VIA ELECTRONIC DELIVERY

July 3, 2018

Robert W. Errett
Deputy Secretary, U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Change to Amend FINRA Rule 6730 Relating to ATS Reporting of Transactions to TRACE in U.S. Treasury Securities
SR-FINRA-2018-023

Dear Mr. Errett:

Execution Access, LLC (the "Firm"), the broker-dealer operator of the Nasdaq Fixed Income ("NFI") alternative trading system ("ATS"), and its parent company Nasdaq, Inc. ("Nasdaq") appreciate the opportunity to provide comments on the Financial Industry Regulatory Authority's ("FINRA's") proposed rule change relating to ATS reporting of transactions in U.S. Treasury Securities ("USTs") (the "Proposed Rule").[1] The Proposed Rule will require certain ATS's to identify non-FINRA member subscribers on its UST securities transaction reports to FINRA's Trade Reporting Compliance Engine ("TRACE").

As Nasdaq has said previously in response to the Treasury Capital Markets Report, Nasdaq generally supports increased transparency in the U.S. Treasuries markets as a means of providing a broader understanding of the market to regulators and market participants, both to mitigate risks to the market and to facilitate liquidity. In fact, Nasdaq has advocated for expanded transparency with the U.S. Department of Treasury and the Federal Reserve Bank. We believe that TRACE reporting plays a critical role in achieving that transparency.

We recognize that the market for USTs could benefit from greater transparency, organization and efficiency. Markets must be transparent in each of several respects to serve market participants and investors fully and fairly. The structure, regulation, and operation of the market should be readily understood to inspire trust and confidence. Widespread availability of the best available prices ensures that market participants make informed investment decisions and receive high quality, low cost service from intermediaries and markets alike.

In addition, Nasdaq strongly believes that any data gathering and dissemination initiative must be comprehensive and cover all Treasury market participants and venues or else the data collection will be incomplete, potentially misleading, and adversely affect transparency.

[1] See SR-FINRA-2018-023.

FINRA's action in 2017 to require its members to report UST trades to TRACE was a productive first step towards achieving full transparency in the Treasury market. The Proposed Rule is another welcome step in this regard. However, for reasons that we discuss below, we do not think that the Proposal Rule is sufficient or even necessarily an appropriate means of facilitating transparency among non-FINRA member participants in the Treasury market.

<u>The Proposed Rule is Insufficient to Achieve Full Transparency</u>

First, the Proposed Rule does not do enough to achieve full transparency in the Treasury Market and may actually result in reduced transparency.

It is estimated that approximately 40% of the On-The-Run UST instruments, total daily volume is conducted on Inter-Dealer Broker ("IDB") platforms.[2] The other segment of the Treasury market consists of dealer-to-client ("DTC") platforms, request for quote systems, voice brokerage, single bank portals and chat rooms trades. While FINRA member dealers report their transactions to TRACE, more must be done to ensure that ***all*** UST trades are subject to regulatory reporting. We are concerned the Proposed Rule may have unintended consequences of shifting UST trading from FINRA member firms to non-FINRA member and bank affiliates that have no reporting responsibilities. We believe a significant amount of UST trading occurs between parties that have no reporting requirements, including but not limited to, transactions between-

- Non-FINRA member principal trading firms ("PTFs");
- banks;
- banks and traditional buy-side clients;
- banks and Non-FINRA member PTFs; and
- Non-FINRA member PTFs and traditional buy-side clients.

We are also concerned that ATS participants whose trades are presently reported to TRACE only as "customer" trades – including banks, hedge funds, and PTFs – may choose to not become an ATS subscriber or refrain from trading on ATS's to maintain anonymity and avoid regulatory oversight. These participants may use this regulatory arbitrage to take the path of least resistance and migrate their UST trading from transparent, "lit" platforms to "dark" venues where their trades are not subject to the Proposed Rule. Not only would such an action undermine the Proposed Rule, but it would also place ATS's like NFI at a competitive disadvantage to these dark venues.

<u>The Proposed Rule is Not An Appropriate Solution to the Problem of Opacity in the UST Market</u>

Although we broadly support the principle of increased transparency, we believe that responsibility for effecting such transparency should rest with market participants themselves and not with the platforms on which they trade. Making a participant responsible for reporting its own trades would be more equitable than the Proposed Rule, which unfairly allocates to ATS's the significant operational costs and

[2] Department of the Treasury, Office of Debt Management, TRACE Data Update, November 2017. https://www.treasury.gov/press-center/press-releases/Documents/TRACE%20Deck%20Final.pdf

regulatory burdens of trade reporting. This alternative would also ensure that regulation of non-FINRA member UST market participants does not vary with the participants' choices of trading venue.

Moreover, to the extent that ATS's must bear the burdens and costs of reporting their customers' trades under the Proposed Rule, then the reality is that ATS's will likely need to recoup these costs by passing them through to their customers.

The Ultimate and Enduring Solution to Market Opacity is for Comprehensive and Individual Trade Reporting and Centralized Clearing

FINRA's proposal would potentially undermine Fixed Income Clearing Corporation's ("FICC") efforts to promote central clearing and enhance transparency in UST trading. The SEC recently approved changes to the FICC fee schedule, which accomplishes the following: (1) simplifies and adds transparency to FICC's fee schedule; (2) introduces a sensible risk-based fee model; and (3) permits and incentivizes more market participants to utilize central clearing for UST securities. Although FICC's Proposal does not directly increase transparency, it does so indirectly by removing an obstacle to transparency, namely, high clearing fees for PTFs. Some of NFI's customers have told us that they have been reluctant to become FINRA members due to FINRA's requirement that its members establish central clearing arrangements. We expect that FICC's action to reduce the cost of clearing will ease customer concerns and provide a pathway for many of them to become both FICC and FINRA members. To the extent that PTFs become FINRA members, then they will also become subject to the TRACE reporting requirements. As noted above, such actions would be significant because submission of all market participants to direct regulatory oversight is the only enduring solution to opacity in the Treasury Market.

Ultimately, Nasdaq believes that Congress or the SEC should consider requiring PTFs to register as broker-dealers such that FINRA, in turn, may require them to centrally clear their transactions and report their transactions to TRACE. Until such a requirement exists, the problem of market opacity will persist. As will the systemic risk to the market that opacity creates. The Proposed Rule and the FICC fee change will help to mitigate the extent and risks of market opacity, but they are incomplete and inadequate solutions.

In summary, we broadly support FINRA's goal of increased transparency and effective market surveillance, but we seek a more complete and appropriate solution that distributes responsibilities and burdens equitably. We appreciate the opportunity to submit the above comments for your consideration.

Please contact me at [redacted] should you have any questions or require any additional information.

Very truly yours,

Theodore (Ted) Bragg
Chief Executive Officer
Execution Access, LLC