

October 3, 2007

Via Electronic Mail (rule-comments@SEC.gov)

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

Re: File No. SR-FINRA-2007-006 (Historic TRACE Data)

Dear Ms. Morris

The Market Data Subcommittee of the Securities Industry and Financial Markets Association (“SIFMA”)¹ Technology and Regulation Committee appreciates the opportunity to comment on SR-FINRA-2007-006. FINRA has proposed this rule change in response to industry need for a new data product (“Historic TRACE Data”), FINRA previously solicited member views through an NASD Notice to Members, and FINRA has stated that it has set the proposed fee at a level only to recoup costs for creating the necessary database and distributing the data. In short, FINRA has taken the approach that SIFMA has long advocated with respect to the other SROs’ market data products.

The fact that FINRA’s proposed fees are substantially lower than those for other market data products of similar type and complexity currently under review at the Commission demonstrates again the pressing need for the SEC to conduct a public formal review of the costs underlying those market data fee proposals to prevent unfair and unreasonable fees and assure compliance with statutory requirements.² Our comments below briefly elaborate on the cost and fee issue as it pertains to Historic TRACE Data, as well as two technical aspects of the proposed rule.

The rule proposal states that FINRA is establishing its fee “to offset the costs of developing and maintaining the new Historic TRACE Data database and providing such

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² See, e.g., Letter from Ira Hammerman, SIFMA, *In the Matter of NetCoalition*, File No. SR-NYSEArca 2006-21 (Aug. 1, 2007).

data to vendors, members, and other users.” Through a follow-up conversation with FINRA staff, we understand that FINRA’s intent is only to recover costs associated with this particular product, some of which it has already incurred in building the database.

Significantly, FINRA’s cost-based approach does not attempt to bootstrap regulatory costs or other costs relating to its role in overseeing the fixed income markets. Nor is it trying to subsidize competitive activities or generate profits to be used for foreign acquisitions. This is in stark contrast to what NYSE, Nasdaq, Amex, and NYSEArca have indicated in relation to their pending market data proposals. We only hesitate to fully support FINRA’s proposal because of the absence of cost information in the public file to enable SIFMA and its members and others to comment on it. Without actual cost information, a reviewer is not able to verify whether FINRA’s proposed fees are reasonably related to its costs and therefore are “fair and reasonable” and an “equitable allocation of . . . reasonable charges” – the required standards under the Securities Exchange Act of 1934.

We appreciate that FINRA has proposed a straightforward fee that appears to be devoid of multipliers (*e.g.*, there are no per user or per data query charges) and a rule that does not restrict the use of the data. The fee, assuming it is structured as described further below, will be manageable for SIFMA’s members to estimate and implement. FINRA’s approach promotes administrative ease, in contrast to the approach the exchanges take with respect to their market data programs which are highly restrictive and require complicated per “subscriber” fees, tracking, and ongoing reporting burdens.

Based on the notice of the proposed rule change as well as a clarifying conversation with FINRA staff, we understand that the fee schedule includes an initial set-up fee of \$2,000; an additional fee of \$2,000 per calendar year of data (*e.g.*, if a firm wants 2003, 2004, and 2005 data, that would be \$6,000); and a bulk redistribution fee of \$1 per CUSIP per calendar year with a maximum fee of \$1,000 per calendar year for each recipient of re-distributed data (*e.g.*, if a vendor wants to re-distribute all available CUSIPs for 2003, 2004, and 2005, that would be an additional \$3,000 per recipient). There is no redistribution fee for internal distribution within a member firm or for sharing extracts of the data with a firm’s clients. Moreover, a firm’s agreement with FINRA will cover the entire firm, its affiliated entities, and their respective individual users without additional charge. In other words, all affiliated entities and employees within them are covered by one fee and one license. The measure of count is the same in calculating redistribution fees for third-party organizations to which SIFMA members redistribute data. We ask the SEC staff and FINRA to clarify if the above assumptions, based on our conversation with FINRA’s staff, are incorrect.

If approved, we would expect that FINRA will monitor its ongoing costs in light of future demand for the data, and adjust its fee accordingly if the revenue from Historic TRACE Data begins to out-pace the costs for compiling and disseminating the data (*i.e.*, the fees collected cease being reasonably related to the costs). For example, if vendors begin widely redistributing the data, the redistribution fees paid to FINRA could result in revenues far exceeding the costs of providing the data. Again, underlying cost data is a

prerequisite for ascertaining whether fees are, and remain, reasonably related to cost, which, in this case, FINRA has stated that its fees are intended to “offset” its cost.

There are two additional points for comment. First, the proposal does not include a non-professional fee. Instead, as the proposing release states, FINRA will respond to requests from non-professionals in an “ad hoc” manner and charge a fee “to cover the administrative and operational costs of responding to such a request.” Under the specific circumstances of Historic TRACE Data and the likely usage and need for this data, SIFMA has no objections to this approach. We do not, however, think such an ad hoc approach to non-professional access to market data would be appropriate in other contexts.

Second, as part of the proposal – a component which the SEC should explicitly approve or disapprove in its order – FINRA has asked that it be able to change the elements of Historic TRACE Data “by FINRA Notice or other equivalent publication.” Based on FINRA’s representation that future changes would be “to respond to user needs, improve the usefulness of the data, and foster the extensive use of such data in research on the OTC corporate bond markets” and FINRA’s stated position that the service is priced only to recover costs, the change-by-notice approach seems reasonable. We ask, however, that FINRA announce such future changes in an official FINRA Notice unless the “equivalent publication” is spelled-out in the order of approval. We do not think it is likely that a change-by-notice approach would be appropriate for other market data products that are more controversial in nature.

Thank you for your time and consideration of these views. If you have any questions regarding this letter, please contact Melissa MacGregor, SIFMA, 202-434-8447.

Respectfully submitted,

Christopher Gilkerson and Gregory Babyak

Co-Chairs, Market Data Subcommittee of
the SIFMA Technology and Regulation
Committee

cc: The Hon. Christopher Cox, Chairman, SEC
The Hon. Paul S. Atkins, Commissioner, SEC
The Hon. Annette L. Nazareth, Commissioner, SEC
The Hon. Kathleen L. Casey, Commissioner, SEC
Dr. Erik R. Sirri, Director Division of Market Regulation, SEC
Robert L.D. Colby, Deputy Director Division of Market Regulation, SEC
Brian Cartwright, General Counsel, SEC
Sharon Zackula, Associate Vice President and Associate General Counsel,
FINRA