BDA Bond Dealers of America

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

February 21, 2023

Comments in regard to Release No. 34-96541

Dear Madame Secretary,

The Bond Dealers of America is happy to provide comments in response to SEC Release No. 34-96541, "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)" (the "Order").[1] The Order pertains to FINRA's March 2019 proposal, approved by the Commission in December 2019, to establish a Corporate Bond New Issue Reference Data Service (the "Proposal").[2] BDA is the only DC-based group exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

A large majority of BDA's 82 member firms are mid-size and regional broker-dealers active in the fixed income markets. While we are concerned about the costs associated with FINRA's Proposal overall, we are especially concerned about the costs and burdens the Proposal would place on mid-size and regional broker-dealers and about FINRA's failure to provide any meaningful detail on the costs FINRA itself would incur around implementing the Proposal.

The Proposal would require underwriters to produce 32 descriptive fields of data for corporate bonds they underwrite. FINRA would then package the data provided by underwriters into a commercial database product and offer it for sale back to underwriters and the public. While we are generally wary about regulators using their authority to compel regulated entities to provide data to be packaged for sale to the public and to those same regulated entities, we are particularly concerned about the costs associated with the Proposal, both those costs dealers themselves would incur as well as the costs that FINRA would incur in building and maintaining the product.

Throughout the rulemaking process around the Proposal, FINRA has failed to provide robust cost estimates either for expenses that would be incurred by firms themselves or costs that would be incurred by FINRA. This raises questions about whether the rulemaking process around the Proposal fully comports with Sections 15A(b)(5), 15A(b)(6) and 15A(b)(9) of the Exchange Act[3] and with the Administrative Procedure Act.[4] The DC Circuit Court raised similar concerns in its recent order in the case of *Bloomberg L.P. v. Securities and Exchange Commission* where the Court stated "the Commission

[1] 87 FR 79014.
[2] 84 FR 67491.
[3] 15 U.S.C. 78o-3(b)(5), (6) and (9).
[4] 5 U.S.C. 551–559

failed to respond adequately to Bloomberg's concerns about the cost of building and maintaining the program and the extent to which those costs – which could conceivably amount to millions, or tens of millions of dollars – will be borne by market participants."[5]

FINRA recently filed a statement with the SEC where they responded to the Court's critique.[6] Unfortunately, FINRA's response provides little detail or analysis as to how they reached their cost estimates, which are unsupported by any data. This is a major concern for BDA members because FINRA's resources are provided by the broker-dealer industry through membership fees and other charges. FINRA told the SEC "In the event FINRA could not implement an effective fee for the New Issue Reference Data Service on an ongoing basis, any costs incurred to that point in connection with establishing the service would be covered from FINRA's financial reserves without raising member dues or fees." While we appreciate FINRA's commitment not to raise dealer fees to cover the cost of the Proposal, without a more detailed cost estimate, we have no confidence that the cost of the Proposal would remain within FINRA's estimates. Moreover, FINRA's reserves are industry and market resources to be used judiciously and strategically. FINRA has not provided a justification for tapping reserves to cover its expenses for the Proposal. FINRA has not committed to the level of fees they would charge for the Reference Data product stating only that fees would be established once the Proposal is approved.

FINRA's direct expenses are just one side of the cost coin. Dealers would also incur expenses associated with building and maintaining systems to comply with the requirement of the Proposal. The Court referenced these expenses in its order to the Commission. FINRA's response does not address this issue at all, and the costs to the industry could be substantial. These costs apply more severely to mid-size and regional dealers because the fixed costs of building compliance systems are spread over smaller firm revenue.

It is difficult to gauge what compliance with the Proposal would cost dealers because there are too many uncertainties with respect to the details of the Proposal. For example, FINRA has stated that they intend to build "an application programming interface submission process" that dealers could use to submit data required by the Proposal. What would this interface look like? How much work would be required for dealers to "tie into" the interface FINRA plans to build? Without answers to these and other basic questions about how the database in the Proposal would be built, it is impossible for us—and presumably for FINRA as well—to accurately gauge costs to the industry.

Estimates of the costs of the Proposal, both FINRA's costs and as costs to dealers of complying with the requirement of the Proposal, should have been provided in detail early in the Rulemaking process. That they still have not been adequately addressed gives us little confidence that FINRA has even considered these expenses in detail. If they had, why would they not share their analysis?

FINRA's Proposal comes at a time when the industry is wrestling with other large regulatory initiatives that will tax dealers' ability to implement rule changes. The Commission, for example, recently approved rule changes to implement T+1 clearance and settlement. This is a massive project that will require huge industry resources to implement. The Commission has also proposed a new Rule Best Execution, which, if approved, would also impose significant compliance costs on BDA's members. FINRA has a proposal

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

[6] Letter from Marcia E. Asquith, FINRA, to Vanessa Countryman, SEC, January 19, 2023, www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20155240-323579.pdf.

outstanding to reduce the TRACE trade reporting time to one minute, which would further constrain industry compliance resources. And we hear that FINRA is considering rulemaking around "pre-trade price transparency" for fixed income, another potentially huge project. These initiatives, as well as others like the requirement implemented last year for banks to begin TRACE reporting or FINRA's proposal related to delayed Treasury spot trades, impose on the industry significant and expensive compliance and maintenance requirements. We do not believe FINRA has justified why the expense of a corporate bond reference database is necessary in the context of all the other major fixed income rulemaking coming from FINRA and the Commission.

Since the Proposal was first floated in 2019, FINRA has failed to provide adequate estimates of the cost of the initiative. Unless and until FINRA is able to provide more detailed cost estimates for both its own implementation of the Proposal and for dealer expenses associated with compliance, as demanded by the DC Circuit Court, we cannot support the Proposal. We urge the Commission to withhold further support of the Proposal until the SEC and the public have a full accounting of the project's costs.

Sincerely,

Michael Decker
Senior Vice President for Public Policy