HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

February 21, 2023

Via Electronic Mail

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

Re: File No. SR-FINRA-2019-008 and Exch. Act Rel. No. 96541

Dear Ms. Countryman,

The Healthy Markets Association ("HMA")[1] writes to supplement our prior letters to the Commission regarding the now remanded Commission approval of FINRA's rule to establish a corporate bond reference data service.[2]

We appreciate the Commission's December 2022 Order Scheduling Filing of Statements on Review.[3] We had hoped that the Order would solicit a sufficiently detailed response from FINRA to establish the rule's compliance with the Exchange Act. It didn't.

Six months ago, the Court of Appeals for the DC Circuit held that "Commission's approval of FINRA's proposal was arbitrary and capricious because the Commission neglected to give a reasoned explanation in response to Bloomberg's significant concerns about the costs that FINRA, as well as market participants, will incur in connection to the creation and maintenance of the data service." It continued, saying that "the agency did not provide a reasoned response to Bloomberg's comments that FINRA failed to quantify the direct and indirect costs of its proposed data service (or explain why certain costs could not be quantified), and failed to explain how the costs incurred for building the service will be paid if the Commission disapproves FINRA's proposed fee structure in subsequent proceedings."

[1]HMA is a not-for-profit member organization of public pension funds, investment advisers, broker-dealers, exchanges, and market data firms focused on reducing conflicts of interest and improving the transparency, efficiency, and fairness of the capital markets. To learn more about HMA or our members, please see our website at http://healthymarkets.org/about.

[2] *See, e.g.,* Letter from Tyler Gellasch, HMA to Vanessa Countryman, SEC, Apr. 29, 2019, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423848-184599.pdf; Letter from Tyler Gellasch, HMA to Vanessa Countryman, SEC, July 29, 2019, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5879134-188731.pdf; Letter from Tyler Gellasch, HMA to Vanessa Countryman, SEC, Oct. 25, 2019, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6346067-195294.pdf; Letter from Tyler Gellasch, HMA to Hon. Gary Gensler, SEC, Nov. 1, 2022, *available at* https://healthymarkets.org/wp-content/uploads/2022/11/Letter-to-SEC-re-FINRA-Ref-Data-11-1-2022.pdf.

[3] *Order Scheduling Filing of Statements on Review, In the Matter of FINRA*, SEC, Exch. Act Rel. No. 96541, Dec. 20, 2022, *available at* https://www.sec.gov/rules/other/2022/34-96541.pdf.

The four-page FINRA Response to the Order still hasn't provided all of the legally-mandated details.[4] Instead, the FINRA Response dedicated a whopping three paragraphs to describe (in summary fashion) the costs and fees associated with designing, implementing, and operating a new, government-mandated market data collection and dissemination system impacting thousands of market participants and covering thousands of debt issues.[5]

FINRA seems to suggest that it has wasted over four years of its time and public and private sector resources – including the thousands HMA has spent on legal fees – because it failed to include three paragraphs in its rule. FINRA would have us all believe that it only needed to provide a very rough estimate of its own initial costs (which it estimates as approximately $1,300,000) and ongoing annual costs (which it now estimates as approximately $700,000).[6]

That's facially inadequate. FINRA needs to provide sources for those costs. The cursory explanations of costs and different summary estimates leave no room for (1) questioning them, (2) assessing how their costs would (or would not) be passed through to market participants, or (3) determining the direct costs on market participants to comply with the rule (which are ignored).

Lastly, we note that FINRA's Economic Impact Assessment was conducted several years ago by surveying less than a dozen market participants and that the Commission has engaged in no relevant analysis of its own. Given the fundamental changes to the marketplace (including dramatically increased electronic trading), a more timely, accurate assessment should be required.

Because FINRA has still declined to provide sufficient information for the Commission to conclude that FINRA has met its statutory obligations, the FINRA corporate bond reference database proposal should still be rejected.

Thank you for your consideration. Please feel free to have your staff contact me by email at [redacted] or telephone at [redacted] for any follow up.

Sincerely,

Tyler Gellasch
President and CEO

[4] Letter from Marcia Asquith, FINRA, to Vanessa Countryman, SEC, Jan. 19, 2023, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20155240-323579.pdf ("FINRA Response").
[5] FINRA Response.
[6] *Id.*, at 3.