

COMMITTEE ON CAPITAL MARKETS REGULATION

September 28, 2022

Vanessa A. Countryman, 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

Dear Ms. Countryman:

In light of the D.C. Circuit Court's recent decision in *Bloomberg L.P. v. Securities and Exchange Commission*,¹ the staff of the Committee on Capital Markets Regulation (the "**Committee**") wish to reiterate to the Securities and Exchange Commission (the "**SEC**") certain concerns regarding the proposal by the Financial Industry Regulatory Authority ("**FINRA**") to establish a reference data service for corporate bonds (the "**Proposal**").²

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-seven leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is 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.

After the SEC published notice of the initial Proposal in April 2019,³ the Committee submitted three comment letters arguing that the Proposal should be disapproved.⁴ These letters expressed

¹ See *Bloomberg L.P. v. Securities and Exchange Commission*, USCA Case No. 21-1088 (D.C. Circuit) (Aug. 16, 2022).

² See 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), <https://www.federalregister.gov/documents/2019/10/10/2019-22142/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of> [the "**Bond Data Proposal**"].

³ See 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>.

⁴ See COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to U.S. Sec. & Exch. Comm'n re: File Number SR-FINRA-2019-008* (July 25, 2019), <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5869336-188668.pdf> [the "**First CCMR Comment Letter**"]; Committee on Capital Markets Regulation, *Comment Letter to*

COMMITTEE ON CAPITAL MARKETS REGULATION

concern that FINRA failed to provide, and the SEC failed to consider, cost data necessary to evaluate FINRA's assertion that fees for market data under the Proposal would be fair and reasonable as required by the Exchange Act. Nevertheless, the SEC approved the final Proposal in January 2021,⁵ and in March 2021, Bloomberg petitioned the Court for review.⁶

In its August 2022 decision, the D.C. Circuit Court remanded the SEC's order approving the Proposal. Specifically, the Court found that "the [SEC] failed to respond adequately to... concerns about the cost of building and maintaining the program and the extent to which those costs – which could conceivably amount to millions or even tens of millions of dollars – will be borne by market participants."⁷ As a result, the Court remanded the SEC's approval order for further consideration so that the SEC can adequately respond to concerns regarding the Proposal's cost.⁸

The Committee staff wishes to reaffirm the Committee's longstanding position that, in order to conduct the requisite cost-benefit analysis, the SEC should require FINRA to provide detailed data concerning the costs of the Proposal and the fees to be charged under it. This cost data should be disclosed publicly so that interested parties can adequately scrutinize and comment on it before the SEC approves these significant changes to the dissemination of bond market data.

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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 me ([REDACTED]) at your convenience.

Respectfully submitted,



John Gulliver
Executive Director

U.S. Sec. & Exch. Comm'n re: File Number SR-FINRA-2019-008 (Oct. 22, 2019), <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6322909-194463.pdf> [the "Second CCMR Comment Letter"]; COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to U.S. Sec. & Exch. Comm'n re: File Number SR-FINRA-2019-008* (March 16, 2022), <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6960400-212782.pdf> [the "Third CCMR Comment Letter"].

⁵ See U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Establish a Corporate Bond New Issue Reference Data Service*, Release No. 34-90939; File No. SR-FINRA-2019-008 (Jan. 15, 2021), <https://www.sec.gov/rules/sro/finra/2021/34-90939.pdf>.

⁶ See *Bloomberg L.P. v. Securities and Exchange Commission*, USCA Case No. 21-1088 (D.C. Circuit) (Aug. 16, 2022), at 15.

⁷ *Id.* at 27.

⁸ *Id.*