

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

July 19, 2006

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

Re: SR-NSX-2006-08

Dear Ms. Morris:

Order Execution Services Holdings, Inc. ("OES") submits to the Securities and Exchange Commission ("Commission") this comment letter regarding the National Stock Exchange' ("NSX") proposed rule change, SR-NSX-2006-08, to amend its trading rules and provide a new trading model and market structure that is based on strict price-time priority and automatic execution of orders. In addition, the NSX proposes to make other related changes including seeking from the Commission approval of NSX Securities, LLC ("NSX Securities"), a wholly-owned broker-dealer subsidiary of the NSX, to be the outbound router facility (as facility is defined in Section 3(a)(2) of the Act) of the NSX. OES believes that the sections of the proposed rule change relating to routing orders outbound from the NSX to away trading centers appears to be inconsistent with the definition of an exchange found in Rule 3b-16 of the Exchange Act.

First, in the NSX' published rule change it is stated on page number 113 that NSX Securities will receive routing instructions from the NSX. Specifically, in the proposed NSX Rule 11.15(a)(ii)(A) it states, "The order will be converted into one or more limit orders, as necessary, to be matched for execution against each protected quotation at the Protected NBBO available at away trading centers." Notwithstanding the NSX' regulatory obligations to route on a non-discretionary basis intermarket sweep orders according to Rule 611 of Reg NMS, the proposed NSX Rule 11.15 places the routing decision, and therefore discretion, with the NSX rather than its facility broker-dealer NSX Securities. The NSX will be acting as agent for the orders designated for routing away and will use some discretionary logic to determine where to route orders. The NSX, as an exchange, will by rule be allowed to use fiduciary discretion to determine routing instructions of orders designated to be routed away to trading centers. The NSX is not a broker-dealer and allowing it to make discretionary routing decisions is inconsistent with the definition of an exchange in Rule 3b-16 in that it does not: (1) *bring together the orders of multiple buyers and sellers*; and (2) *uses established, non-discretionary methods under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.*

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OES believes that it is inconsistent with the definition of an exchange found in Rule 3b-16 of the Exchange Act for the NSX to be allowed to perform the agent role of a broker-dealer, and that the Commission should consider requiring that any discretionary routing decisions in the new NSX trading model be made by the broker-dealer facility, NSX Securities. These modifications should be specifically described in the proposed rule submitted by the NSX.

Second, SR-NSX-2006-08 insufficiently describes how NSX Securities will route orders to other trading centers. As described in the proposed rules, NSX Securities will be registered as a member or ETP Holder with the NASD and NSX. Therefore, NSX Securities will not be able to act as an introducing broker at any away trading center other than the NASD' ADF. It appears to OES that in order to successfully complete outbound routing of orders from the NSX, NSX Securities or the NSX will need vendors providing trading center connectivity, membership or other permissioning for sponsored access, and broker-dealer agency execution services. OES believes that in order to protect the best interests of investors and market participants, the proposed rule should be complete and sufficiently describe the manner in which orders will be routed away to trading centers.

Lastly, the NSX asserts that NSX Securities will not engage in any business other than as an outbound router function and any other business that the Commission approves. The direct affiliation of the NSX with the outbound router business of its wholly-owned broker-dealer subsidiary puts it in direct competition with other members of the NSX. Many broker-dealer members of the NSX provide private linkage, routing and sponsored access to trading centers throughout the National Market System. Rather than having the NSX be an exchange organization that constitutes, maintains, or provides a market place or facilities for bringing together buyers and sellers, the NSX will be empowered through NSX Securities to possibly alter its business model in ways where its "exchange business" is predominantly the services of a broker-dealer and contrary to providing a market place that itself brings together buyers and sellers. The NSX will be in a commercial conflict of interests with some of its members and potentially be positioned to hold unfair competitive advantages through its regulatory and operational positions as a SRO and an exchange.

As a result of Reg NMS, exchanges will hold a critical potential commercial advantage as trading centers because Reg NMS requires that their automated quotes be protected, and this will result in other trading centers as well as a large population of broker-dealers to have connectivity to the exchanges for access purposes. The NSX can take advantage of this rule-mandated access as a competitive edge for its non-exchange business via NSX Securities in that it will have a large population of potential business connected to the exchange, which it can market to solely provide low cost away market access through its outbound router facility. This unfair competitive position certainly was not the intended result of Reg NMS by the Commission, however it will have been created because

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exchanges can use the increased connectivity of broker-dealers to provide agency broker-dealer services rather than exchange services. OES believes that the NSX will have an unfair structural or operational advantage over its members, enabling it to further its commercial interests in competition with, and to the detriment of, its members. OES believes that in circumstances such as those the NSX proposes to implement, exchange ownership of broker-dealers is an inappropriate conflict of interests, and the Commission should not allow further ownership or tightly restrict the business activities of the broker-dealers.

The Commission previously grappled with the definitions associated with exchanges and broker dealers in Reg ATS, the approval orders for the Archipelago Exchange and the Nasdaq Exchange. OES has consistently interpreted the Commission's actions to be an attempt to maintain distinct and fair definitions between exchanges and broker-dealers, and especially to eliminate conflicts of interests where exchanges directly compete with their member broker-dealers. It also seems that the Commission desired to keep any broker-dealer subsidiaries of exchanges limited and strictly for single-purpose functions that support the definition of an exchange found in Rule 3b-16 of the Exchange Act.

OES believes that for a number of reasons, including the proposal to allow the NSX to act as an agent with routing discretion and the unintended competitive advantages received by exchanges as key access points in Reg NMS, that in this case NSX ownership of a broker-dealers is inappropriate or should be strictly controlled.

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.

Sincerely,

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