customers, their OATS order data does not contribute to the life of the customer order time-sequence, the data does not provide customer protection through transparency, and the requirement for the two firms to collect, report and resubmit OATS information are onerous and burdensome. PRO and ISERoute will continue to collect, maintain and retain order data information on a format that could easily be integrated into the OATS system in the event FINRA or another self-regulatory organization makes a request for such information.

OES further notes and requests that by extension of this rationale to exempt exchange order routing facility broker-dealers from OATS reporting requirements, any Nasdaq amendment include the following: that any broker-dealer used by an order routing facility broker-dealer as a conduit to one or more automated trading centers shall be exempt from OATS order data reporting requirements for those orders specifically received from the order routing facility broker-dealers. OES owns and operates broker-dealers that act as conduits to automated trading centers for PRO, ISERoute and ArcaSec. These agency broker-dealers, in their capacity as conduits to automated trading centers for the order routing facility broker-dealers, do not conduct business with public customers, their OATS order data does not contribute to the life of the customer order time-sequence, the data does not provide customer protection through transparency, and the efforts by these firms to collect, report and resubmit OATS information are onerous and burdensome.

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<sup>2</sup> Archipelago Securities, LLC letter, dated July 30, 2007, Pages 3 and 4.



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In closing, OES joins ArcaSec in respectfully requesting that Nasdaq amend its Nasdaq Rule Filing to include a similar exemption for the category of Order Routing Firm and to petition FINRA to amend its OATS requirements to include the same categories and exemptions. Furthermore, OES requests that the exemption include Conduit Broker-Dealers under the definition of an Order Routing Firm.

Should any questions arise concerning this comment submission, please feel free to contact me at (609) 430-4979, or via e-mail at [mbarth@tradeoes.com](mailto:mbarth@tradeoes.com).

Sincerely,

Michael A. Barth  
Executive Vice President  
Order Execution Services Holdings, Inc.