

COMMITTEE ON CAPITAL MARKETS REGULATION

October 22, 2019

Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: File Number SR-FINRA-2019-008: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service and Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, to Establish a Corporate Bond New Issue Reference Data Service (the “**Amended Bond Data Service Proposal**”)

Dear Madam:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to comment on the Amended Bond Data Service Proposal by the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) with the Securities and Exchange Commission (the “**SEC**”).¹ In our first comment letter dated July 25, 2019, the Committee expressed strong reservations with the original proposal because it lacked cost data supporting a rule change that would significantly affect the system for collecting and disseminating market data for TRACE-eligible corporate bonds.² The Amended Bond Data Service Proposal exacerbates our initial concerns regarding transparency in the development and approval of market data fees.

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business

¹ U.S. SEC. & EXCH. COMM’N, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Corporate Bond New Issue Reference Data Service*, 84 FED. REG. 54712 (Oct. 10, 2019), available at [https://www.federalregister.gov/documents/2019/10/10/2019-22142/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-\["Amended Proposal"\]](https://www.federalregister.gov/documents/2019/10/10/2019-22142/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-[); FIN. IND. REG. AUTH., *Form 19b-4* (Oct. 3, 2019), available at <https://www.finra.org/sites/default/files/2019-10/sr-finra-2019-008-amendment2.pdf>.

² COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to U.S. Sec. & Exch. Comm’n re: File Number SR-FINRA-2019-008: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service* (July 25, 2019), available at <https://www.capmksreg.org/wp-content/uploads/2019/07/CCMR-Comment-Letter-to-SEC-FINRA-Bond-Market-Data-Rule.pdf>.

School) and John L. Thornton (Chairman, The Brookings Institution) and led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Under the original proposal, (i) FINRA sought to amend Rule 6760 with respect to new issues of corporate debt securities to require bond underwriters to report additional attributes of the security to FINRA prior to the first transaction in the security; and (ii) FINRA would begin selling this data back to market participants at a FINRA-prescribed fee (up to \$6,000 per month if the data is retransmitted or repackaged for dissemination).³

Under the Amended Bond Data Service Proposal, FINRA would establish the bond data service now, submit a separate filing to set fees for the new service at a future date, and implement the service after those fees are adopted.⁴ However, the SEC does not have sufficient information to approve or disapprove of the Amended Bond Data Service Proposal because FINRA has still failed to provide the cost data for the fees that FINRA would charge for this service. If the SEC approves the Amended Bond Data Service Proposal, then the subsequent fees, as determined by FINRA, can be immediately effective upon filing under Exchange Act Rule 19b-4(f).⁵ This will undermine the SEC's ability to review the reasonableness of the fees before the public is subject to them. The public would also be deprived of the opportunity for notice and comment as to the fees charged by FINRA under the Amended Bond Data Service Proposal.

The SEC recently moved to rescind the analogous exception under Exchange Act Rule 608(b)(3) allowing fees for national market system plans to become immediately effective upon filing with the SEC (the "**NMS Plan Fee Exception**").⁶ The SEC specifically noted that, "where plans responsible for providing core data are monopolistic providers of such data, there is no market competition that can be relied upon to set competitive prices."⁷ Because none of its competitors can compel underwriters to provide the data that FINRA proposes to collect, FINRA's bond data service would enjoy similar monopolistic advantages that concern the SEC in the context of national market system plans. Further, the NMS Plan Fee Exception denies market participants the ability to review fee changes under the standard notice-and-comment procedure "because, even if a [fee] is subsequently abrogated, the fee is effective immediately upon filing, remains effective for the period between filing and abrogation, and market participants can be charged the fee during the entire period between filing and abrogation."⁸ The SEC's proposal to eliminate the NMS Plan Fee Exception reflects its clear understanding that immediate effectiveness undermines the full

³ U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service*, 84 FED. REG. 13977 (April 8, 2019), available at <https://www.federalregister.gov/documents/2019/04/08/2019-06786/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a> [the "**Original Proposal**"].

⁴ Amended Proposal, *supra* note 1, at 54713-54714.

⁵ 17 C.F.R. § 240.19b-4(f).

⁶ U.S. SEC. & EXCH. COMM'N, *Rescission of Effective-Upon Filing Procedure for NMS Plan Fee Amendments*, 84 FED. REG. 84 FR 54,794 (Oct. 11, 2019), available at <https://www.federalregister.gov/documents/2019/10/11/2019-21770/rescission-of-effective-upon-filing-procedure-for-nms-plan-fee-amendments> [**"Fee Exception Proposal"**].

⁷ Fee Exception Proposal, *supra* note 6, at 54,799.

⁸ Fee Exception Proposal, *supra* note 6, at 54,799.

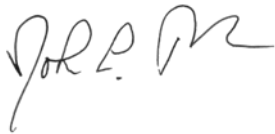
and transparent review of market data fees. These concerns are equally applicable in the context of the Amended Bond Data Service Proposal.

Therefore, the Amended Bond Data Service Proposal removes the service's fees from the full notice-and-comment rulemaking process at a time when the SEC is curtailing this practice with respect to other market data fees because it undermines transparent review and approval. Further, by addressing fees at a later date, the Amended Bond Data Service deprives the SEC of critical information it needs now to conduct a full cost-benefit analysis of the proposal. For these reasons, the Amended Bond Data Service Proposal should be disallowed.

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Prof. Hal S. Scott (hscott@law.harvard.edu), or Executive Director, John Gulliver (jgulliver@capmksreg.org), at your convenience.

Respectfully submitted,



John L. Thornton
Co-CHAIR



Hal S. Scott
PRESIDENT



R. Glenn Hubbard
Co-CHAIR