



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000

July 29, 2019

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

RE: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (Release No. 34-86256; File Number SR-FINRA-2019-008)

Dear Secretary Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") welcomes this opportunity to comment to the U.S. Securities and Exchange Commission ("SEC" or "Commission") regarding the Financial Industry Regulatory Authority's ("FINRA") proposal to establish a corporate bond new issue reference data service.

FINRA has proposed expanding FINRA rule 6760 to require underwriters to submit additional data to FINRA as part of their "Obligation to Provide Notice" of an initial offering of a "Corporate Debt" TRACE-Eligible security prior to the execution of the first transaction. FINRA would then disseminate this data to market participants in accordance with a prescribed fee structure.

CCMC appreciates the Commission instituting proceedings to determine whether to approve or disapprove the FINRA Proposal ("Proposal"). In our April 29, 2019 comment letter, CCMC observed that we had serious concerns regarding the impact of the proposal on competition and market efficiency. To respond specifically to the questions posed in the Order:

The Proposed Rule Change does not does not “provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons” under Section 15A(b)(5)

The fees that FINRA would charge for the data have not been substantiated as required by law. Under the proposal, FINRA would redistribute underwriter data to any person or organization for a fee of \$250 per month for internal purposes only, and for a fee of \$6,000 per month where the data is retransmitted or repackaged for delivery and dissemination. The proposal characterizes these fees as “commercially reasonable.” The law requires that SRO fees be demonstrated to be “fair and reasonable.”

However, there is no data or analysis justifying these fees as mandated under Exchange Act Section 15A(b). As observed by a number of commenters – including SIFMA, Bloomberg L.P., Healthy Markets, and CCMC – data sufficient to allow the Commission to determine that the fees comply with the law is required.¹

We also concur with those who have observed that FINRA, as a not-for-profit regulator, has no basis to collect margin above its costs.² If not appropriately calibrated and substantiated, we share concerns that these fees may be too burdensome for market participants.³

In summary, the fees are inconsistent with current law as reflected in the SEC’s

¹ See Letter from Christopher B. Killian, Managing Director, Securitization and Corporate Credit, SIFMA, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5426947-184647.pdf>; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5426948-184629.pdf>; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423848-184599.pdf>; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5421304-184608.pdf>.

² See Letter from Lawrence Harris, Ph.D., CFA, Fred V. Keenan Chair in Finance, USC Marshall School of Business, May 17, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5533902-185252.pdf>; Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423756-184597.pdf>.

³ See Letter from Cathy Scott, Director, Fixed Income Forum, On behalf of The Credit Roundtable, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5420359-184590.pdf>; Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, April 29, 2019, *available at* <https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423756-184597.pdf>.

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recent decisions in the holdings of *Box*,⁴ *NetCoalition*,⁵ the Bloomberg CTA matter,⁶ the D.C. Circuit's decision in *Susquehanna*,⁷ and the SEC "Staff Guidance on SRO Rule Filings Related to Fees."⁸

The Proposed Rule Change does not "promote just and equitable principles of trade, foster cooperation and coordination...remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest" under Section 15A(b)(6).

Given this Commission's emphasis on data-driven regulations, it is worth underscoring that this proposal provides no data to support the proposition that there is a problem or that FINRA is best placed to provide the recommended service.

FINRA points to the model of the Municipal Securities Rulemaking Board ("MSRB") to suggest the FINRA proposal would remove impediments to an open market. However, FINRA's proposal for a corporate bond data service is very different from the MSRB's proposal for a new issue information dissemination service (NIIDS). The MSRB had an urgent necessity to establish NIIDS. Because of the sun-setting of an exemption, large tranches of previously exempt securities needed to be reported. It was indisputable that the existing framework of private sector participants couldn't handle this skyrocketing volume caused by the filing exemption ending. By contrast, no similar exigency or development justifies the timing or scope of FINRA's proposal. The MSRB, unlike FINRA, undertook a two-year open consultative process to arrive at a consensus proposal. MSRB named a financial services corporation owned by its principal users (DTCC) to run the facility, while FINRA proposed to operate the service itself. The MSRB also restricted itself to requesting data clearly essential to their task, and charged only connectivity fees. In short, the MSRB's approach is very different from FINRA's, and provides no basis for approving this proposal.

⁴ See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

⁵ See In the Matter of the Application of SIFMA, Securities Exchange Act Release No. 84432 (October 16, 2018), *available at* <https://www.sec.gov/litigation/opinions/2018/34-84432.pdf>.

⁶ See In the Matter of Bloomberg L.P., Securities Exchange Act Release No. 83755 (July 31, 2018), *available at* <https://www.sec.gov/litigation/opinions/2018/34-83755.pdf>.

⁷ See *Susquehanna International Group v. SEC*, 866 F.3d 442 (D.C. Cir. 2017).

⁸ See Staff Guidance on SRO Rule Filings Relating to Fees, May 21, 2019, *available at* <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

The Proposed Rule Change fails to not “impose any burden on competition not necessary or appropriate in furtherance of the purposes” of the Act under Section 15A(b) (9) of the Act.

The proposal could diminish competition and encourage the creation of monopolistic data services, decreasing market efficiency and innovation. Currently, multiple vendors compete to provide bond reference data and related services. FINRA stated that “the quality and timeliness of reference data varies greatly across data providers.”⁹ FINRA believes the “solution” to the problem of competing vendors offering consumers a variety of products is to displace those competing services with a single monopoly provider. However, whenever there is competition, there are different providers providing goods of varying quality – whether the goods are data, shoes, or computers. Consumer choice among varying goods is not generally regarded as evidence of market failure requiring regulatory intervention.

Early access to reference data is important if the data is accurate and of high quality. Currently, multiple vendors engage in an iterative, labor-intensive process of working directly with underwriters, issuers, and other sources to improve the quality of data. We would expect the quality of data to drop if that process gave way to a single government-backed data set. Indeed, the error rate on even the limited data sets currently collected by FINRA argues powerfully against expanding FINRA’s commercial role.¹⁰

We are particularly troubled by FINRA’s announced plans that, following this new fee-based service, it expects to intervene in additional, currently competitive private markets.¹¹ That would, over time, further discourage private investment and activity in these adjacent spaces, prompting a reduction in transparency and market efficiency.

⁹ See Securities Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977 (April 8, 2019) (Notice of Filing of a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service).

¹⁰ See “An SEC-Mandated Corporate Bond Data Monopoly Will Not Help Quality,” TabbFORUM, May 21, 2019, *available at* <https://tabbforum.com/opinions/an-sec-mandated-corporate-bond-data-monopoly-will-not-help-quality/>.

¹¹ Securities Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977, 13979 (April 8, 2019) (Notice of Filing of a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service) (“Based on implementation of this proposal, FINRA would evaluate a potential expansion of the new issue reference data service to include other debt products.”).

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The proposal would increase regulatory and liability burdens for underwriters, which could burden competition in this sector as well. Underwriters would be required to provide FINRA with 26 fields of data, many unrelated to new issuance, such as ISIN and currency. Underwriters would not only have to collate, calculate and submit these new fields, but would also need to update submitted data (such as incorrectly calculated fields or other errors). Underwriters would face new potential liability for errors in reporting and calculation, all without any showing that existing private incentives to quickly and accurately disseminate bond information to potential investors are inadequate.

Thank you for the opportunity to comment on this issue. We urge the SEC to disapprove this proposed rule change. We encourage the SEC and FINRA to maintain competition in reference data services for the corporate bond market.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long, sweeping horizontal stroke.

Tom Quaadman