THE NELSON LAW FIRM, LLC | White Plains Plaza One North Broadway White Plains, New York 10601
tel 914.220.1900 fax 914.220.1911 thenelsonlawfirm.com

March 31, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: File No. SR-FINRA-2009-004 (Relating to TRACE Expansion)

Ladies and Gentlemen,

The Nelson Law Firm, LLC respectfully submits the following comments on the proposal by the Financial Industry Regulatory Authority, Inc. ("FINRA") to broaden the definition of "TRACE-eligible security" in FINRA Rule 6710(a). We strongly support the proposal described in SR-FINRA-2009-004 because it provides for increased price transparency in the market by broadening the range of securities for which trades must be reported and disseminated in the TRACE system.

While we approve of FINRA's efforts to broaden the range of securities that are subject to TRACE reporting, and agree with its view that increased price transparency is beneficial to market participants, we strongly believe that this proposal should be amended to enhance another very important component of TRACE—its dissemination protocols. FINRA currently follows a protocol limiting the dissemination of certain information that is required to be reported. We urge FINRA to amend its protocol on dissemination of information relating to the number of bonds traded so that the actual number of bonds traded is disseminated to the investment community.

FINRA Rule 6730 on Transaction Reporting currently requires reporting of transactions in TRACE-eligible securities. The information required to be reported includes, among other things, the "actual number of bonds traded..." (Rule 6730(d)(2)).

FINRA Rule 6750 on Dissemination of Transaction Information currently provides that "NASD will disseminate information on all transactions in TRACE-eligible securities immediately upon receipt of the transaction report..." The only transactions that are not required to be disseminated, according to this Rule, are transactions effected pursuant to Rule 144A under the Securities Act.

Although Rule 6750 requires dissemination of transaction information, not *all* of the information relating to a transaction that is required to be reported pursuant to Rule 6730 is actually disseminated by FINRA to the public. FINRA has instituted "dissemination caps" on the quantity of bonds traded. According to FINRA's TRACE User Guide, Version 2.2 (12/1/08), "For a reported trade [in Investment Grade debt] with a par value above $5 million (more than 5,000 bonds), the quantity disseminated will be displayed as '5MM+'.... For a reported trade [in Non-Investment Grade debt (high-yield and unrated debt)] with a par value above $1 million (more than 1,000 bonds), the quantity disseminated will be displayed as '1MM+'." (TRACE User Guide, p. 49.)

We think that the reason that FINRA instituted this protocol of withholding certain information from dissemination is because broker-dealers in the debt market have resisted the complete dissemination of trade information that is required by Rule 6750. Broker-dealers in equity markets have also resisted similar disclosure in the past. Experience has taught us, however, that disclosure benefits investors and improves markets.

We do not believe there is any valid justification for the imposition of these dissemination caps and withholding the dissemination of the actual quantities of bonds traded, nor do we believe there is any valid justification for the disparate treatment provided to Investment Grade and Non-Investment Grade debt with respect to these dissemination caps. Not only do these dissemination caps violate Rule 6750, but they are contradictory to the provisions of Section 15A(b)(6) of the Securities Exchange Act of 1934 which require, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

We represent broker-dealers and registered investment advisers who manage large portfolios, frequently trade in debt, and often buy non-investment grade debt that trades at significantly deep discounts to par (frequently at only pennies per $1000 par bond). When a large trade is executed in the market, key information relating to the exact number of bonds traded is very important to our clients in interpreting the data relating to the trade. Our clients have a duty to evaluate the quality of their executions, and our clients generally view TRACE reports to make a best execution determination. Thus, it is essential for our clients to have complete transparency in trade information in order to properly evaluate whether they have received best execution with respect to any debt transaction in which they are participants, as well as to evaluate the market for possible business opportunities.

For example, suppose that 2,000 non-investment grade bonds trade at ½ of par ($500). The total cost of the trade would be $1,000,000, and the quantity (or volume) would be reported as 1MM+. (Based on the TRACE method of calculating quantity, par value multiplied by the number of bonds traded, the reported quantity should be 2,000,000.) Now suppose that 5,000 bonds traded at 1/10 of par ($100). The total cost of the trade would only be $500,000, but the quantity of the trade would still be reported as 1MM+. (Based on TRACE methodologies, the reported quantity should be 5,000,000.) The lack of good information in these two trades is significant for investors in the market for this bond. If an investor is trying to see whether he received a good execution from his broker, the investor would not be able to use this trade information to evaluate the quality of his execution because the same information is disseminated for any transaction of 1,000 bonds or greater—the investor has no way of knowing whether the trade (and its price) was for 1,000 bonds or 1,000,000 bonds. Unless the information disseminated includes the quantity of bonds traded, an investor in these bonds has no way of knowing whether he has received a bad execution. This problem is exacerbated with deeper discounts,[1] as the 1MM+ limit is reached more quickly on bonds that trade at greater discounts to par, and it is more difficult for an investor to interpret information about a trade from the disseminated TRACE information.

FINRA and the Securities and Exchange Commission ("SEC") have recently been expanding their policies relating to dissemination of trade information, in order to create transparency in the markets. In addition to the current proposal SR-FINRA-2009-004, FINRA and the SEC have, in recent past, (i) instituted protocols to provide for the dissemination of last sale information in odd lots of high-priced OTC equity securities (SEC Release 34-57143, January 14, 2008), (ii) aligned the dissemination protocols for all last sale reports of OTC equity transactions (whether domestic equity securities, ADR's, Canadian issues or other foreign securities) (SEC Release 34-58331, August 8, 2008), and (iii) expanded the TRACE dissemination protocols to publicly disseminate the buy/sell and dealer/customer data elements, reasoning that this expansion would "enhance market transparency by allowing TRACE users to better understand what a reported price actually represents" (SEC Release 34-58115, July 7, 2008). The expansion of FINRA's protocol with respect to dissemination of the actual number of bonds traded would be consistent with the theories behind these recent changes to dissemination protocols and would protect investors by helping them better understand what the reported price of a trade actually represents.

We strongly believe that disparate treatment with respect to dissemination of trade reports is detrimental to the trading markets and that the transparency that would be provided by complete dissemination of trade information would greatly enhance the ability of investors to monitor such markets. Additionally, we believe that providing industry participants with greater transparency will result in increased competition among broker-dealers with respect to executions and enhance best execution practices in the industry.

---

[1] Current economic conditions have resulted a dramatic increase in the number of deep-discount bonds trading in the marketplace, and this trend is not expected to change in the near future. Corporate high-yield bonds saw a default rate of 8.5% in 2008, up from 8.0% in 2007, but his number is expected to increase to 15-18% in 2009 (according to Fitch Ratings). This default trend serves to further lower the prices on these types of bonds. Additionally, the size of the non-investment grade debt market is increasing as more and more corporate bonds are being downgraded. At the end of 2008, the share of the market rated 'CCC' or lower grew from 3.7% at the end of 2007 to 6.1% at the end of 2008, topping the share of bonds rated 'AAA' for the first time. The equity markets have seen similar dramatic decreases in share prices, so much that the NYSE has temporarily suspended their market capitalization and $1 minimum share price listing rules.

Accordingly, we request that FINRA eliminate its policy regarding selective dissemination of trade information in its TRACE system, which policy is in violation of Rule 6750, and institute a protocol (whether by rule change or otherwise) which complies with Rule 6750, whereby the actual number of bonds traded will be displayed in its TRACE dissemination system instead of displaying a threshold amount.

We greatly appreciate the opportunity to comment on this rule proposal. Please contact me if you have any questions or require any additional information. I can be reached at (914) 220-1919 or via email at bnlowson@nelsonlf.com.

Respectfully submitted,

Beth N. Lowson

Beth N. Lowson