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June 28, 2006

VIA FEDERAL EXPRESS

CONFIDENTIAL

Mr. Robert L.D. Colby
Acting Director
Division of Market Regulation
U.S. Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549

RE: Direct Edge ECN LLC
Extension of No-Action Relief

Dear Mr. Colby:

Reference is made to the no action letter (the "No Action Letter"), dated March 3, 2006, issued by the Division of Market Regulation (the "Division") of the U.S. Securities and Exchange Commission (the "Commission"), to Direct Edge ECN LLC ("Direct Edge LLC"), a broker-dealer registered with the Commission and an indirect, wholly-owned subsidiary of Knight Capital Group, Inc., a Delaware corporation ("Knight").

Based upon representations made to the Division in a letter from Direct Edge LLC to the Division dated February 23, 2006, the Division took the position in the No Action Letter that the *Direct Edge ECN*, an alternative trading system sponsored by Direct Edge LLC is: (i) an "electronic communications network" as defined in Rule 600(b)(23) of Regulation NMS¹ promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act"); and (ii) in compliance with the requirements applicable to the ECN Display Alternative² with respect to Nasdaq securities for which a linkage between the *Direct Edge ECN* and one or more national securities exchanges or national securities associations (collectively, "SROs") or the National Association of Securities Dealers, Inc. ("NASD") Alternative Display Facility ("ADF") is operational and *Direct Edge ECN* provides access to certain orders

¹ 17 CFR 242.600(b)(23)

² 17 CFR 242.602(b)(5)(ii)



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pursuant to the terms of the ECN Display Alternative. In addition, the Division agreed that it would not recommend that the Commission take enforcement action against any OTC market maker or exchange market maker (as such terms are defined in the Order Execution Rules³) for entry into the *Direct Edge ECN* of: (a) orders without modifying their public quotations in compliance with the ECN Display Alternative; and (b) customer limit orders, in compliance with the Limit Order Display Rule⁴.

The No Action Letter expires by its terms on June 28, 2006. Accordingly, Direct Edge LLC hereby respectfully requests that the Division extend their no-action position vis-à-vis *Direct Edge ECN*, both in terms of time and to include trading of all NMS stocks⁵ on the *Direct Edge ECN*. To support such extension, Direct Edge LLC makes the following representations upon which the Division may rely:

1. Direct Edge LLC is registered with the SEC as a broker-dealer under Section 15 of the Exchange Act and is a member of the NASD and the National Stock Exchange. Direct Edge LLC operates an alternative trading system known as the *Direct Edge ECN* pursuant to Regulation ATS⁶ under the Exchange Act. The *Direct Edge ECN* is an “electronic communications network” as defined in Regulation NMS⁷, and permits OTC market maker and exchange market maker subscribers electronically to enter orders in NMS stocks directly into the *Direct Edge ECN* order book.

³ 17 CFR 242.602 and 17 CFR 242.604

⁴ 17 CFR 242.604

⁵ 17 CFR 242.600(b)(47)

⁶ 17 CFR 242.300-303

⁷ See Footnote 1, *supra*



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2. Direct Edge LLC has established and will maintain⁸ an automated linkage with one or more SRO trading facilities⁹ and/or SRO display-only facilities¹⁰ and provides to such SRO trading facilities and/or SRO display-only facilities¹¹ the “top of book”, i.e., best bid/ask by time priority, aggregated by choice of display venue and security symbol for all orders displayed to more than one subscriber¹² in the *Direct Edge ECN* order book¹³ for inclusion in

⁸ There is and will be redundant network connectivity between the *Direct Edge ECN* and any SRO trading facility and/or SRO display-only facility to which the *Direct Edge ECN* is linked. Connectivity is and will be continuously and systematically monitored. In the event both the primary and redundant *Direct Edge ECN* connectivity to any SRO trading facility and/or SRO display-only facility is interrupted and such interruption affects the ability of *Direct Edge ECN* to display quotes, the *Direct Edge ECN* administrator will immediately notify all SRO trading facilities and/or SRO display-only facilities to which *Direct Edge ECN* is linked and will cancel *Direct Edge ECN*'s quotes from the affected SRO trading facility and/or SRO display-only facility. In addition, Direct Edge LLC will immediately send a broadcast email to all *Direct Edge ECN* subscribers advising them of the nature of the interruption; if the interruption impacts the ability of *Direct Edge ECN* to display or execute orders, subscribers will be advised to seek alternate execution/display destinations until service can be restored.

⁹ 17 CFR 242.600(b)(72)

¹⁰ 17 CFR 242.600(b)(71)

¹¹ Subscribers choose an available display venue, i.e., an SRO trading facility or an SRO display-only facility, at the time of order entry.

¹² Order types that are not displayed by definition in the *Direct Edge ECN* order book are not included in the determination of “top of book” for a security in the *Direct Edge ECN*. Accordingly, exchange market makers and OTC market makers that determine they have display obligations pursuant to the Quote Rule or the Limit Order Display Rule with respect to a particular order must not enter such order as an order type that is not displayed by the *Direct Edge ECN*. For example, if an OTC market maker has a display obligation with respect to a specific order, the OTC market maker should not enter the order type “non-displayable book” as these orders are not displayed in either the *Direct Edge ECN* order book or in the “top of book” on any SRO trading facility or SRO display-only facility.



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the quotation data made available by such SRO trading facilities and/or SRO display-only facilities to vendors pursuant to the Quote Rule¹⁴.

3. *Direct Edge ECN* accepts only orders that can be automatically executed pursuant to their terms and will not post any "manual quotations".¹⁵
4. Non-subscriber broker-dealers that have access to an SRO trading facility and/or SRO display-only facility are able to: (i) view the "top of the book" quotes of the *Direct Edge ECN* displayed through such SRO trading facility or SRO display-only facility; and (ii) effect a transaction against the quotes contained in: (a) an SRO trading facility montage, via such SRO trading facility's platform; or (b) an SRO display-only facility, either via an SRO trading facility's platform (assuming any quote entered in an SRO display-only facility is also displayed in the SRO trading facility), or through a private linkage system between such non-subscriber broker-dealer and the *Direct Edge ECN*. Direct Edge LLC will provide to such non-subscriber broker-dealers: (A) for *Direct Edge ECN* quotes displayed on an SRO trading facility, access to such quotes that is functionally equivalent to the access that is generally available for quotes displayed by an SRO trading facility, or (B) for *Direct Edge ECN* quotes displayed in an SRO display-only trading facility, a level and cost of access to such quotations that is substantially similar to the level and cost of access to quotations displayed by SRO trading facilities in that stock, respectively.¹⁶

¹³ In determining the "top of book" for each display venue, Direct Edge LLC aggregates displayable orders received from all subscribers, including OTC market makers, exchange market makers and non-market maker orders.

¹⁴ 17 CFR 242.602

¹⁵ 17 CFR 242.600(b)(37)

¹⁶ Currently, *Direct Edge ECN* quotes contained in an SRO trading facility's montage are accessed through order delivery execution service functionality incorporated into the relevant SRO trading facility's platform. *Direct Edge ECN* quotes contained in an SRO display-only facility are currently accessed via a private linkage system either: (1) directly, via a leased line, e.g., 56K, T-1, or (2) indirectly, through a *Direct Edge ECN* broker-dealer subscriber or third party service bureau. To that end, Direct Edge LLC has established relationships with third party service bureau(s) that enable such non-subscriber to access the *Direct Edge ECN* quote. In addition, a participant in an SRO trading facility or SRO



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5. Direct Edge LLC responds to orders entered into the *Direct Edge ECN* through access to an SRO trading facility, or through a private linkage system to the *Direct Edge ECN* for quotes displayed in an SRO display-only facility, no slower than *Direct Edge ECN* responds to orders entered directly by subscribers into the *Direct Edge ECN* book.¹⁷
6. Direct Edge LLC charges non-subscriber broker-dealers a rate no more than the fee Direct Edge LLC charges a substantial portion of its active broker-dealer subscribers, plus any fee charged to Direct Edge LLC by an SRO trading facility or SRO display-only facility. Direct Edge LLC will comply with the applicable fee limitations for non-subscriber broker-dealers pursuant to Regulation NMS.
7. *Direct Edge ECN* has sufficient capacity to handle the volume of data reasonably anticipated to be conducted in *Direct Edge ECN*. Direct Edge LLC conducts periodic reviews and testing to: (i) ensure future capacity; (ii) identify potential weaknesses; and (iii) reduce the risks of system failures and threats to system integrity.

Based on the foregoing, Direct Edge LLC hereby respectfully requests that the Division extend the no action position contained in its No Action Letter.

display-only facility may access the quotes in an SRO trading facility or SRO display-only facility directly by telephone to Direct Edge LLC.

¹⁷ An order delivered automatically by an SRO trading facility to the *Direct Edge ECN* on behalf of a broker-dealer that wishes to access the *Direct Edge ECN* quote displayed on such SRO trading facility's montage via the SRO trading facility, or an order delivered via a private linkage system from a broker-dealer that wishes to access a quote from *Direct Edge ECN* displayed in an SRO display-only facility, electronically enters the *Direct Edge ECN* order book as a "subscriber order" and is treated pari passu by the *Direct Edge ECN* with orders received in the same security from other *Direct Edge ECN* subscribers, i.e., by price/time priority.



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Please do not hesitate to contact me at the phone number listed above if you have any questions or comments regarding this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Karen P. Mohr".

Karen P. Mohr
Director and Associate General Counsel

cc: William Karsh
Ronald Pasternak
Romeo Bermudez