



March 31, 2009

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

Re: **SR-FINRA-2009-004**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on SR-FINRA-2009-004 which proposes to amend the definition of TRACE-Eligible Security to include securities eligible for public sale and additional securities that are restricted securities. Our comments on this rule proposal relate primarily to the operational nuances for certain Regulation S transactions. Our specific comments and concerns have been organized and headed below for ease of reference.

**A. Clarification On Operational Reporting for Securities That Have Not Been Assigned CUSIPs.**

SR-FINRA 2009-004 requires reporting of certain Regulation S transactions that do not typically have CUSIPs but rather tend to utilize other unique identifiers such as ISINs. We understand that operational enhancements now permit FINRA to receive, store and retrieve transaction information for securities that have not been assigned CUSIPs. FINRA has however not provided any direction or clarity on the operational requirements for such reporting and how such enhancements interact with the current Daily Master CUSIP File methodology in place today. Accordingly, firms are unable to gauge the degree of systems changes required, if any, to comply and therefore can not provide any substantive feedback on a reasonable and appropriate implementation timeline. We request that FINRA issue any related operational specifications on the envisioned reporting methodology prior to establishing an effective date so that we have the opportunity to provide sufficient feedback.

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<sup>1</sup> 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, DC and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

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**B. Clarification On Regulation S Offerings Underwritten By Offshore Broker Dealers**

As you are aware, Regulation S offerings are typically underwritten by offshore broker dealers that are not bound by FINRA TRACE requirements, including Rule 6760 (Managing Underwriter Obligation to Provide Notice). When these instruments are traded by US broker dealers, 2009-004 would require firms to report these transactions even though the underwriter likely never reported the security terms to FINRA upon issuance pursuant to 6760. Given the significant number of Regulation S transactions traded by US broker dealers and the fact that the great majority of these Regulation S securities will not be reported to FINRA at issuance pursuant to 6760 (and correspondingly not included on the Daily TRACE Master CUSIP File or other associated files), a more systematic issue emerges. FINRA stated in a February 2008 trading notice that firms should notify FINRA promptly of CUSIP and other identifying information if they are aware of a TRACE-eligible security that has not been included in the Daily TRACE Master CUSIP File. We, however, suggest that FINRA give more specific guidance on the timing issues associated with the trade reporting of a security where no identifying information has been previously reported under 6760. We further suggest that FINRA consider implementing a systematic process for obtaining identifier information for these securities. Absent such systematic process or an ability to provide some type of generic reporting temporarily, we believe that FINRA should provide a reasonable grace period for reporting so that firms are not charged with late trades or corrections to the extent that Regulation S securities are not already on the TRACE Master CUSIP File.

Thank you again for the opportunity to provide our comments. We would be pleased to discuss these issues in greater detail with the FINRA staff. I can be reached in this regard at 212-313-1118 or at [sdavy@sifma.org](mailto:sdavy@sifma.org).

Sincerely,



Sean C. Davy  
Managing Director