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March 24, 2004

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: **File No. SR-NASD-2003-182 Relating to the Expansion of the Definition of
“TRACE-eligible security”**

Dear Mr. Katz:

The Bond Market Association (“Association”)¹ is pleased to submit this letter to the Securities and Exchange Commission (“SEC” or “Commission”) in connection with the National Association of Securities Dealers, Inc.’s response² (“NASD”) to the points raised in the Association’s comment letter to the Commission dated January 16, 2004³ on the NASD proposal to amend Rule 6210(a) to clarify the definition of “TRACE-eligible security” to include all United States dollar denominated debt securities that are depository (“DTC”) eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private “issuers,” rather than “corporations” (the “Proposal” or “Amendment”).⁴

While we commend and appreciate the NASD’s efforts to clarify the purpose and scope of the Amendment, we believe several of the important issues raised in our comment letter have not been adequately addressed and resolved. The NASD states that its purpose in changing the word “corporations” to “issuers” is to clarify “what is well understood in the industry – that the debt securities of non-corporate issuers, such as limited partnerships, capital trusts, equipments trusts, are included in the universe of

¹ The Association represents firms and banks that underwrite, distribute and trade in fixed income securities, both domestically and internationally. More information about the Association is available on its website at www.bondmarkets.com. This comment letter was prepared in consultation with various committees of the Association’s Corporate Credit Markets Division.

² See NASD’s letters to the Commission dated March 10, 2004 (“NASD Response”) and February 13, 2004.

³ Association’s letter to the Commission dated January 16, 2004.

⁴ See Exch. Act Rel. No. 48,926 (December 15, 2003); 68 Fed. Reg. 71,207 (Dec. 22, 2003) (“Proposing Release”).

TRACE-eligible securities.”⁵ This explanation merely reiterates the NASD’s statements in the Proposal as to the purpose of the Amendment—to clarify that “although most issuers are organized as corporations. . . debt securities of issuers that use another form of business organization are ‘TRACE-eligible securities.’”⁶ It does not address the previously stated concerns of the Association that that the Amendment (1) causes confusion and uncertainty as to which securities are included within the scope of TRACE and (2) potentially expands the universe of TRACE-reportable securities to include securities which do not expose bondholders to the credit risk of the issuer and were never intended to be included in a corporate bond reporting system.

As currently drafted, the amended definition of “TRACE-eligible security” does not reflect the NASD’s stated, limited intention to reflect that securities issued by “business organizations” using forms other than the corporate form are included in the universe of TRACE. The plain term “issuer” is extremely broad and creates uncertainty as to which types of securities are included within TRACE. The NASD states that the universe of TRACE securities include securities issued by “a limited partnership, a capital trust, an equipment trust, and other types of trusts, among others.”⁷ As noted in our comment letter, many securities issued by “trusts” or other types of special purpose vehicles (“SPVs”) are structured products, where payments to bondholders are collateralized by segregated pools of financial assets. Purchasers of the securities issued by these entities are not exposed to the credit risk of an issuing “business organization,” but to the performance risk of the underlying pool of financial assets. In addition to being considered structured products, many of these types of securities may also be considered asset-backed securities, as the payments due to bondholders are often backed by assets held by the SPV or trust. As discussed in our comment letter, there is no historical legal or factual basis for expanding TRACE to structured products, and they have not been included in TRACE to date.

The NASD Response characterized the Association’s comment letter as expressing concern that the purpose and effect of the Amendment was to “require members to *now* report to TRACE a variety of ‘structured’ or ‘asset-backed’ securities that are not currently being reported to TRACE.”⁸ Our concern, however, is that the Amendment as drafted opens the door to the future, piecemeal inclusion of various structured products that will be deemed not to fall within the exclusion for “asset-backed securities.” As discussed in our comment letter, the NASD’s recent and new inclusion of risk-linked securities (“CAT bonds”), in the TRACE User’s Guide list of TRACE-eligible bonds is one example of an attempt to bring certain structured products within the scope of TRACE without a formal rule filing setting forth the rationale and basis for the expansion and allowing the industry an opportunity to comment. We are concerned that other types

⁵ NASD Response at 2.

⁶ Proposing Release at 71,208.

⁷ NASD Response at 2.

⁸ NASD Response at 2 (emphasis added).

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of structured products, for example CDOs or education bonds, may also eventually be brought within the ambit of TRACE in this manner.

The NASD Response did not address the rationale or basis for the inclusion of CAT bonds in TRACE. It is the Association's view that CAT bonds should not be included within the TRACE reporting regime, as they are structured products which TRACE was never intended to include. We therefore respectfully request that the NASD set forth its purpose and rationale for bringing CAT bonds into the TRACE reporting regime and to allow an opportunity for industry comment on this issue.

The NASD states that "under the Amendment the extent to which a debt security of a business organization would come within the definition of 'TRACE-eligible security' would turn, not on the form of that business organization, but rather, solely on whether such debt securities fell within any of the classes of debt securities denominated for exclusion under the definition"⁹—however, the NASD declines to give any clarification as to which securities fall within those classes excluded from TRACE. The extremely broad term "issuer" could include among other entities trusts and other SPVs which issue structured products, and as such the NASD should provide clear guidance on the extent of the exclusion for asset-backed securities from the definition of TRACE-eligible security. Alternatively, the NASD could consider more narrowly defined language for the Amendment which would accomplish its stated objective of recognizing other business organization forms without creating uncertainty and confusion with respect to the application of TRACE to various types of structured products and asset-backed securities.

The Association therefore respectfully requests that the Commission defer approval of the Proposal until such time as the NASD has addressed the above issues in an amended Proposal.

Should you have any questions or desire any clarification or additional information regarding any of the matters discussed in this letter, please do not hesitate to contact the undersigned at (646) 637-9220.

Sincerely,

/s/ Michele C. David

Michele C. David
Vice President
and Assistant General Counsel

⁹ NASD Response at 2-3.

cc: ***Securities and Exchange Commission***

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