U.S. Chamber of Commerce

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April 6, 2023

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

Re: Order Scheduling Filing of Statements on Review; 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)

Dear Ms. Countryman:

The U.S. Chamber of Commerce's ("Chamber") Center for Capital Markets Competitiveness ("CCMC") submits our views in response to the recent order issued by the Securities and Exchange Commission ("SEC" or "Commission") relating to the Financial Industry Regulatory Authority's ("FINRA") proposal to establish a corporate bond new issue reference data service ("Data Service"). Consistent with previous comments the CCMC has submitted to the SEC,[1] we continue to be concerned that FINRA has failed to accurately estimate the costs and justify the need to create a centralized new issue corporate bond database operated by FINRA.

In January 2021, the SEC approved FINRA's plan – first proposed in 2019 – to establish the Data Service. Under the plan, FINRA members would be mandated to cover the costs for setting up the Data Service, including providing 32 new fields of data to FINRA and supporting the infrastructure required for FINRA to manage the information that would be collected. The three comment letters CCMC submitted in 2019 outlined several flaws with FINRA's proposal and questioned whether the urge to consolidate data for new issue corporate bonds into a quasi-governmental database was necessary and in the best interest of investors. To summarize, CCMC expressed concern that the proposal:

- would diminish competition and decrease market efficiencies;
- may have inconsistencies that frustrate normal notice and comment procedures;

[1] U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, Comment Letters on FINRA Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service, File Number SR-FINRA-2019-008, April 29, 2019 letter available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5421304-184608.pdf, July 29, 2019 letter available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5884619-188809.pdf, October 24, 2019 letter available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6339890-195290.pdf.

- differs substantially from the Municipal Securities Rulemaking Board's (MSRB) efforts regarding a new issue information dissemination service;

- would expose the market to a conflict of interest between FINRA's commercial and regulatory roles;

- would increase regulatory and liability burdens for underwriters; and

- would impose fees that are not justified as required by law.

In August 2022, the United States Court of Appeals for the D.C. Circuit (D.C. Circuit) found that the SEC's order approving FINRA's proposal failed to address "concerns about the costs that FINRA, as well as other market participants, will incur in connection to the creation and maintenance of the data service" and remanded the issue back to the SEC for reconsideration.[2] The decision validated many of the cost concerns expressed by the CCMC and other organizations throughout the comment process.

Following the D.C. Circuit's decision, the SEC solicited further information from FINRA that FINRA considers "relevant to the Commission's analysis of the issue on remand, including the costs FINRA expects to incur in building and maintaining its data service and how the costs of building the data service would be remunerated if the fee proposal is ultimately disapproved by the Commission."[3]

Unfortunately, FINRA's response to the SEC's request, dated January 19, 2023, is not a credible attempt to categorize the substantial costs that broker-dealers and investors are likely to bear for establishing the Data Service. FINRA submitted a brief letter – not accompanied by any type of empirical data or substantive projections – that included just two sentences of generic assumptions for potential initial and ongoing costs for the Data Service. If the SEC were to rely on these fleeting estimates it would represent a failure of the regulatory process and a likely violation of the SEC's obligations under the Administrative Procedure Act.

Even more alarming, FINRA's response indicates that if its cost assumptions are inaccurate and it could not implement a fee program to support the Data Service, FINRA could simply dip into its financial reserves "without raising member dues or fees." FINRA's financial reserves should not be viewed as a funding mechanism of last resort when FINRA's failure to conduct a robust economic analysis causes a funding shortfall. FINRA's plans to use its reserves to subsidize the Data Service is a tacit admission that its cost estimates contained in the January 19th letter are vastly underestimated.

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[2] Bloomberg L.P. *v.* SEC*,* 45 F.4th 462, 466 (D.C. Cir. 2022)

[3] Securities Exchange Act Release No. 96541 (December 20, 2022), 87 FR 79014 (December 23, 2022) (Order Scheduling Filing of Statements on Review in File No. SR-FINRA-2019-008).

In line with our previous comment letters, CCMC reiterates our recommendation that the SEC disapprove this entire project. FINRA has had nearly five years to provide convincing justification for the project and to conduct a comprehensive economic analysis that would help broker-dealers understand the costs that would be imposed on the broker-dealer industry and investors. On both fronts, FINRA has failed. Accordingly, the SEC should disapprove the Data Service and FINRA should re-focus its resources and priorities on its important mission.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce