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June 28, 2006

***Via Facsimile Transmission  
(202.772.9271) and U.S. Mail***

Robert L. D. Colby, Esquire  
Acting Director,  
Division of Market Regulation  
c/o Ms. Gail Jackson  
Mail Stop 6628  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**Re: Track ECN**

Dear Mr. Colby:

We are writing to you on behalf of Track Data Securities Corp (“TDS”) with respect to Track ECN, an electronic communications network. Beginning in May of 2000, I or one of my partners have written to the Staff requesting either the issuance or the renewal of a “no action letter” on behalf of my client. While there have been no material changes in the business or operations of Track ECN, the no action letter last issued to TDS respecting the Track ECN is scheduled to expire at the close of business today.

We submit this letter to you and to the Staff of the Division of Market Regulation requesting that the current no action position be extended, without an expiration date or “sunset” provision. We again supplement our earlier letters with our advice that there have been no material changes in Track ECN or its application on Form ATS<sup>1</sup> subsequent to my letter to you dated October 18, 2005 (a copy of which is transmitted and enclosed herewith).

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<sup>1</sup> Please note that Form ATS of Track ECN was recently amended to confirm that certain reporting activities relating to TDS’ membership in the National Securities Clearing Corporation, which had previously been described as “prospective”, are now operational.

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As you may recall, TDS is a broker-dealer registered with the Securities and Exchange Commission (the "Commission") and a member of the National Association of Securities Dealers ("NASD"). Form ATS respecting Track ECN was filed with the Commission and has been amended periodically to reflect any changes in the operation of Track ECN. On behalf of TDS, we respectfully request that the Division of Market Regulation ("Division") confirm that:

- (i) The Track ECN computer-based trading system (the "System") is an "electronic communications network" ("ECN") as defined in Rule 600(b)(23) (the "ECN Rule") under the Securities Exchange Act of 1934 (the "Act");
- (ii) TDS is and will be in compliance with the requirements of Regulation NMS, particularly those set forth in Rule 602(b)(5) (the "ECN Quote Rule") under the Act with respect to NASDAQ and exchange-listed securities for which linkage between TDS and a Self Regulatory Organization ("SRO"), as defined in the Act, is operational; and
- (iii) The Division would not recommend enforcement action against any OTC or exchange market makers who are Subscribers (as defined below) in the System if those market makers, in compliance with the ECN Quote Rule and Rule 604 of Regulation NMS (the "Limit Order Display Rule"), as applicable, enter orders into the system without modifying their public quotations.

### **General Description of the System**

The System is a screen-based automated trading system that permits broker-dealers ("Subscribers"), including market makers and specialists, to trade as agent for their customers' accounts or as principal for their own accounts. Currently, System-eligible securities include not only NMS securities, but certain OTC bulletin-board securities as well. The System generally operates from 7 a.m. to 8 p.m., Eastern Standard Time, Monday through Friday.<sup>2</sup> Direct access to the System will be available only to Subscribers that are connected to the System through a dedicated line. Accordingly, all bids and offers will represent orders entered by Subscribers on an agency or proprietary basis. TDS will not participate in System transactions on a proprietary basis. In addition to the Track ECN, TDS also operates a retail customer securities brokerage business. When such customers' (agency) orders are routed to Track ECN, TDS functions in the same manner and is subject to all of the same rules and procedures of Track ECN as any other Subscriber.

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<sup>2</sup> These hours are adjusted based on the actual hours of operation of the relevant SRO. Generally, when an SRO trading facility operates on shortened hours or is closed, the System hours are shortened or closed as well.

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Orders entered into the System are displayed to other Subscribers and executed against orders of any of such Subscribers or, as described below, by non-subscriber broker-dealers. The System presently accepts both market and limit orders<sup>3</sup> as well as a variety of system-driven variations on such orders (*e.g.*, so-called “stop” orders, etc.) The System automatically executes matching orders, including partial fills, based on price and time priorities. Orders may be canceled or modified at any time prior to matching.

Each security for which one or more orders have been entered will have an order book. The most significant feature of this order book is that it provides real-time quotations associated with all open orders on the System, aggregated by price and listed in best-price order. Customers of Subscribers may be able to view the order book through their subscribing broker’s systems if they choose to receive TDS’s order book feed and redistribute it.

### **Request for No-Action Letter**

In connection with our request for the no-action relief, TDS makes the following representations:

1. The System is an “ECN” within the meaning of the ECN Rule and the ECN Quote Rule and allows Subscribers, including OTC market makers and exchange market makers, electronically to enter orders in certain NMS securities. As here relevant, the ECN Rule [*e.g.*, 600(b) (23)] under the Act defines an ECN as “any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.” (Omitted exceptions not here relevant). The System is an automated trading system that displays the orders of Subscribers, which include market makers, to other Subscribers and their customers and allows such orders be executed against other orders in the System.

2. Linkage: TDS will continue to maintain a linkage with at least one SRO trading facility, as defined in Rule 600 (b)(72) (an “SRO TF”) or SRO display-only facility, as defined in Rule 600(B)(71) (an “SRO DO”).<sup>4</sup> TDS will: (i) transmit to such SRO TF or SRO DO for display the best priced orders of all orders entered by any Subscriber, including those who are OTC or exchange market makers (or exchange specialists, if applicable) for the securities in

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<sup>3</sup> The System may, in the future, accept other types of orders.

<sup>4</sup> The System presently has such linkages in place for NASDAQ and the ADF.

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which they make markets<sup>5</sup> (or act as specialist pursuant to unlisted trading privileges); and (ii) provide, to any broker or dealer, access to such orders that is functionally equivalent to the access that is generally available for quotes displayed by an SRO TF or, for orders displayed in an SRO DO, a level and cost of access to such quotations that is substantially similar to the level and cost of access to quotations displayed by an SRO TF in that security.

TDS continuously and systematically monitors its connections to each relevant SRO TF and SRO DO. In the event that Track ECN's linkage to a relevant SRO TF or SRO DO is lost for more than a *de minimis* period<sup>6</sup> for any reason, Track ECN will immediately cancel all quotes previously published by the System which relate to that facility and will send an e-mail message to its Subscribers advising of the outage and another to advise when connectivity is subsequently restored.

3. Means of Access: TDS responds and intends to continue to respond to orders by non-Subscribers as promptly as it responds to orders by Subscribers to execute against orders displayed in the System and in any event no more than a few seconds. Non-Subscribers may access the System in various ways, including via dedicated computer line, and will be able to automatically execute against quotations displayed by the System.

In addition, non-subscriber broker dealers may also access and execute against quotations displayed in the System via any third party vendor who has contracted with TDS to provide such execution and routing services as well as via other recognized market participants with whom such non-subscribers may be members, customers and/or subscribers.<sup>7</sup>

Additionally, TDS will continue to maintain a desk to receive and execute orders received telephonically from Subscribers and from non-Subscriber broker-dealers against TDS orders displayed by an appropriate SRO TF or SRO DO. The desk will be staffed by personnel that meet the applicable NASD standards for such activity. Orders entered onto the Track ECN via telephone are displayed in the same manner as orders entered via computer line.

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<sup>5</sup> Although Track ECN offers certain Subscribers a "do not display" function, this function is not available to market makers. Thus, all quotes entered by market makers will be transmitted to the SRO Market Center for display if they are the best priced orders on the Track ECN.

<sup>6</sup> It has been TDS's experience that connectivity with an SRO TF or an SRO DO can be lost for a very brief period of time and re-established almost immediately. TDS does not believe that such *de minimis* interruptions impair its ability to display quotations or market participants' ability to execute against such quotations.

<sup>7</sup> As of the date of this letter, such market participants include, without limitation, NASDAQ, BRUT, Instinet, DirectEdge and Bloomberg/BTrade..

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Finally, if not inconsistent with the rules of the SRO TF or SRO DO, TDS will charge non-Subscriber broker-dealers a rate that does not exceed the then current rate charged to a substantial portion of its active broker-dealer Subscribers plus any fee charged to TDS by a SRO for such trades. However, in no event will TDS charge more than the maximum fee as may be permitted by Rule 610 of Regulation NMS.

4. Capacity: The System has sufficient capacity to handle the volume of trading reasonably anticipated to be conducted in the System. In addition, TDS will conduct regular periodic System capacity reviews and tests to: (i) ensure and expand future capacity, (ii) identify potential weaknesses and (iii) reduce the risks of system failures and threats to system integrity.

5. Confidentiality: TDS has put in place and will maintain procedures to ensure that only certain designated personnel have access to the System. Those designated personnel will keep all trading information entered into the System confidential, and will not use such information for trading in TDS's or any of its affiliates' proprietary account, its customers' accounts, or their own personal trading accounts. In addition, the operation of the System will be kept separate from other business of TDS.

Based upon the foregoing discussion, we request that the Division confirm that TDS would operate the System as an ECN and would be in compliance with the ECN Quote Rule with respect to NMS securities for which a linkage between the System and at least one SRO TF or SRO DO is operational. We also seek the Division's representation that it would not recommend enforcement action against OTC market makers and exchange market makers who are Subscribers for entry of orders into the System pursuant to the ECN Quote Rule.

If you have any questions or would like any additional information regarding or relating to this request, please feel free to contact me at (312) 499-0121. Thank you for your and the Staff's continuing courtesies.

Very truly yours,

*Robert P. Bramnik*

Robert P. Bramnik

RPB/rlc

cc: Brian Trackman, Esquire (Division of Market Regulation)  
Steve Kuan, Esquire (Division of Market Regulation)  
Mr. Martin Kaye (Track Data Securities Corp.)  
Mr. Stan Stern (Track Data Securities Corp.)