



Sharon K. Zackula
Associate General Counsel

April 25, 2005

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2005-026 – Response to Comments on Proposed
Amendments to Rule 7010(k) Regarding TRACE Transaction Data**

Dear Ms. England:

In SR-NASD-2005-026, NASD proposes to amend NASD Rule 7010(k) relating to Transaction Reporting and Compliance Engine (“TRACE”) transaction data to: (i) terminate the Bond Trade Dissemination Service (“BTDS”) Internal Usage Authorization Fee and the BTDS External Usage Authorization Fee and, in lieu of both fees, establish a Vendor Real-Time Data Feed Fee; (ii) define the term “Tax-Exempt Organization,” and amend the defined term “Non-Professional” for purposes of Rule 7010(k)(3); and (iii) make other minor, technical amendments. NASD is responding to the comment submitted to the Securities and Exchange Commission (“SEC”) in response to the publication of the rule filing.¹ The commenter, the Securities Industry Association (“SIA”) Technology & Regulation Market Data Subcommittee (“Market Data Subcommittee”), raises the following issues relating to the proposed rule change.²

“Non-Professional” as Used in Rule 7010(k)

The Market Data Subcommittee commended NASD for its efforts to clarify the term “Non-Professional” in its proposed amendments to Rule 7010(k)(3)(C)(i), which applies to TRACE fees. (As part of the amendments, the defined term, which is currently

¹ See Securities Exchange Act Release No. 51336 (March 9, 2005), 70 FR 12921 (March 16, 2005).

² Letter from Andrew C. Wels, Chairman, Market Data Subcommittee, SIA, to Jonathan G. Katz, Secretary, SEC. (The letter is not dated. SEC staff stated that the SEC received the letter on April 8, 2005.)

set forth in subparagraph (ii) of Rule 7010(k)(3)(C), would be renumbered as subparagraph (i).³ However, the Market Data Subcommittee commented that NASD should make additional changes to proposed Rule 7010(k)(3)(C)(i) to include data users “who are natural persons using a brokerage account established in the name of an entity name they or their family control” as Non-Professionals. For purposes of TRACE fees, NASD has interpreted the term “Non-Professional” to further NASD’s goal of providing access to TRACE market data at no charge to persons who seek to use TRACE market data for personal, rather than commercial, purposes. In most cases, such persons are natural persons. Conversely, non-natural persons (or their agents or representatives) generally do not access TRACE data for personal purposes. NASD believes that the cases raised by the Market Data Subcommittee are the exceptions, and the use of the data by these types of accounts as described by the Market Data Subcommittee would not appear to be inconsistent with NASD’s approach to date regarding TRACE data access under proposed Rule 7010 (k)(3)(C)(i); however, such exceptional cases are not always clearly and easily identifiable. Accordingly, NASD will consider identifying certain non-natural persons as “Non-Professionals” as part of its continuing review and interpretation of TRACE data fees and access. In addition, the Market Data Subcommittee has petitioned the SEC to initiate a more comprehensive review of a number of issues arising in the application and interpretation of the defined terms “Non-Professional” and “Professional” and, if the SEC initiates such a review, this issue could be appropriately included in the review.

Reduced Fee for Qualifying Tax-Exempt Organizations

The Market Data Subcommittee also submitted comments on the proposal to amend Rule 7010(k)(3)(A)(iii) to offer real-time TRACE data (“Real-Time TRACE transaction data”) at the reduced fee of \$400 per month to qualifying Tax-Exempt Organizations, as defined in proposed Rule 7010(k)(3)(C)(ii), to allow such organizations to use TRACE data solely to provide Non-Professionals access to it at no charge. The Market Data Subcommittee commented that further review “may be warranted to determine the justifiable basis for a reduced fee, including a better description of the tax-exempt organizations that would benefit from a reduced price structure, a better explanation as to why the reduced fee is necessary, and an analysis of the potential impact such a proposal may have on competition.”

³ In its comment letter, the Market Data Subcommittee also stated that it favored a review of the term “Non-Professional” and the related term “Professional” as used by various self-regulatory organizations (“SROs”) and plans that are sources or consolidators of data (“plans”) and petitioned the SEC for rulemaking to review both terms as interpreted for market data fee and administrative purposes by various SROs and plans. The petition for rulemaking is not the subject of the rule proposal and is not addressed herein.

Increasing corporate bond market transparency is one of the major goals of TRACE. For NASD, a key aspect of the effort is to make retail investors aware of the newly available information on corporate bond transactions and to continue to expand retail investors' access to such information. NASD has taken a number of important steps to increase retail investors' awareness and use of corporate bond market transaction information, including eliminating the \$1.00 charge for any Non-Professional to access real-time TRACE transaction data through any data vendor and allowing members of the public (Non-Professionals) to access last sale TRACE data at no cost at NASD's Web site, <http://www.nasdbondinfo.com>, by identifying specific securities or searching by a particular characteristic (*e.g.*, rating, maturity, coupon rate, or industry).⁴

NASD is proposing to reduce the data acquisition costs of a qualifying Tax-Exempt Organization if the qualifying Tax-Exempt Organization, by making such information available, furthers, directly or indirectly, NASD's efforts to expand transparency in the corporate bond markets at the retail customer level. In addition, NASD has specifically identified organizations that would be eligible for the reduced fee. Only those organizations that meet the requirements of proposed Rule 7010(k)(3)(C)(ii) would be eligible for the reduced fee. Finally, the commenter raised the issue of competition, but did not identify any specific competitive concern or issue. The proposed definition of Tax-Exempt Organization limits significantly the number and type of organizations that may apply to receive Real-Time TRACE transaction data at the reduced fee and, by definition, limits the use of Real-Time TRACE transaction data *solely* for data access programs for the benefit of individual investors and not for commercial purposes. Given these restrictions, NASD does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

⁴ See Securities Exchange Act Release No. 50977 (January 6, 2005), 70 FR 2202 (January 12, 2005) (SR-NASD-2004-189) (SEC approval order). Also, information on certain actively traded bonds is published daily in the Wall Street Journal and The New York Times. Moreover, NASD expects transaction information to be more widely available in the future. NASD is currently in extensive negotiations with various print and Internet publishers regarding TRACE transaction data to enhance and improve access to TRACE data.

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If you have any questions, please contact me at (202) 728-8985 or sharon.zackula@nasd.com, or Elliot Levine, Chief Counsel and Senior Advisor, Transparency Services, Markets, Services, and Information, at (202) 728-8405 or elliott.levine@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Sharon K. Zackula

cc:

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