



Financial Industry Regulatory Authority

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October 11, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**RE: File No. SR-FINRA-2007-006: Response to Comments**

Dear Ms. Morris:

On August 9, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the above-referenced rule filing proposing to adopt a FINRA policy providing for public access to historic TRACE data ("Historic TRACE Data") and to amend NASD Rule 7030 to define Historic TRACE Data, establish fees for Historic TRACE Data, and make conforming and technical changes to the Rule. On September 10, 2007, the Commission published for comment the proposed rule change in the Federal Register.<sup>1</sup> The comment period closed on October 1, 2007. The Commission received one comment letter in response to the Federal Register publication.<sup>2</sup>

The commenter generally supports the proposed FINRA fees with certain reservations, asks that FINRA clarify the scope of a member's right to "internally" re-distribute a year's subscription of Historic TRACE Data at no charge, and urges that FINRA be required to make any announcement regarding a change in the elements of Historic TRACE Data in a FINRA Notice (or in an alternative publication "spelled-out in the order of approval").

The commenter generally supports FINRA's proposed fees for Historic TRACE Data, noting that they are substantially lower than those for other market data products of similar type and complexity. In addition, the commenter notes with favor that such fees

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<sup>1</sup> See Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689 (September 10, 2007) (notice of filing of SR-FINRA-2007-006).

<sup>2</sup> The Commission received a comment letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee, Technology and Regulation Committee, Securities Industry and Financial Markets Association ("SIFMA"), dated October 3, 2007.

will be easier to administer than similar market data programs of other self-regulatory organizations, which the commenter characterizes as highly restrictive and requiring complicated per “subscriber” fees, tracking and ongoing reporting burdens. The commenter also agrees that an unspecified fee, if any, that FINRA may charge a natural person who is a Non-Professional as defined in NASD Rule 7030(c)(3)(A) and requests Historic TRACE Data is not objectionable given “the likely usage and need for this data” by Non-Professionals. The commenter’s support for the proposed Historic TRACE Data fee structure is conditional, however, because the commenter states that it is unable to verify the fairness of the fees, determine if they are reasonably related to FINRA costs and assess if they are equitably allocated without possessing FINRA cost information. It is FINRA’s view that the fees are reasonable for the reasons stated in the published rule filing; a commenter’s assertion that they cannot verify the fairness does not, in our view, refute our stated rationale for the fee and FINRA does not believe that costs are necessarily determinative of the reasonableness of fees.

In response to the second concern of the commenter, FINRA clarifies that upon paying the Professional Data Fee for certain Historic TRACE Data (*e.g.*, \$2,000 under proposed NASD Rule 7030(d)(1)(A)(ii) for all 2003 Historic TRACE Data) a Professional, such as a member firm (or any other organization), may distribute that data set to any employee of the firm for use at no additional charge. Specifically, there are no per user or per data query charges.

Third, in response to the commenter’s concern that FINRA should not be able to publish any change to the elements of Historic TRACE Data except in an official FINRA Notice, (or another FINRA publication specified by the SEC in its approval order), FINRA agrees that any changes to the elements provided in the Historic TRACE Data base will be set forth in a FINRA Notice. (However, if FINRA terminates the publication of FINRA Notices, FINRA will publish the information in the regulatory publication that succeeds FINRA Notices).

Please contact Sharon Zackula at (202) 728-8972 or [Sharon.Zackula@finra.org](mailto:Sharon.Zackula@finra.org) if you have any questions.

Sincerely,



Sharon Zackula  
Associate Vice President and  
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