

May 5, 2009

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

Subject: File No. SR-FINRA-2009-010 (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") File No. SR-FINRA 2009-010 to amend the FINRA rules in order to broaden the scope of FINRA's Trade Reporting and Compliance Engine ("TRACE") to include reporting and dissemination of trade information relating to Agency debt securities (as defined in the proposal) and primary market transactions, as well as other minor changes. We strongly support this proposal because it provides for increased price transparency in the market by broadening the range of securities trades that must be reported and disseminated in the TRACE system.

Nonetheless, we strongly disagree with the dissemination protocol described in this proposal. FINRA's currently dissemination protocol withholds from the investing public the actual numbers of bonds traded in investment grade debt with a par value above \$5 million and non-investment grade debt securities with a par value greater than \$1 million, despite the fact that this information is reported to FINRA under Rule 6750. We urge the Commission to require FINRA to amend its dissemination protocol, not only with respect to the securities subject to this proposal, but with respect to all TRACE-eligible securities, so that its protocol is consistent with the terms and regulatory goals of Rule 6750. FINRA should abandon its current protocol and disseminate information relating to the actual number of bonds traded for all reported trades.

FINRA (formerly, the NASD) has repeatedly acknowledged the benefits to the investing public from the dissemination of real-time trade and volume data during market hours. For example, in 1992, in its comments to the proposed penny stock rules, FINRA stated that the "dissemination of real-time trade and volume data during market hours will significantly benefit investors by providing the same high degree of market visibility and more efficient

price discovery . . .¹ In the context of trading foreign securities, the Commission also stressed the value of real-time dissemination of market data. In 1997, with respect to trade reporting in foreign equity securities, the SEC noted that dissemination of trade reports has the potential “to better enable investors to monitor the executions they receive in foreign securities.”²

Furnishing a trade report to FINRA is not sufficient to protect the investing public. It is as true now as in 1992 and 1997 that “sunlight is the best of disinfectants.” The information contained on the trade report must also be disseminated so that the investing public can monitor the behavior of their brokers.

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, FINRA disregards its own rule by instituting “dissemination caps” on the quantity of bonds traded. According to FINRA’s TRACE User Guide, Version 2.2 (12/1/08), “[f]or 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.) The actual volume is disseminated *only* for Investment Grade securities in sizes less than or equal to \$5 million (by par value) and for Non-Investment Grade securities in sizes less than or equal to \$1 million (by par value).

We think FINRA instituted its protocol that withholds volume information from the investing public because FINRA member firms participating in the debt market have resisted the complete dissemination of trade information that is required by Rule 6750. Broker-dealers in equity markets also resisted similar disclosures in the past. Experience has taught us, however, that disclosure benefits investors and improves markets.

We do not believe there is any valid justification (statutory or otherwise) for the imposition of these dissemination caps. It is contrary to the public interest to keep the public in the dark regarding the actual quantities of bonds traded. Moreover, there is no valid justification for the disparate treatment provided to Investment Grade and Non-Investment

¹ SEC Release No. 34-30608, 1992.

² SEC Release No. 34-38456, 1997.

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 (often at only a dollar or two 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 1/2 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,³ 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.

³ 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.

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 recent past, FINRA and the SEC have (i) broadened the scope of securities subject to reporting and dissemination through TRACE (SEC Release 34-59768, April 14, 2009), (ii) 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), (iii) 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 (iv) 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 investing public and the marketplace for debt securities. The transparency that would be provided by complete dissemination of trade information would greatly enhance the ability of investors to monitor such markets, leading to more precise valuations, better pricing, and reduced investor costs. 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.

Accordingly, we request that the Commission require FINRA to eliminate its policy that caps dissemination of trade volume information in its TRACE system. FINRA's current policy violates Rule 6750. Instead, FINRA should institute a protocol (whether by rule change or otherwise) that complies with Rule 6750. The actual number of bonds traded should be completely disseminated by FINRA to protect the investing public.

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,



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