

COMMITTEE ON CAPITAL MARKETS REGULATION

March 16, 2020

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.; Order Granting Approval of 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 reiterate its position to the Securities and Exchange Commission (the **“SEC”**) regarding the Amended Bond Data Service Proposal by the Financial Industry Regulatory Authority, Inc. (**“FINRA”**).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 provision of market data for TRACE-eligible corporate bonds.² In our second comment letter dated October 22, 2019, the Committee noted that the Amended Bond Data Service Proposal exacerbates our initial concerns regarding market data fee transparency, because it removes the associated market data fees from the full notice-and-comment rulemaking process.³

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), <https://www.federalregister.gov/documents/2019/10/10/2019-22142/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-“Amended-Bond-Data-Service-Proposal”>].

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), <https://www.capmktreg.org/wp-content/uploads/2019/07/CCMR-Comment-Letter-to-SEC-FINRA-Bond-Market-Data-Rule.pdf> [**“First CCMR Comment Letter”**].


³ 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 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* (Oct. 22, 2019), <https://www.capmktreg.org/wp-content/uploads/2019/10/CCMR-Second-Comment-Letter-to-SEC-FINRA-Bond-Market-Data-Rule-10.22.20191.pdf> [**“Second CCMR Comment Letter”**].

After acknowledging the Committee's objections,⁴ the SEC's Division of Trading and Markets (the "**Division**") nevertheless approved the Amended Bond Data Service Proposal pursuant to delegated authority in December 2019.⁵ However, in response to a petition for review,⁶ the SEC stayed the approval order pending further analysis.⁷

The Committee wishes to reiterate its concern that: (i) because the Amended Bond Data Service Proposal does not specify its proposed fees and underlying cost, the SEC cannot conduct the informed cost-benefit analysis necessary for approval; and (ii) because subsequently proposed fees can be immediately effective upon filing, they may escape appropriate regulatory scrutiny through the full notice-and-comment rulemaking process.⁸ Because the Committee's original concerns with the Amended Bond Data Service Proposal have not been addressed, the Committee continues to believe that the proposal should be disapproved.

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@capmktsreg.org), at your convenience.

Respectfully submitted,



Hal S. Scott
President of the Committee on Capital Markets Regulation

⁴ *SEC Approval Order*, *infra* note 5, at 67496, 67504 ("A number of commenters believed that removal of fees from the proposal was problematic [because] the proposed fees form a critical part of FINRA's proposed newly issued bond-reference data service and that the [SEC] and the public cannot assess whether the benefits of the proposal outweigh the costs and competitive burdens without knowing the fees that FINRA would charge for the service. ... In addition, these commenters stated that eliminating the fees from the proposal amounts to procedural maneuvering in order to avoid scrutiny, as any subsequent fee filing submitted by FINRA will be immediately effective upon filing with the [SEC]."). See also *SEC Approval Order*, *infra* note 5, at 67504.

⁵ U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service*, 84 FED. REG. 67491 (Dec. 10, 2019), <https://www.federalregister.gov/documents/2019/12/10/2019-26498/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-granting-approval-of-SEC-Approval-Order> ["**SEC Approval Order**"].

⁶ BLOOMBERG L.P., *Petition of Bloomberg, L.P. for review of an Order, taken by delegated authority, granting approval of a Proposed Rule* (Dec. 18, 2019), <https://www.sec.gov/rules/sro/finra/2019/34-87656-petition-for-review.pdf> ["**Bloomberg Petition for Review**"].

⁷ U.S. SEC. & EXCH. COMM'N, *In the Matter of the Financial Industry Regulatory Authority, Inc. for an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service* (File No. SR-FINRA-2019-008); *Order Granting Petition for Review and Scheduling Filing of Statements*, 85 FED. REG. 9887 (Feb. 20, 2020), <https://www.federalregister.gov/documents/2020/02/20/2020-03372/in-the-matter-of-the-financial-industry-regulatory-authority-inc-for-an-order-granting-the-approval-SEC-Review-Order> ["**SEC Review Order**"].

⁸ *Second CCMR Comment Letter*, *supra* note 3, at 2-3.

CERTIFICATE OF SERVICE

I certify that on March 16, 2020, copies of the Statement of the Committee on Capital Markets Regulation in Opposition to Approval of the Proposed Rule Change were served by first-class mail on the following recipients:

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