FINRA
Financial Industry Regulatory Authority

Alexander Ellenberg
Associate General Counsel

Telephone: 202-728-8152
Facsimile: 202-728-8264

March 16, 2020

BY MESSENGER

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE, Room 10915
Washington, DC 20549-1090

RE: FINRA's Statement In Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (SR-FINRA-2019-008)

Dear Ms. Countryman:

Enclosed are the original and three copies of FINRA's Statement in Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service.

Sincerely,

Alexander Ellenberg

Enclosures

cc: Benjamin Beaton, Squire Patton Boggs (US) LLP, counsel for Bloomberg L.P.

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of **Financial Industry Regulatory Authority, Inc.** **For an Order Granting the Approval of** Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (File No. SR-FINRA-2019-008)

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FINRA'S STATEMENT IN SUPPORT OF PROPOSED RULE CHANGE TO ESTABLISH A CORPORATE BOND NEW ISSUE REFERENCE DATA SERVICE

Stephanie Dumont
Senior Vice President and Director of Capital Markets Policy

Alexander Ellenberg
Associate General Counsel

FINRA
1735 K Street, N.W.
Washington, DC 20006
(301) 590-6500

Dated: March 16, 2020

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In the Matter of **Financial Industry Regulatory Authority, Inc.** **For an Order Granting the Approval of** Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (File No. SR-FINRA-2019-008)

FINRA'S STATEMENT IN SUPPORT OF PROPOSED RULE CHANGE TO ESTABLISH A CORPORATE BOND NEW ISSUE REFERENCE DATA SERVICE

I. SUMMARY

Today, the corporate bond market lacks consolidated new issue reference data that is made available to all market participants on equal terms. Without this data, market participants are limited in their ability to freely trade, clear, and settle corporate bonds when those bonds first come to market. To address this need, the Securities and Exchange Commission ("SEC" or "Commission") Fixed Income Market Structure Advisory Committee ("FIMSAC") unanimously recommended, following a public hearing that included input from a diverse cross-section of market participants, that FINRA provide a centralized, regulated corporate bond new issue reference data service.[1]

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[1] *See Recommendation to Establish a New Issue Reference Data Service for Corporate Bonds*, (October 29, 2018), *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-corporate-bond-new-issue-reference-data-recommendation.pdf ("Recommendation").

The creation of a corporate bond new issue reference service fits precisely within FINRA's role as a self-regulatory organization ("SRO"). FINRA is charged under the Securities Exchange Act ("Act") with a number of responsibilities that include, among other things, removing impediments to a free and open market and fostering clearance, settlement, and information processing with respect to transactions in corporate bonds and other securities. Indeed, FINRA currently operates the system that provides market participants with other critical corporate bond trade information. Moreover, SRO regulation of new issue reference data is not novel; the same kind of new issue reference data for municipal bonds is made available under rules adopted by the SRO charged with a similar mandate in the municipal securities market.

Following the FIMSAC's Recommendation, FINRA filed the current proposed rule change with the Commission.[2] A key element of the Proposal is that FINRA, as a not-for-profit SRO, will provide a limited set of essential corporate bond new issue reference data as a public market utility on timely, reasonable, and non-discriminatory terms to anyone who chooses to receive it. In contrast, the private data vendors that today provide corporate bond new issue reference data are not bound by similar obligations, and the FIMSAC expressed particular concern that a dominant private data vendor has refused to license data, or has withheld it selectively, for anti-competitive reasons.[3] Importantly, the FIMSAC was concerned that a dominant private vendor's ability to restrict access to new issue reference data has immediate

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2 *Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service*, Securities Exchange Act Release No. 85488, 84 Fed. Reg. 13977 (April 8, 2019) (SR-FINRA-2019-008) ("Proposal").

3 *See Recommendation Regarding FINRA Proposal to Establish a Corporate Bond New Issue Reference Data Service*, at 4 (June 11, 2019), *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-comment-letter-new-issue-reference-data-service.pdf ("Supplemental Recommendation").

and direct downstream impacts on the ability of other market participants to perform critical market functions such as pricing, trading, clearing, and settling new issues once the bonds begin trading in the secondary market.[4]

As discussed at the FIMSAC, Bloomberg is the dominant private data vendor in today's market for corporate bond new issue reference data, and given current underwriter practices, Bloomberg often gains access to new issue reference data before other vendors and market participants.[5] In five separate comment letters opposing FINRA's Proposal, Bloomberg attempted to dismiss all of the FIMSAC's concerns with the status quo. Bloomberg repeatedly denied that regulation is needed to ensure timely and equal access to corporate bond new issue reference data. Yet FINRA's Proposal was based on a substantial record demonstrating such need. Specifically, FINRA demonstrated that its Proposal was designed to address a particular problem in today's market—namely, that a number of market participants are not reasonably able to gain access to timely, comprehensive, and accurate corporate bond new issue reference data when the bonds begin trading. As FINRA's Proposal discussed in detail, this problem was identified by the FIMSAC, by FINRA's independent outreach to a diverse set of market participants, by the comments submitted in support of the Proposal, and in FINRA's data analysis.

Bloomberg further argued against the Proposal as an inappropriate attempt to displace competition among private data vendors. Yet FINRA demonstrated that this is plainly not the case, as the Proposal is narrowly tailored to include only the basic items of reference data that are essential for trading and settling new issues in corporate bonds. Because of the Proposal's

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4 *See* Recommendation at 1-2.

5 *See infra* notes 17 through 19 and accompanying discussion.

narrow scope, it would not interfere with private data vendors' ability to compete to provide more enriched and value-added data. This is not a speculative conclusion; competition among reference data providers continues to exist in the municipal bond market, where there has long been a centralized, SRO-mandated data service similar to the service FINRA proposed. In fact, FINRA's Proposal is designed to promote competition. It is telling that—contrary to Bloomberg's arguments to preserve the status quo—the Proposal was widely supported as a means to level the competitive playing field and enhance competition among market participants, including those that operate alongside Bloomberg in both the markets for reference data and trading services.

After a lengthy rulemaking process with substantial public input, the Commission, acting through authority delegated to the Division of Trading and Markets ("Division"),[6] approved the Proposal.[7] The Division's Approval Order thoroughly considered the entire record, including the significant independent sources of evidence that supported the Proposal, as well as the various arguments that Bloomberg raised in each of its five comment letters opposing the Proposal. The Approval Order concluded that the ample record clearly demonstrated a regulatory gap and a need for FINRA's Proposal.[8] Further, the Approval Order found that the Proposal is reasonably designed to address the regulatory gap in the current market to the benefit of the marketplace, consistent with Section 15A(b)(6) of the Act.[9] Finally, the Approval Order found that, based on

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6 17 CFR 200.30-3(a)(12).

7 *Order Granting Approval of a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service*, Securities Exchange Act Release No. 87656, 84 Fed. Reg. 67491 (December 10, 2019) ("Approval Order").

8 *See id.* at 67497-98.

9 *See id.* at 67499.

the Proposal's limited scope, it would not impose an unnecessary or inappropriate burden on competition, consistent with Section 15(A)(b)(9) of the Act.

With its Petition, Bloomberg now seeks to further delay FINRA's Proposal along with the level playing field the Proposal would create for access to essential reference data. Bloomberg's Petition raises no new arguments, nor does it identify any errors in the Approval Order. For the reasons explained below, the Commission should promptly affirm the Approval Order.

II. BACKGROUND

FINRA's Proposal is supported by a substantial regulatory record that begins with the FIMSAC's unanimous Recommendation adopted in 2018. The full record is discussed at length in FINRA's Proposal and the Division's Approval Order. FINRA is providing a select summary of the record here in response to the arguments Bloomberg raises in its Petition. FINRA otherwise continues to rely on the entire record in support of the Proposal, and offers additional arguments below in response to Bloomberg's Petition and in support of the Commission's de novo review.

a. The FIMSAC's Unanimous Recommendation

The FIMSAC is a federal advisory committee that was empaneled by the SEC in 2017 "to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure."[10] In particular, the FIMSAC, which is composed to represent the views of retail and institutional investors, small and large issuers, trading venues, dealers, and SROs,

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10 *Notice of Federal Advisory Committee Establishment for the Fixed Income Market Structure Advisory Committee*, Securities Exchange Act Release No. 81958, 82 Fed. Reg. 50460 (October 31, 2017).

among others, was asked to advise the Commission "on the efficiency and resiliency of [the fixed income] markets and identify opportunities for regulatory improvements."[11]

On October 29, 2018, the FIMSAC unanimously approved the Recommendation from its Technology and Electronic Trading Subcommittee ("Subcommittee") that the Commission, in conjunction with FINRA, establish a new issue reference data service for corporate bonds. As noted in the Recommendation, the Subcommittee represents a cross-section of market participants, including electronic trading platforms, buy-side organizations, quantitative trading firms and sell-side dealers, and well-known market observers. To develop the Recommendation, the Subcommittee drew on its experience as well as input from various sources including the leading reference data vendors and underwriters.[12]

The Subcommittee recognized that disparities exist among reference data vendors' access to new issue reference data depending on several factors, including the vendors' relationships with underwriters. For example, the Subcommittee noted that there can be data availability delays among vendors between a few hours and several days. These gaps raised a concern because "[m]arket participants require this information to identify bonds, settle bond trades and value bonds."[13] The Subcommittee explained that "[t]o support the trading of newly issued bonds on electronic platforms, it is necessary that all platform participants price and trade bonds based on consistent and accurate information."[14]

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11 *See SEC Announces the Formation and First Members of Fixed Income Market Structure Advisory Committee*, SEC Press Release 2017-209 (November 9, 2017), *available at* https://www.sec.gov/news/press-release/2017-209.

12 *See* Recommendation at 1.

13 *See id.*

14 *See id.*

The Subcommittee further observed that in the current environment, because private data vendors are not obligated to provide impartial access to key new issue reference data, a vendor can "significantly tilt the playing field for trading platforms and market participants." In particular, "[i]f a reference database vendor refuses to license its database to all market participants and venues on commercially reasonable terms, the rejected entities must seek out and use alternative reference databases" that may not reconcile with data used by other market participants, including a rejected party's clients. The resulting confusion, the Subcommittee noted, increases transaction costs and impedes competition in the corporate bond markets.[15]

To address these concerns, the Subcommittee recommended the establishment of a consolidated new issue reference data service that is made available to all subscribers in timely fashion and on an impartial basis, subject to applicable regulation. The Subcommittee noted, in this connection, that "[t]he lack of a universal means of disseminating new issue reference data for the corporate bond market is further exacerbated by the lack of regulation mandating impartial access to corporate bond reference data." Accordingly, the Subcommittee recommended that FINRA operate the service and provide subscribers with impartial and commercially reasonable access, subject to applicable SRO regulation. As recognized by the Subcommittee, similar new issue data access concerns have been avoided in the municipal bond market, where the centralized, regulated data model already exists under rules adopted by the Municipal Securities Rulemaking Board ("MSRB"), another SRO subject to Commission oversight.[16]

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15 *See id.* at 2.

16 *See id.*

The Subcommittee received strong support for the Recommendation when it was presented for consideration by the full FIMSAC. During this public meeting, the FIMSAC sought and obtained input from a panel of experts, whose comments further confirmed the need to implement the Recommendation. First, the panelists agreed that there is a disparity among vendors—a disparity favoring Bloomberg over its competitors—in their access to new issue reference data provided by underwriters. At the FIMSAC, a panelist from a large underwriting firm expressly acknowledged that "there is no question that we do undertake getting our securities set up on the Bloomberg trading platform because that is what the industry predominantly uses to book our tickets."[17]

Notably, even as panelists from two vendors that compete with Bloomberg described their substantial investments in efforts to source new issue reference data, one explained that, given current underwriter practices, "there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution."[18] Similarly, the panelist from the other vendor stated that "at the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors," and that this "creates basically competitive advantage on certain platforms, which is in my view not ideal for having a transparent market."[19]

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17 *See Transcript of FIMSAC Meeting* (October 29, 2018), *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt, ("FIMSAC Transcript"), comments from Bob LoBue, J.P. Morgan, at 80-81.

18 *See id.*, comments from Spencer Gallagher, ICE Data Services, at 68.

19 *See id.*, comments from Frederic Demesy, Refinitiv, at 78.

Second, the record of the FIMSAC meeting confirms that market participants bear the costs of this disparity. One panelist from a large investment management firm observed that "[h]istorically, we have noticed cases where a new issue does take time to get set up on some of our electronic trading platforms, and that means that we can't necessarily go and use those electronic trading platforms right away."[20] This panelist further noted secondary costs that accrue when the disparity impairs bond valuation, as investment managers may find less liquidity when market makers lack the information needed to value and price bonds.[21] Similarly, one of the data vendor panelists commented that the disparity imposes "higher costs for our customers."[22]

The FIMSAC meeting also provided additional support for the Subcommittee's recommended solution that FINRA establish and operate a consolidated, regulated data service. One FIMSAC member explained that the Recommendation focuses on FINRA because "FINRA is best equipped to solve this problem."[23] In addition, the panelist from a large underwriting firm described the firm's existing process to provide new issue reference data to FINRA and noted "we could probably populate that a little bit deeper."[24]

Based on this public record, the FIMSAC unanimously approved the Subcommittee's Recommendation. The FIMSAC subsequently reaffirmed the Recommendation, again with

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20 *See id.*, comments from Alex Sedgwick, T. Rowe Price, at 84.

21 *See id.*

22 *See id.*, comments from Frederic Demesy, Refinitiv, at 78.

23 *See id.*, comments from Larry Harris, USC Marshall School of Business, at 100.

24 *See id.*, comments from Bob LoBue, J.P. Morgan, at 80.

unanimous approval.[25] In its Supplemental Recommendation, the FIMSAC emphasized that FINRA is "the most logical and impartial choice" to establish and operate the data service. The FIMSAC explained that this choice was based on FINRA's role as a regulated entity, as it noted its concern that certain large reference data providers "have in the past, and could in the future, manage their data and trading businesses in a coordinated fashion—refusing to license their leading reference data products to trading platforms that they deem to be competitive with their own."[26] FINRA, on the other hand, would provide the data impartially "to *all* market participants on objective and non-discriminatory terms."[27] (Emphasis in original.)

b. The FINRA Proposal

Following the FIMSAC Recommendation, FINRA filed the Proposal with the Commission on March 27, 2019. Under the Proposal, FINRA will amend its Rule 6760 to require that underwriters report to FINRA a limited set of additional new issue reference data elements for corporate bonds. As explained in the Proposal, underwriters are already required under current Rule 6760 to provide certain new issue reference data to FINRA, so that FINRA can set the bonds up in its Trade Reporting and Compliance Engine ("TRACE"), FINRA's system for bond trade reporting and dissemination. The Proposal reflects a modest expansion of Rule 6760 to include the basic set of essential new issue reference data fields that market participants require for pricing, trading, and settlement.[28]

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25 *See* Supplemental Recommendation.

26 *See* id. at 3-4.

27 *See id.* at 3.

28 FINRA provided a detailed list data fields in Exhibit 3 of the Proposal. As amended, Exhibit 3 explains why each data field is needed for these purposes. Exhibit 3 of the Proposal is found on pages 6-17 of the Amendment 2 to Proposed Rule Change,

The Proposal further specified that FINRA will disseminate the new issue reference data immediately upon receipt. Under Rule 6760, FINRA will require underwriters to report reference data for a new issue before the first trade in the bond. This reporting timeline, coupled with immediate dissemination, will allow market participants to receive the information in a timelier manner and more efficiently participate in market activity once a new issue begins secondary trading.

The Proposal included detailed discussion of its regulatory need. FINRA explained that it performed its own independent outreach to eleven market participants—four data providers, three underwriters, two trading platforms, and two clearing firms—and heard the same problem identified by the FIMSAC.[29] FINRA's outreach indicated that data vendors receive new issue reference data through different channels at different times, and FINRA discussed in its Proposal the problems that market participants experience as a result with trading and settling new issues of corporate bonds. For example, if a trading platform does not have essential information about a new issue, it cannot identify the bond and set it up on its platform to trade; FINRA heard in its outreach from a trading platform that could not facilitate trades in new issues on their first day of trading because the platform's reference data provider would only provide reference data the following morning.[30] In addition, if trading platforms, trading firms, or investors receive inconsistent reference data, the Proposal noted that there is an increased likelihood of broken trades and reduced efficiency reconciling data for purposes of trading, clearance, and

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available at https://www.finra.org/sites/default/files/2019-10/sr-finra-2019-008-amendment2.pdf.

29 *See* Proposal at 13980-81.

30 *See id.* at 13980 n.17.

settlement.[31] FINRA designed the Proposal to address these problems, informed by its independent outreach and the record developed in connection with the FIMSAC Recommendation.

The Proposal also included detailed analysis of its anticipated economic impacts.[32] FINRA explained how the disparity among vendor access to reference data resulted from competitive barriers, as underwriters have relatively few incentives to report to data vendors other than the prevalent incumbent data vendor, *i.e.*, Bloomberg. Accordingly, FINRA discussed its view that the Proposal will promote competition in the markets both for reference data and trading. By providing all data vendors with timely access to a basic set of new issue reference data, the Proposal would level the playing field and allow vendors to compete on other value-add dimensions. In turn, the costs of untimely and impartial access to essential data—a barrier to entry—would be lowered for trading firms.

c. The Division's Approval Order

On December 4, 2019, after more than eight months of deliberation and multiple rounds of public comment,[33] the Division approved the Proposal on behalf of the Commission. In the Approval Order, the Division methodically reviewed the entire record before it and concluded that the Proposal is needed and reasonably designed to address the problems identified by the FIMSAC and others. The Approval Order further found that the Proposal would not cause the competitive harm that Bloomberg expressed concern about. For each of its findings, the

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31 *See id.* at 13981.

32 *See id.* at 13980-83.

33 Comments received on the Proposal are available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.

Approval Order weighed the evidence before it and explained why, on balance, its determinations were supported by the record. In short, the Approval Order practiced sound decision-making by examining relevant data and articulating reasoned explanations for its findings.

In considering the need for the Proposal, the Approval Order reviewed the problem with untimely and impartial access to reference data identified by the FIMSAC and FINRA's outreach. The Approval Order further accounted for additional evidence provided through the public comment process. Notably, the Approval Order fully recognized the oppositional views from Bloomberg and similarly aligned commenters. In response to Bloomberg's comments that there is no need for the Proposal, the Approval Order said: "the record provides ample evidence supporting the proposed new issue reference database." In particular, the Approval Order found that "the record demonstrates two things clearly: (1) Many market participants, including investors, trading platforms, and data vendors, do not have accurate, complete and timely access to corporate bond new issue reference data on the day a new issue begins trading in the secondary market; and (2) the proposed data elements to be included in the FINRA database could provide such access, as they encompass data that allow for the identification, valuation, and settlement of newly issued corporate bonds."[34]

The Approval Order concluded that the problem with data access creates costs for market participants, and that the Proposal is reasonably designed to address this problem. Specifically, the Approval Order found that "[c]urrent gaps in the availability of new issue reference data increase transaction costs and impede competition in the corporate bond markets."[35] The

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34 *See* Approval Order at 67497-98.

35 *See id.* at 67498.

Approval Order noted that basic new issue reference data is needed to identify, value, and settle a bond, and without this reference data, trading platforms are not able to make a bond available for trading.[36] As a result, the Approval Order found, "the inability of market participants that lack reference data to trade newly issued corporate bonds reduces the breadth of participation in the secondary market, thereby impacting liquidity, market efficiency, and price competition."[37]

Again, these findings were clearly justified, as they were based on the stated experience of multiple market participants, represented throughout the record. Ultimately, the Approval Order concluded that, like the SRO-mandated data service in the municipal bond market, FINRA's Proposal is reasonably designed to solve the information asymmetry problem that exists today. As a result, the Approval Order made the required statutory finding under Section 15A(b)(6) of the Act that the Proposal would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market for new issue corporate bonds.[38]

The Approval Order also concluded that, contrary to Bloomberg's arguments, the Proposal would not inappropriately burden competition among private data vendors.[39] The Approval Order first took note of public comments that stated the Proposal would actually promote competition among data vendors by reducing costs and barriers to entry. The Approval Order then concluded that, given the limited set of essential data fields that FINRA will collect and publish, the Proposal will not supplant demand for private data vendor services. This

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36 *See id.*

37 *See id.* at 67499-500.

38 *See id.* at 67500.

39 *See id.* at 67502-03.

conclusion was supported by various data points. For example, the Approval Order cited to a comment from a leading market structure economist, which noted that private data vendors currently sell products that include more data fields than those contemplated by the Proposal, such as ratings and indications of whether an issuer is currently in default, in an agreement to merge, or negotiating such agreement.[40] In addition, the Approval Order pointed to one of Bloomberg's own comment letters that made a similar point, noting that market participants demand more reference data fields than FINRA proposed to collect.[41] Furthermore, the Approval Order cites the Division's own research into current private reference data vendor offerings, which also identified and listed some of the "many other data" fields provided by reference data vendors.[42]

In addition to these points of support, the Approval Order noted that the Proposal applies only to new issue corporate bond data and does not contemplate providing additional data following issuance throughout the life of a bond. Accordingly, the Approval Order noted its belief that reference data vendors "will continue to compete and innovate in order to meet the additional needs of their customers."[43] And, importantly, in making its required finding under Section 15A(b)(9) of the Act, the Approval Order balanced the impact on competition posited by

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40 *See id.* at 67502 n.165 (citing to a comment letter from Larry Harris, Fred V. Keenan Chair in Finance, U.S.C. Marshall School of Business).

41 *See id.*

42 *See id.* at 67503 n.166 (identifying additional data fields in IHS Markit and Bloomberg offerings including issuer information (*e.g.*, fundamentals data, capital structure data), specific bond rating, bond trade and selling restrictions, classification data (industry, legal entity, etc.), corporate action data, ESG (Environmental, Social & Governance) data, dividend data, instrument analytics data, and security ownership data).

43 *See id.* at 67503.

Bloomberg against the Proposal's benefits in furtherance of the goals in Section 15A(b)(6) of the Act. Given the Proposal's benefits, the Approval Order found that even if it were to burden competition, such burden would be minimal and justified.

d. Applicable Legal Standards

In deciding a petition for review that challenges the Division's approval of an SRO's rule pursuant to delegated authority, the Commission "may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part," the approval order.[44] The Commission conducts a de novo review of the Division's approval.[45] When the Commission considers a FINRA proposed rule change, it shall approve the rule when it is "consistent with the requirements" of the Act and the rules and regulations issued thereunder that apply to a registered securities association.[46]

For a registered securities association such as FINRA, the central requirements for its rules are that they, among other things, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest.[47] In addition, FINRA's rules may not impose any burden on competition not

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44 SEC Rule of Practice 431(a).

45 *See, e.g.*, *Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.*28, Securities Exchange Act Release No. 88088, 85 Fed. Reg. 4726 (January 27, 2020) (exercising de novo review of a Division approval order issued pursuant to delegated authority).

46 *See* Exchange Act Section 19(b)(2)(C).

47 *See* Exchange Act Section 15A(b)(6).

necessary or appropriate in furtherance of the purposes of the Act.[48] In this case, the Approval Order properly found that FINRA's Proposal is fully consistent with the Act.

III. ARGUMENT

As the background above makes clear, there is a wealth of support for the Proposal, and the Approval Order properly concluded that the Proposal meets all of the Act's requirements. Now, after failing to derail the Proposal with its five comment letters, Bloomberg continues to retread its same arguments. With the Proposal's justification established already in detail, FINRA will explain in turn why none of Bloomberg's arguments provide a basis for the Commission to overturn the Division's Approval Order.

a. Bloomberg's Arguments about Fees are Meritless and Contrary to Precedent

Perhaps recognizing the Proposal's obvious merits, Bloomberg's lead argument seeks to invalidate the Approval Order on procedural grounds. Bloomberg argues that the Approval Order failed to make a required statutory finding under Section 15A(b)(5) of the Act, which requires that FINRA justify proposed fees as reasonable and equitably allocated. This argument is puzzling, as fees were not part of the Proposal that the Division approved.

Bloomberg's core concern appears to be that FINRA included fees in its initial proposal but withdrew them from the Proposal that the Division approved. As FINRA explained when it amended the Proposal, FINRA withdrew fees from the initial proposal so that it could further evaluate an appropriate fee structure for the data service. FINRA did so in light of a number of comments received on the initial proposal, as well as new Commission staff guidance on SRO fee filings that the Division published after FINRA's initial proposal. In particular, FINRA believed that with additional time, it could better assess the costs it incurs to develop the data

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48 *See* Exchange Act Section 15A(b)(9).

service, and also better forecast the number of expected subscribers. With this additional information, FINRA will be in a better position to determine proposed fees for the data service, consistent with the Division's guidance.

Notably, FINRA committed in its initial fee proposal to pricing the data service as a utility, using a cost-based formula. That commitment remains unchanged. The commitment is also clear, despite Bloomberg's characterization of it as "amorphous and undefined."[49] It means FINRA, a not-for profit organization, will tie the subscription price of the data service to FINRA's costs, and FINRA will allow all market participants to subscribe to the data service on reasonable, disclosed terms, as required of SROs. It also means that FINRA will not employ discriminatory pricing or unreasonably refuse anyone access to the data, unlike the anti-competitive practices the FIMSAC noted have been observed in the private market.

Furthermore, contrary to Bloomberg's arguments, the Approval Order did not simply rely on FINRA's assertions about operating the service as a regulatory utility. Instead, the Approval Order recognized that when FINRA proposes fees, they must be subject to public notice and comment and consistent with Section 15A(b)(5), whether filed for immediate effectiveness or not.[50] Accordingly, Bloomberg's contention that FINRA withdrew fees from the Proposal to avoid scrutiny from the public or the Commission is misguided at best. Even Bloomberg appears to recognize this in its own Petition, when it notes that the rule filing process has allowed the Commission to "disagree" with immediately effective SRO fee proposals that do not meet the Act's requirements.[51]

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49 *See* Petition at 11.

50 *See* Approval Order, 84 Fed. Reg. at 67503-504.

51 *See* Petition at 16.

Moreover, Bloomberg's argument that the Proposal could not be approved without including proposed fees is inconsistent with the plain text of the Act and longstanding Commission precedent. Section 19(b)(3)(A) of the Act allows immediately effective filings both for "establishing" or "changing" a due, fee, or other charge imposed by an SRO. On its face, then, the Act allows immediately effective filings when a fee is established in the first instance, even though the creation of the service that a new fee would be tied to would presumably be subject to separate Commission approval, unless it is otherwise eligible for immediate effectiveness. Perhaps not surprisingly, given the plain language of the statute, the Commission has long applied this exact approach in numerous examples—all of which would seemingly be invalidated by Bloomberg's argument.[52] Following the Commission's settled approach here did not preclude the Division in any way from properly evaluating the impacts of the Proposal to

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52 *See, e.g.*, *Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Fees for the MIDP Routing Option*, Securities Exchange Act Release No. 87186, 84 Fed. Reg. 53504 (October 7, 2019) (providing notice of an immediately effective proposed rule change filed by The Nasdaq Stock Market LLC to adopt fees for a new order routing option that had been approved through a separate filing and order); *Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Fee Schedule*, Securities Exchange Act Release No. 86854, 84 Fed. Reg. 47330 (September 9, 2019) (providing notice of an immediately effective proposed rule change filed by Investors Exchange LLC to establish pricing for its Retail Price Improvement Program, which had been approved through a separate filing and order); *Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the New York Stock Exchange LLC Price List To Establish Pricing for the Retail Liquidity Program,* Securities Exchange Act Release No. 67529, 77 Fed. Reg. 46137 (August 2, 2012) (providing notice of an immediately effective proposed rule change filed by New York Stock Exchange LLC to establish pricing for its Retail Liquidity Program, which had been approved through a separate filing and order); *Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Rebates for the Competitive Liquidity Provider Program*, Securities Exchange Act Release No. 676427, 77 Fed. Reg. 11608 (February 27, 2012) (providing notice of an immediately effective proposed rule change filed by BATS Exchange, Inc. to adopt the specific financial terms of its Competitive Liquidity Provider program, which had been approved through a separate filing and order).

determine its consistency with the Act. The central feature of the Proposal is to provide impartial, reasonable access to new issue reference data. The Approval Order gave this issue thoughtful and comprehensive analysis, with notice reasonably taken of the standards to which FINRA's fees for the service will be held.

Yet Bloomberg's Petition stretches its novel statutory reading even further. Bloomberg's Petition claims that the Approval Order erred by not making affirmative findings under Section 15A(b)(5), despite the absence of fees from the Proposal. In response to the Approval Order's explanation that 15A(b)(5) will apply when FINRA in fact proposes fees, Bloomberg argues that "Section 15A(b)(5 [sic] is not so limited; it applies to *all* '[t]he rules of the association.'"[53] (Emphasis in original.) This argument cannot hold. Section 15A(b) includes a number of requirements applicable to the rules of a registered national securities association (*e.g.*, Section 15A(b)(7) requires that the rules provide for appropriate disciplinary action), yet it is obvious that the Commission need not make findings under those portions of Section 15A(b) that have no bearing on the rule proposal before it (*e.g.*, in this case, it need not make a finding regarding whether the rule provides for appropriate discipline, as that topic is not addressed by the Proposal).

Further, Bloomberg's proposed approach is patently infeasible, which may explain why it is inconsistent with countless other Commission approval orders. Does Bloomberg mean to suggest that for every single SRO rule proposal, including those without a proposed fee component, the Commission must re-evaluate the overall allocation of the SRO's dues, fees, and charges, above and beyond the Commission's determination inherent in an approval that a given

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53 *See* Petition at 13.

project is worthy of the SRO's time and resources? Of course, Bloomberg does not provide any answer, nor does it provide any support for its unique approach to statutory interpretation.

b. The Approval Order Properly Found that the Proposal is Needed and Reasonably Designed, Consistent With Section 15A(b)(6) of the Act

The regulatory need for the Proposal was exhaustively recounted in the Approval Order. As discussed in the background above, the record is replete with evidence that a variety of market participants have experienced problems gaining timely, reasonable, and impartial access to the essential new issue reference data that is needed when corporate bonds begin trading. Bloomberg's Petition tries to write this evidence off as mere "anecdotal comments" from market participants. Yet these are clear and attributed statements of need, in the public record, from a variety of market participants, including investment firms and trading firms. Bloomberg tries to minimize these statements further by characterizing them as "self-serving." Yet Bloomberg does not explain, much less demonstrate, why qualitative evidence from these market participants should be discounted in favor of Bloomberg's own self-serving statements, particularly when evaluated by the SEC in an administrative capacity where its statutory mandate is to advance the interests of investors and promote fair and orderly markets.

Bloomberg further claims that the substantial evidence of regulatory need for the Proposal is somehow negated by data on the growth of electronic bond trading. According to Bloomberg, it showed that "a substantial and increasing amount of electronic bond trading occurs on the day of issuance," and it pointed to third-party analysis which shows the "explosive growth and record high market share in ATS electronic corporate bond trading overall."[54] Bloomberg's data was not ignored by the Approval Order; rather, it was specifically recognized

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54 *See* Petition at 23.

and addressed.[55] Data on the overall growth of electronic trading, whether on the day of issuance or more broadly, simply does not mitigate the concerns that gave rise to the Proposal. As the Approval Order recognized, the Proposal will fill a specific gap in the existing marketplace—namely, "the lack of broadly available and accessible new issue reference data on the first day of secondary market trading."[56] The overall growth of electronic trading does not negate this gap's existence, as electronic trading platforms may receive data and begin trading late, while still contributing to cumulative growth. Moreover, data on the overall growth of electronic trading says nothing about whether the *rate* of growth is impacted or inhibited by the costs of limited access to reference data on the first day of trading. In fact, the growth of electronic trading makes impartial access to this data more imperative.

Bloomberg next questions whether FINRA's analysis of certain TRACE data on ATS trading patterns conclusively demonstrates a regulatory need for the Proposal. FINRA's analysis, in summary, offered data that showed some ATSs experienced persistent time lags before they began trading newly issued corporate bonds. Bloomberg complains that the analysis may be out of date, because it was based on 2018 data. However, data from 2019, attached as Appendix A, demonstrates the same. Bloomberg also argues that FINRA's analysis focuses too narrowly on ATS activity, rather than all electronic trading activity, and is therefore "uninformative." This is a strange change in tact for Bloomberg; as the Approval Order recognized, FINRA provided the ATS analysis specifically in response to data that Bloomberg initially presented on ATS activity.[57]

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55 *See* Approval Order, 84 Fed. Reg. at 67493 n.30.

56 *See id.* at 67499.

57 *See id.* at 67499 n.130.

In any event, the Approval Order did not depend on the ATS analysis for any findings, as the Order noted that "there are a number of electronic bond trading platforms that are not registered as ATSs and there are a number of other types of market participants, including investors, intermediaries and data vendors that may not have timely access to newly issued bond reference data to identify, value and settle bonds on the first day of trading in the secondary market."[58] FINRA recognizes the limitations of quantitative analysis here, given that TRACE data cannot currently identify trades on electronic trading platforms other than ATSs, such as trades facilitated by Bloomberg. FINRA recognizes further that its ATS analysis was not needed for the Approval Order; as the Commission recently explained, the agency acts reasonably when it uses quantitative analysis where possible, and exhaustive qualitative analysis where not.[59] Nevertheless, because ATSs represent one of the types of market participants that provided statements for the record of their difficulty receiving timely reference data access, FINRA continues to believe that its ATS analysis helps validate the exhaustive qualitative evidence otherwise relied on in the Approval Order.

Bloomberg also contends that the Approval Order made factual errors when it concluded that FINRA's proposal was reasonably designed to fulfill the regulatory need. Bloomberg's first argument here hinges on what it claims is "unrebutted evidence" of errors in FINRA's current TRACE data.[60] However, FINRA did indeed rebut this "evidence" when Bloomberg cited it in its earlier comment letters. The Approval Order took note of FINRA's rebuttal, which

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58 *See id.*

59 *Cf.* Brief for Respondent at 35-56, N.Y. Stock Exch. LLC v. Sec. and Exch. Comm'n, No. 19-1042 (D.C. Cir. 2019) (evaluating the Commission's decision-making obligations under *Business Roundtable* and other applicable precedent).

60 *See* Petition at 23-25.

questioned why Bloomberg automatically assumed that differences between TRACE and Bloomberg data were errors attributable to TRACE rather than Bloomberg.[61] In fact, FINRA's rebuttal noted a significant number of cases where data was not available on Bloomberg at the time FINRA received the information.[62]

More fundamentally, however, FINRA believes Bloomberg's argument about TRACE accuracy can be easily dismissed given FINRA's long history of providing critical TRACE data to the markets. Market participants have relied on TRACE data since 2002, and in 2019, the TRACE system disseminated over 16 million trades in corporate bonds, representing a total par value of almost $9 trillion in roughly 44,000 unique corporate bond CUSIPs, which were reported by over 1,000 FINRA members. As FINRA explained when Bloomberg last raised this argument, FINRA will use the TRACE system to validate all new issue reference data fields, the same way FINRA system-validates other TRACE fields. Given FINRA's successful history making large amounts of complex TRACE data immediately public, the Approval Order had sound reason to find that "FINRA is committed to establishing a reliable reference database."[63]

Finally, Bloomberg argues that the Approval Order could not conclude that the Proposal was reasonably designed because, "[i]f nothing else, at [sic] other alternatives might have achieved [the Proposal's] goal with less harm to competition."[64] Bloomberg speculates about a few potential alternatives that it thinks "in theory" could solve the problem the Proposal is

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61 *See* Approval Order, 84 Fed. Reg. at 67503 n.168.

62 *See FINRA Response to Comments on the Proposal*, at 11 n.32 (October 29, 2019), *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6366404-196429.pdf.

63 *See* Approval Order, 84 Fed. Reg. at 67503 n.168.

64 *See* Petition at 27.

designed to address. However, FINRA's Proposal did consider alternatives, and it explained the choices it made formulating the Proposal. Furthermore, Bloomberg is wrong that an SRO proposed rule change cannot be approved if some party can theorize some alternative that might also accomplish the same goal. Here, the Approval Order found that FINRA's Proposal is consistent with Section 15A(b)(6) of the Act because it would promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitate transactions in newly issued corporate bonds. This is exactly the finding required by the Act, and the Approval Order explained the basis for its finding in detail.

c. The Approval Order Properly Found that the Proposal Would Not Impose an Unnecessary or Inappropriate Burden on Competition, Consistent with Section 15A(b)(9) of the Act

As discussed above, the Proposal is designed to level the competitive playing field for market participants by providing all market participants with equal, impartial, and reasonable access to new issue reference data. According to SEC staff guidance, a key indicator of enhanced competition is the ability to reduce prices.[65] Contrary to Bloomberg's Petition, the Approval Order did not simply assume that the Proposal would provide the benefit of reduced costs. According to a number of statements in the record, the Proposal will lower the costs that market participants must bear to obtain the essential new issue reference data included in the Proposal. For example, at the FIMSAC, a panelist from a data vendor explained why the status quo results in "higher costs for our customers."[66] Similarly, in a comment on the Proposal, an

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65 *See SEC Staff Memorandum, Current Guidance on Economic Analysis in SEC Rulemakings*, at 11 (March 16, 2012), *available at* https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

66 *See* FIMSAC Transcript, comments from Frederic Demesy, Refinitiv, at 78.

eminent economist explained how the status quo increases research costs for non-dominant vendors and, correspondingly, their customers.[67] Another comment from a company that services institutional investors agreed, stating that "[b]y providing market participants with direct access to new issuance reference data, the proposed service will reduce overall costs, while permitting third party vendors to retransmit and repackage the reference data for market participants who may opt for this service."[68]

It is firmly established that competition law is meant to protect *competition*, not competitors.[69] A rule proposal does not burden competition in a market for services simply because it may impact the standing of one market competitor. Indeed, if an entity is a dominant incumbent and creates barriers to entry for users of its service, then impacting that entity's standing may be required to promote competition and relieve inappropriate burdens on competition. In this case, the FIMSAC heard explanation of Bloomberg's dominant position in the market for corporate bond new issue reference data, given that Bloomberg gains earlier access to reference data because of other services it provides underwriters.[70] And the FIMSAC expressed particular concern, based on past practice, that a dominant reference data vendor has limited other market participants' access to its data for anti-competitive purposes.[71] If

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67 *See* Letter to Commission from Larry Harris, Fred V. Keenan Chair in Finance, U.S.C. Marshall School of Business, at 4 (May 17, 2019).

68 *See* Letter to Commission from John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development (May 24, 2019).

69 *Cf. Brown Shoe Co. v. United States*, 370 U.S. 294 (1962) (explaining this proposition as a cornerstone of antitrust law).

70 *See supra* notes 17 through 19 and accompanying discussion.

71 *See* Supplemental Recommendation at 4.

Bloomberg has information that counters these points and demonstrates the existence of a functioning competitive market, it has had numerous opportunities to add such information to the record but has not done so.

While Bloomberg tries to paint its competition argument at the market level, its preoccupation with preserving its own competitive advantage is transparent. Bloomberg's contention that the Proposal will chill the private market's investment in reference data offerings is countered by other private reference data vendors that expressed the opposite view, that the Proposal will level the playing field and promote competition. Bloomberg even acknowledges as much in its Petition. In explaining why it is a "person aggrieved" by the Proposal, Bloomberg states that "[s]ome vendors supported the Proposal, noting it could benefit them competitively relative to others like Bloomberg."[72] It is also noteworthy that Bloomberg provides trading services that compete with other trading platforms that expressed their need for another source of data.

Further, while the record demonstrates the Proposal will stimulate further competition, such a finding exceeds what is necessary for approval under the Act. Here, the Approval Order concluded that the Proposal meets the requirement of 15A(b)(9) because it will not unduly burden competition. The Approval Order's basis for this finding—namely, that the Proposal is narrowly drawn and would not supplant demand for reference data vendors' more comprehensive offerings—is thoroughly documented. Notably, the Approval Order relied on several independent sources of evidence for this finding. As discussed in the background above, the Approval Order pointed to several comments, including one from Bloomberg, as well as the

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72 *See* Petition at 6.

Commission's own research, to confirm the conclusion that market participants demand more data fields than FINRA will include in its data service.

This finding is not speculative. Rather, it is plainly consistent with the municipal bond market's long history with a centralized, SRO-provided reference data service. As the Approval Order discussed, FINRA's proposed data service is based on, and similar to, the New Issue Information Dissemination Services ("NIIDS"), which is operated by the Depository Trust and Clearing Corporation ("DTCC") pursuant to MSRB rules.[73] The Approval Order recognized that "NIIDS has had a positive impact on the market for new issue municipal bonds."[74] Critically, while NIIDS has existed for more than a decade, it has not displaced private reference data vendors in the municipal market. The FIMSAC heard one reference data provider explain how NIIDS feeds into its private offerings for municipal bond new issue reference data, and the FIMSAC's unanimous Supplemental Recommendation observed that "[e]ven today, years after NIIDS was established, DTCC [the system provider for NIIDS] is not competing with reference data providers to be the primary provider of municipal bond reference data to market participants."[75] Simple internet searches confirm that there are indeed a number of private data vendors in the municipal bond market, and that these vendors provide offerings that include more data fields than what is included in NIIDS.[76] Bloomberg has made no effort to explain why

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73 *See* Approval Order, 84 Fed. Reg. at 67500 (finding that "the substance of FINRA's proposal is similar to the MSRB's NIIDS").

74 *See id.*

75 *See* Supplemental Recommendation at 4.

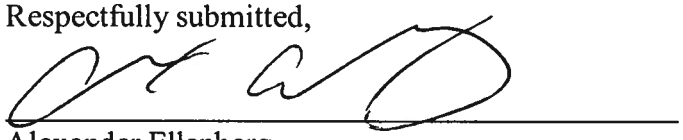
76 *See, e.g.*, ICE information on municipal data offerings, *available at* https://www.theice.com/market-data/munis; IHS Markit Reference Data Bonds Factsheet, *available at* https://cdn.ihs.com/www/pdf/Reference-Data-Bonds-factsheet.pdf; Xignite

ten years of directly comparable experience in the municipal bond market should not inform the Commission's understanding of the corporate bond market and support the same conclusion here.

IV. CONCLUSION

There is a demonstrated need for impartial access to essential corporate bond new issue reference data in today's market. FINRA's Proposal is reasonably designed to meet that need and to promote competition by leveling the playing field. The Proposal is also narrowly tailored to avoid any inappropriate burden on private competition. These key findings are roundly supported in the record and confirmed by experience in the municipal bond market. For all of these reasons, FINRA respectfully requests that the Commission promptly affirm the Approval Order and approve the Proposal as fully consistent with the Exchange Act and the protection of investors.

Respectfully submitted,



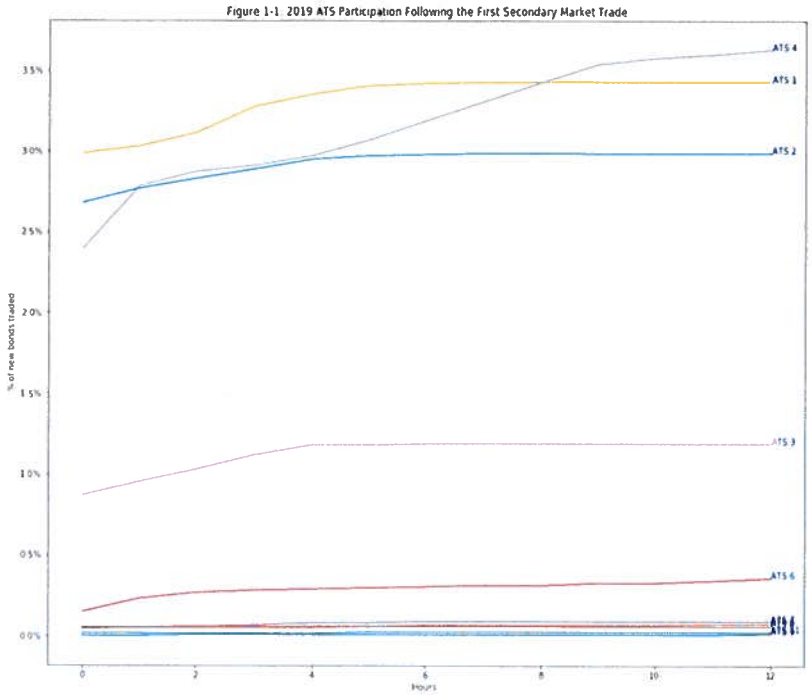
Alexander Ellenberg
Associate General Counsel

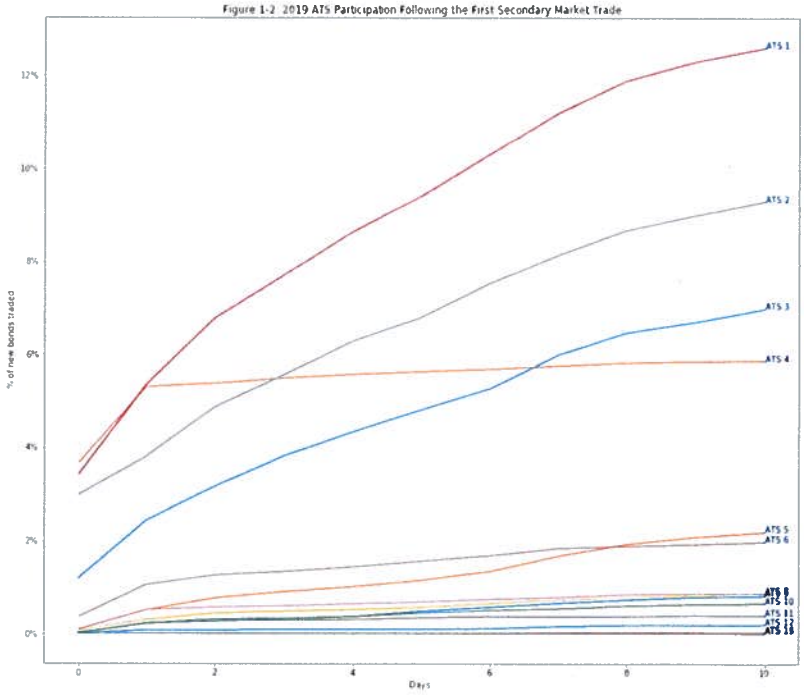
Stephanie Dumont
FINRA
1735 Street, N.W.
Washington, D.C. 20006

Municipal Bond Master Product Overview, *available at* https://www.xignite.com/product/municipal-bond-master/#/productoverview.

Appendix A

Figure 1: Start of Trading Newly Issued Bonds on ATSs -- 2019





CERTIFICATE OF SERVICE

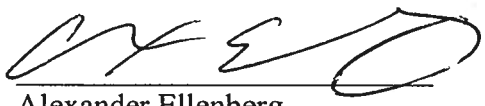
I, Alexander Ellenberg, certify that on this 16th day of March 2020, I caused the original and three copies of FINRA's Statement in Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (File No. SR-FINRA-2019-008) to be served by messenger on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

and via overnight FedEx on:

Benjamin Beaton
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
Counsel for Bloomberg L.P.

Respectfully submitted,



Alexander Ellenberg
Associate General Counsel
FINRA
1735 Street, N.W.
Washington, D.C. 20006