



**SENT VIA ELECTRONIC AND OVERNIGHT MAIL**

May 13, 2008

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2008-011**

Dear Ms. Morris:

Direct Edge ECN LLC ("Direct Edge") welcomes the opportunity to offer our comments to the Securities and Exchange Commission ("Commission") on the recent rule filing of the Financial Industry Regulatory Authority ("FINRA") in which FINRA proposes an "executing party" trade reporting framework and, further, requiring members with the trade reporting obligation under FINRA rules acting as riskless principal or agent to submit non-tape (i.e., non-media) reports to FINRA, as necessary, to identify such other members as a party to the trade.

Direct Edge respectfully submits that the proposed rules raise serious and broad policy questions that require FINRA to provide significantly greater information and transparency regarding its operations before the efficacy of this proposal can be fairly evaluated. It also appears that the proposal would introduce duplicative reporting with little added regulatory benefit. The discriminatory treatment of alternative trading systems ("ATs") compared to other broker-dealers also appears unwarranted and requires further explanation.

FINRA's rule proposal does not discuss the fees and economic impact of such fees associated with the new reporting requirement.

Direct Edge is one of the largest individual users of exchange-operated TRFs. Competition among the operators of TRFs has been an essential component of the competitive dynamic among exchanges, ECNs and ATs. Accordingly, the economic relationship between FINRA and exchange-operators of TRFs, and rule proposals that can materially impact that relationship, are critically important to inter-market competition that has served our markets so well.

It is in this context that FINRA's proposal to require submission of non-media reports be evaluated. We understand that FINRA does not distinguish between media and non-media reports when assessing fees upon the exchange-operators of TRFs.<sup>1</sup> Based on our participation and experience with the FINRA/NSX TRF, NSX has passed through fees to its participants related to the submission of non-media reports.<sup>2</sup> We understand these fees assessed by NSX directly correlate to charges imposed by FINRA against the NSX for the processing of these non-media reports. FINRA's filing is devoid of any reference to this important impact of the proposal.

Direct Edge submits to the Commission that the potential economic impact associated with FINRA's rule proposal is a critical element to consider. The proposal neither speaks to whether FINRA made such economic impact analysis nor does it address the potential impact upon its membership if such analysis has taken place. As users of FINRA's facilities and systems, market participants are entitled to know how such fees and charges are calculated and allocated before FINRA imposes such fees.

FINRA already requires member firms to submit detailed daily information onto its OATS system. FINRA does not address why its OATS system is an inadequate source for FINRA to rely upon.

If made effective, the proposed rule filing would require a significant number of additional non-media trade reports to be submitted to FINRA. In addition to the explicit cost impact as discussed above, this will likely result in higher costs for FINRA members by virtue of the capacity, storage and other capacity enhancements required to meet the new requirements.

FINRA's OATS requirements already generally require members to submit detailed information on orders received by the member. This broad requirement does not distinguish between media or non-media events. As the FINRA staff can attest to, Direct Edge sends daily files containing upward of 17 million order events, containing both media and non-media events.

Direct Edge offers to the Commission that the submission of non-media events to both a TRF and to FINRA's OATS system is duplicative. To justify these new compliance burdens, FINRA needs to address in greater detail whether FINRA is able to garner the non-media information from its OATS system, and explain the reasons why this system is inadequate for purposes of analyzing non-media events.

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<sup>1</sup> It is impossible to make this statement with certainty given that FINRA does not publicly disclose the fees assessed for TRF supervision. Given FINRA must disclose fees assessed on broker-dealers generally under the Exchange Act, and that fees for TRF operation flow through to broker-dealers as discussed above, this lack of transparency is questionable.

<sup>2</sup> See SR-FINRA-2008-004 (February 8, 2008) (assessing a fee of \$0.0075 for each non-media trade report submitted to the FINRA/NSX TRF).

FINRA fails to adequately offer a compelling reason to discriminate against ATSs and ECNs with respect to the proposed implementation date.

Because FINRA asserts that since ATSs are currently the reporting party for transactions executed on the ATS and *some* voluntarily submit the applicable non-tape reports, FINRA's proposal calls for a 90 day implementation timeframe for ATSs (and ECNs) compared to a 180 day implementation timeframe for all other market participants.

While Direct Edge, as an ECN, submits the daily applicable trade reports as the reporting party (upwards of hundreds of thousands), we advise the Commission that we do not voluntarily submit associated non-media reports. Doing so will, in essence, cause us to submit at least double the amount trade reports to the TRF (as one media report will trigger as least one non-media report).

We offer to the Commission that such technological change is not a trivial endeavor. Notwithstanding this notion, it is unfair for FINRA itself to make the determination, implicitly or explicitly, that ATSs and ECNs are so less burdened by the required substantial technological change, that FINRA seeks to impose an implementation date that is half compared to all other market participants.

Simply stating that "some" ATSs voluntarily submit non-tape reports does not rise to a compelling reason to call for ATSs such as Direct Edge to submit double the amount of trade reports in half the time than that of other market participants who must implement the same change.

Direct Edge requests the Commission to examine and consider these critical issues and take such action as the Commission deems appropriate.

Thank you again for providing us with the opportunity to comment on this rule proposal, and we would welcome the opportunity to discuss our comments with the Commission.

Sincerely yours,



Romeo Bermudez  
Chief Compliance Officer