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Submitted Electronically

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

Via email to: rule-comments@sec.gov

Re: ***Proposed Rule Change to Establish a Corporate Bond New Issue Reference Service (Release No. 34-85488; File No. SR-FINRA-2019-008)***

Dear Ms. Countryman:

I. EXECUTIVE SUMMARY.

Bloomberg L.P.* appreciates the opportunity to respond to FINRA's additional submission regarding the U.S. Court of Appeals for the District of Columbia's remand of FINRA's Proposed Rule Change to Establish a Corporate Bond New Issue Reference Service. (the "Proposal").

From 1996 to 2022, the SEC approved more than 1,500 rules proposed by FINRA or its predecessor, the NASD. None of those decisions were disapproved by a court other than the SEC's decision to approve the Proposal.

How defective must a rule be to make this short list? Very defective.

As the Court observed in finding the Commission's initial approval of the Proposal arbitrary and capricious:

> "[T]he Commission failed to respond to Bloomberg's concerns about the cost of building and maintaining the program and the extent to which those costs

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> – which could conceivably amount to millions, or tens of millions of dollars – will be borne by market participants."

In December 2022, the Commission afforded FINRA another opportunity to attempt to cure the legal defects highlighted by the Court. On January 19th, 2023, FINRA filed a cursory three and one-half page letter – one paragraph of which purported to respond to the court's demand for data on the costs not only to FINRA and FINRA's members but also other impacted market participants.

The FINRA response was, in the eyes of the market, grossly inadequate and totally unresponsive to the Court's demands, particularly as it related to cost data. No meaningful cost data was provided as to costs to FINRA. No cost data at all was provided relative to FINRA members or the broader market. A diverse array of market participants – including Healthy Markets, the Committee on Capital Markets Regulation, the Heritage Foundation, the U.S. Chamber of Commerce, and the Bond Dealers of America – urged disapproval on this basis.

On April 28, 2024 – 16 months after its initial cost submission, and 14 months after the market with one voice yet again highlighted FINRA's failure to satisfy the Exchange Act – FINRA made an additional filing "to respond to comments submitted in response to the Commission's December 20, 2022, Order…"[1] With the passage of 14 months, FINRA's new filing is slightly longer than its predecessor. Like its January 2023 predecessor, it provides no meaningful new data and is totally unresponsive to the Court's directive. This is not surprising, as FINRA inaccurately asserts that its January 2023 filing addressed the Court's concerns.

In February 2023, Bloomberg asked Compass Lexecon – one of the world's leading economic consulting firms that provides critical insights in legal and regulatory proceedings – to provide an assessment of any empirical basis for the sums listed in FINRA's submission. Compass Lexicon concluded at that time "…we could not ascertain the empirical basis, if any, for the costs provided in the January 19, 2023 FINRA's letter and that the information provided was not sufficient to evaluate the reasonableness of the cost estimate."

Bloomberg asked Compass Lexecon whether there is anything in the April 2024 FINRA submission that would permit an outside expert – or for that matter the Commission – to assess costs of the Proposal. The answer in short is "no". Specifically, Compass Lexecon stated that "we reviewed FINRA's new submission and find that FINRA's additional details about the incremental costs associated with initial development and the ongoing annual costs do not include any meaningful empirical analysis and are therefore not sufficient to evaluate the reasonableness of the cost estimates."

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[1] See "FINRA April 23 Letter", from Ms. Marica E. Asquith, Corporate Secretary, EVP, FINRA, April 23, 2024, at 1, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-462011-1209274.pdf.

FINRA argues it may be "better situated" to estimate its costs than outsiders like Bloomberg, Compass Lexicon, a host of other market participants and – most significantly – the SEC. That is not clear, though it is clear that outside analysts – including the public and the SEC – are severely hampered by FINRA's failure to provide meaningful direct cost data or any data as to costs to market participants. FINRA is openly demanding that the Commission simply trust FINRA's estimates, even though FINRA offers no detail supporting them and no basis for disagreeing with the detailed estimates that Bloomberg provided. But the D.C. Circuit has previously warned the Commission not to simply accept the unsupported assertions of SROs, and the Commission has previously heeded that instruction.

The Exchange Act gives FINRA a special role in securities markets, and quasi-governmental authority over a wide range of market participants. It correspondingly obligates the Commission to understand the economic consequences of each FINRA rule it approves, to ensure that these decisions are beneficial, not harmful, to investors and the market. FINRA, as the organization that proposed the rule at issue, has the obligation to give the Commission the information needed for that assessment, and the Commission cannot approve a rule based on data that the Commission has not been given. Particular concerns should be raised when – as here – FINRA experts have publicly offered guidance to the Commission that is precisely the opposite to that attested to in FINRA's most recent submission, where the lack of cost data has thwarted efforts to provide a cost benefit analysis, and where changes in the marketplace have underscored that the illusory benefits offered to justify the Proposal are entirely non-existent.

FINRA has had six years – the last two of those years under the spur and directive of a Court Order – to provide the meaningful cost data. It hasn't. The Commission has both the authority and the obligation to disapprove the Proposal.

II. REMAND ORDER.

In *Bloomberg L.P. v. SEC*, the United States Court of Appeals for the D.C. Circuit ("the Court") in August 2022 issued an extremely rare remand, finding that the SEC's approval of FINRA's proposed corporate bond new issue reference data service ("the Proposal") was arbitrary and capricious owing to the SEC's failure to address the costs of FINRA's proposed service.[2]

Specifically, the Court concluded that the SEC's approval order failed to address concerns about the cost of building and maintaining the program and the extent to which those costs – which the Court recognized could be in the tens of millions of dollars – will be borne by

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

market participants. This failure rendered the SEC's approval "arbitrary and capricious" and a violation of the Administrative Procedure Act.[3]

How rare is a remand of this sort? From 1996 to 2022 the SEC approved more than 1,500 rules proposed by FINRA or its predecessor the NASD. Bloomberg has not found any that were vacated by a Court, and only one that was even remanded, back in 1993.[4] Even among the many thousands of SRO proposed rules that the SEC has approved, Bloomberg has found only five or six remands. The most recent example, before this proceeding, was the D.C. Circuit's 2017 remand in Susquehanna Int'l Grp., LLP v SEC.[5]

A proposed rule needs to be extremely defective to make this extraordinarily short list. When the Commission receives a remand as in this matter, that outcome reflects a significant criticism and concern from the court. Accordingly, what follows must be a serious reconsideration of the prior approval decision. The Commission has both the authority and the obligation to reverse its prior approval and terminate FINRA's rule. That is what the Commission did after the remand in Susquehanna: The SRO (there, the Options Clearing Corporation) failed to provide enough information to show its rule would actually meet the criteria for approval, and the Commission then reversed its prior decision and disapproved the rule under consideration.[6]

In addition, the Commission has the authority and the obligation to consider all pertinent issues, not solely the deficiencies that led the Court to remand this matter back to the Commission. Bloomberg's letter last year raised problems beyond those that FINRA had chosen to address. For example, the true scale of FINRA's costs makes the net value of the Proposal likely negative, because there is little to no quantitative benefit to the market and certainly FINRA has offered the Commission no quantitative analysis of benefit to justify incurring the costs of FINRA's system. FINRA's response to all these is to insist that the remand is "very limited," and the D.C. Circuit "affirmed" the Commission's prior decision.[7] Neither claim is correct.

First, it has been clear for decades that upon a remand, an agency has full authority to reconsider the remanded decision. In 1940, after a remand, the FCC undertook a full-scale reconsideration of its original decision; the D.C. Circuit, disapproving, tried to impose on the FCC a limitation like what FINRA thinks applies here. The Supreme Court held that was

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[3] Id.

[4] *Timpinaro v. SEC*, 2 F.3d 453 (D.C. Cir. 1993).

[5] *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442 (D.C. Cir. 2017).

[6] See "Self-Regulatory Organizations; The Options Clearing Corporation; Order Disapproving Proposed Rule Change Concerning The Options Clearing Corporation's Capital Plan", Release No. 34-85121; File No. SR-OCC-2015-02, February 13, 2019, available at https://www.sec.gov/files/rules/sro/occ/2019/34-85121.pdf.

[7] See FINRA April 23 Letter, at 1-2.

incorrect; the FCC had to respect the finding of legal error that had led to the remand, but was otherwise empowered to exercise its ordinary authority.[8] In 1998, the D.C. Circuit considered the case of an agency that had received a remand to provide more explanation of its original decision. The agency chose, instead, to reverse its original decision, for a range of reasons beyond the issue that motivated the remand. The D.C. Circuit found that acceptable: "[W]e remanded . . . to permit FERC to clarify its reasoning, [but] . . . once FERC reacquired jurisdiction, it had the discretion to reconsider the whole of its original decision."[9] The Commission similarly has full reconsideration authority, not the "limited" scope that FINRA thinks. And the remand does obligate the Commission to genuinely reconsider, with the full scope of that discretion; a remand "is not an invitation to do nothing."[10]

Second, the D.C. Circuit did not "affirm" anything about the Commission's previous decision. The word "affirm" appears nowhere in the Court's opinion. Nor would it have been proper to "affirm" the Commission's decision. The D.C. Circuit's power over the Commission is not that "between lower and upper courts"; it is "restricted to a purely judicial review."[11] The D.C. Circuit rejected certain arbitrary-and-capricious challenges (while finding the Commission's decision was indeed arbitrary and capricious with respect to the evaluation of costs). That did not constitute a judicial determination that the approval of FINRA's Proposal was correct, and did not foreclose commenters from presenting or the Commission from considering further arguments against the Proposal.[12]

FINRA notes that the Court said the Commission could redress the defects identified in the prior decision by analyzing the costs FINRA will incur for the data service and how those costs will be remunerated if the Commission does not eventually approve a fee for the service.[13] The Commission should not draw, from that statement in the Court's opinion, comfort that simply noting FINRA's $1.3 million estimate will be sufficient. The Commission must conduct the same rigorous assessment of the costs as on any other decision. And the Commission must, at a minimum, follow through on the implications that follow from its analysis of costs. The Court was discussing how the Commission could redress the problem that motivated the remand. There were multiple additional deficiencies in the prior decision that the Court did not even address, because it found the Commission's flawed response on costs was enough by itself to warrant a remand for reconsideration. See below for additional discussion on this point. Thus, if

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[8] *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 145 (1940).

[9] *Se. Mich. Gas Co. v. FERC*, 133 F.3d 34, 38 (D.C. Cir. 1998).

[10] *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 244 (D.C. Cir. 2013).

[11] *Pottsville*, 309 U.S. at 145.

[12] *Cf. Banner Health v. Price,* 867 F.3d 1323 (D.C. Cir. 2017) (finding a previous court decision rejecting arbitrary/capricious challenges to a given rule did not foreclose other challenges to the same rule; then holding some of those subsequent arguments were meritorious).

[13] See FINRA April 23 Letter, at 2.

the Commission finds it can make a reasonable estimate of the costs to FINRA—it cannot because FINRA has not given it enough information—it must also assess the costs to underwriters and the market, and then quantify the benefits, to see if they are worth the costs. These issues, which the D.C. Circuit did not address, expressly remained open.

III. PUBLIC COMMENT ON REMAND.

Bloomberg appreciated the Commission's December 20, 2022 decision to seek public comment on this important matter. When offered the opportunity by the Commission to submit additional data to attempt to cure the legal defects highlighted by the Court, FINRA filed a cursory three and one-half page letter – one paragraph of which purported to respond to the court's demand for data on the cost not only to FINRA and FINRA's members but also other impacted market participants.

The FINRA response was, in the eyes of the market, grossly inadequate and totally unresponsive to the Court's demands, particularly as it related to cost data. A diverse array of market participants – including Healthy Markets, the Committee on Capital Markets Regulation, the Heritage Foundation, the U.S. Chamber of Commerce, and the Bond Dealers of America – urged disapproval on this basis.[14]

Healthy Markets filed comments that were representative of the market as a whole and consistent with its amicus brief to the Court of Appeals and its four submissions to the Commission raising severe concerns regarding lack of cost data and other issues:

> "FINRA seems to suggest that it has wasted over four years of its time and public and private sector resources – including the thousands HMA has spent on legal fees – because it failed to include three paragraphs in its rule. FINRA would have us all believe that it only needed to provide a very rough estimate of its own initial costs (which it estimates at approximately $1,300,000) and ongoing annual costs (which it now estimates at approximately $700,000).
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> That's facially inadequate. FINRA needs to provide sources for these costs. The cursory explanations of costs and different summary estimates leave no room for (1) questioning them, (2) assessing how the costs would (or would not) be passed through to market participants, or (3) determining the direct costs to comply with the rule (which are ignored).
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> Lastly, we note that FINRA's Economic Impact Assessment was conducted several years ago by surveying less than a dozen market participants and that the Commission has

[14] See Comments on FINRA Rulemaking, Release No. 34-85488; File No. SR-FINRA-2019-008, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.

> engaged in no relevant analysis of its own. Given the fundamental changes to the marketplace (including dramatically increased electronic trading), a more timely, accurate assessment should be required."[15]

Bloomberg provided substantial data and analysis to show that FINRA has understated the cost of its Proposal by at least sevenfold and in fact significantly more.[16]

IV. FINRA's APRIL 29, 2024 SUBMISSION.

On April 28, 2024 – 16 months after its initial cost submission, and 14 months after the market with one voice yet again highlighted FINRA's failure to satisfy the Exchange Act – FINRA made an additional filing "to respond to comments submitted in response to the Commission's December 20, 2022 Order…" With the passage of 14 months, FINRA's new filing is longer than its predecessor but, like its predecessor, it provides no meaningful new data and is totally unresponsive to the Court's directive.

In its arguments to the Court, the SEC contended that it need not consider the costs that FINRA incurs for the service because those will be internal to FINRA. Bloomberg responded that the costs will be funded from somewhere, and ultimately those costs will be borne by investors whether directly through fees for the data service or indirectly through effects on FINRA's budget. Moreover, agencies routinely account for their internal costs in cost-benefit analysis. A cost does not disappear simply because it is funded by taxpayers (for an agency) or by membership dues (at FINRA). As the D.C. Circuit explained, the cost of FINRA's new service "must be paid by someone, whether the subscribers of the service or the broker-dealers who make up FINRA."[17]

For the Commission to make a reasoned assessment of the economic impact of FINRA's proposed rule, the Commission must of course make a quantitative estimate of the costs of the

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[15] See Letter from Tyler Gellasch, President and CEO, The Healthy Markets Association, February 21, 2023, at 2, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20157755-325837.pdf.

[16] See Letter from Gregory Babyak and Gary Stone, "Bloomberg Remand Letter", February 21, 2023, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20158673-326598.pdf. . Bloomberg conducted a high-level analysis in Appendix B. Because Bloomberg was unable to determine some costs, such as infrastructure, hardware, cloud fees, etc., that depend on details of what FINRA plans, as well as on arrangements it might already have in place, its analysis focused on ***only*** on software labor costs. Because it leaves out non-labor costs, its estimate was a significant underestimation for the overall cost of the project. The analysis utilized the metrics articulated in third-party materials, primarily the May 21, 2019 "Staff Guidance on SRO Rule Filings Related to Fees" and the Commission's application of law and guidance to its initial suspension and then ultimate acceptance of fee changes by Investors Exchange (IEX) in early 2022, to attempt to isolate some of the workstreams, expertise and hours to be expended which would be necessary to partially advance this FINRA project.

[17] 45 F.4th at 477.

rule.[18] Those must-include the costs to FINRA of building and operating its data service as well as quantitative estimates of the very real costs that will be incurred downstream by FINRA members, in the form of possible technology and infrastructure enhancements, head count increases, licenses, potential fines , etc. generated by the proposed rule. The Commission must also, of course, make a quantitative estimate of the benefits of the rule, without which it cannot assess whether the costs (whatever they are) are reasonable. FINRA simply has not provided the Commission with enough information from which to conduct such an analysis.

FINRA's Proposal, even as supplemented by FINRA's sparse additional filings, does not satisfy the criteria of the Exchange Act, for multiple reasons. The cost of building and running its system would be substantially higher than FINRA guesses; underwriters and end users would face additional costs that FINRA has not even addressed; and the benefits, which FINRA has not attempted to quantify, would be minimal and illusory. It bears emphasis that all these issues are before the Commission under the D.C. Circuit's remand.

A. BURDEN OF PROOF.

FINRA, as the proponent of the rule, has the burden to provide the information that the Commission needs to assess the costs and benefits of FINRA's proposed rule. The Commission's rules make that burden explicit in 17 C.F.R. § 201.700(b)(3); and the Commission has explained that an SRO "must present sufficient evidence to demonstrate that [its] Proposed Rule Changes are consistent with the Exchange Act," without demanding from the Commission "unquestioning reliance on an SRO's defense of its own actions."[19]

FINRA has not met that burden. Indeed, even if the Commission were pre-disposed to approve the Proposal, FINRA has not provided the bare minimum of data necessary to allow the Commission to realistically conclude that FINRA is remotely in compliance with the requirements of the Act.

In response to a fresh opportunity to provide data about its costs, FINRA's three-and-a-half-page submission of January 19, 2023, devoted one paragraph to address the "combination of costs" that FINRA expected to incur as a result of its Proposal. FINRA listed broad, generic categories that might generate costs to it, but made no effort to suggest what those costs might

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[18] The Commission regularly "considers costs and benefits when it reviews SRO filings." 86 Fed. Reg. 6,922, 6,927 n.26 (Jan. 25, 2021). Exchange Act section 3(f) obligates it to do so, applying to the decision whether to approve an SRO rule proposal the same standards regarding "efficiency, competition, and capital formation" as for the SEC's consideration of its own rules. 15 U.S.C. § 78c(f). The D.C. Circuit has long held that in such an analysis, the SEC must "quantify the costs." *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1149 (D.C. Cir. 2011).

[19] See "In the Matter of the BOX Exchange LLC", Release No. 34-88493, 85 Fed. Reg. 18,617, 18621 (Apr. 2, 2020).

actually be. FINRA simply provided an unsupported aggregate assertion of initial costs, and an unsupported aggregate assertion of recurring annual costs.

FINRA's April 23, 2024 submission doubles down on this approach. As to the Court's questions, FINRA simply asserts the January 19th, 2023 submission addressed them. Presumably this is why the new submission adds nothing to the inadequate record presented by FINRA.

FINRA should have had a serious understanding of its Proposal at the time of submission in 2019. But it has been over three years since the Commission approved the Proposal, and more than four years since the Division of Trading and Markets approved it. FINRA has had ample time to plan its system. Indeed, the Commission did not stay its approval of the Proposal. If (1) certain parts of the proposed system, such as an API, would have benefitted underwriters with their current FINRA Rule 6760 compliance obligations, (2) increased the accuracy of the data that FINRA is currently collecting[20], (3) building the system cost only $1.3 million, as FINRA claims, and (4) that amount is easily absorbed within FINRA's $2 billion reserve fund, as FINRA further claims, then there is no reason FINRA could not have completed the setup by now. Certainly, FINRA ought to be able to provide hard information with details about how much the system costs, rather than empty guesses about how much it might cost.

B. COSTS? INCREMENTAL BUILD?

FINRA's estimates are, on their face, significantly too low, as an independent third-party estimate confirms. In February 2023, Bloomberg asked Compass Lexecon – one of the world's leading economic consulting firms that provides critical insights in legal and regulatory proceedings – to provide an assessment of any empirical basis for the sums listed in FINRA's submission. Compass Lexicon concluded at that time "…we could not ascertain the empirical basis, if any, for the costs provided in the January 19, 2023 FINRA's letter and that the information provided was not sufficient to evaluate the reasonableness of the cost estimate."[21] In the absence of that empirical basis in the submission, Compass Lexecon as a fallback attempted to ascertain the rough magnitude of the cost of the new issue bond service via reference to other comparable FINRA platforms. Compass Lexecon concluded that FINRA's proposed cost estimates "seem understated compared to what data is publicly available."[22]

We asked Compass Lexecon whether there is anything in the April 2024 FINRA submission that would now permit an outside expert – or for that matter the Commission – to

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[20] As discussed in more detail in section (3), FINRA has persistent data quality issues that the Commission has been informed of since the analysis that FIMSAC member and Larry Tabb, founder and research chairman of TABB Group, ("Tabb Study") published in the TABB Forum "An SEC-Mandated Corporate Bond Monopoly Will Not Help Quality" on May 21, 2019, available in Letter from Gregory Babyak and Gary Stone, Bloomberg L.P. (July 29, 2019) at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5881954-188778.pdf.

[21] See Bloomberg Remand Letter, Appendix A, at 34.

[22] Id.

assess costs of the proposal. The answer in short is "no". Specifically, Compass Lexecon concluded that "FINRA's additional details about the incremental costs associated with initial development and the ongoing annual costs do not include any meaningful empirical analysis and are therefore not sufficient to evaluate the reasonableness of the cost estimates." (Attachment A—Compass Lexicon "Response to FINRA's Additional Comment Letter Re Support for Cost Estimates of Proposed New Issue Referenced Data Service"). Compass Lexecon stresses that "FINRA's additional support for cost estimates is insufficient and cannot by ascertained." Compass Lexecon also makes a pertinent observation that FINRA's cost estimate has not changed from January 2023, even though inflation has been substantial in recent years such that, for example, FINRA's general operating expenses are 7% higher than in 2023. That FINRA's estimated cost for the reference data system is unchanged while actual costs are increasing across the board "further cast[s] doubt about the reasonableness of its estimates."[23]

FINRA suggested in January 2023 that there were five cost areas "[s]pecifically, related to development and deployment… (1) the development of a cloud-based user interface for intake of new filings, an application programming interface submission process, and submission validations; (2) system requirements maintenance, quality assurance, and user acceptance testing of system implementation; (3) development of the reference data files for subscribers; (4) enhancements to regulatory programs; and (5) necessary infrastructure upgrades, among other things; and related to annual, ongoing costs to support the New Issue Reference Data Service. Bloomberg pointed out that this summary was uninformative and inadequate, consisting of nothing but "chapter headings," far short of the detailed analysis and supporting information that the Commission's regulations require.[24]

In the face of that criticism from Bloomberg and many others, FINRA's new letter provides very little additional information. What little FINRA provides actually shows how understated and erroneous its total estimate is. FINRA asserts that "[e]fforts related to the new cloud-based user interface for intaking new filings represent approximately half of the $1.3 million estimate for the initial development and deployment of the New Issue Reference Data Service." Those "efforts," FINRA said, would "include development of the cloud-based platform and related user interfaces as well as development related to reference data management, such as programming FINRA's existing reference data system to interact with, and validate data from, the new cloud-based intake platform."[25] The remaining cost is, FINRA says, for "other development projects that are more minor undertakings."[26] Compass Lexecon observes that

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[23] See Appendix A, Compass Lexecon, "Response to FINRA's Additional Comment Letter Re Support for Costs Estimates of proposed New Issue Reference Data Service", June 24, 2024,..

[24] Bloomberg Remand Letter, at 10.

[25] See FINRA April 23 Letter, at 7.

[26] *Id.*

FINRA provides no additional details concerning how it determined this additional cost was "relatively minor."

Bloomberg previously provided a detailed breakdown of estimated labor burden for many tasks associated with FINRA's undertaking.[27] FINRA has not disagreed with any of that analysis or offered the Commission any reason to doubt Bloomberg's presentation. The task of "development of the cloud-based platform and related user interfaces" appears to correspond to the first three lines in the table of tasks that Bloomberg presented ("Create a new Web-based Manual (form) new issue entry," "Create a new API interface," and "Rule-based submission validation." Those tasks alone constituted 17% of the total labor that Bloomberg estimated. Bloomberg assessed the cost by consulting publicly available data about typical labor costs for the disciplines involved, and FINRA evidently does not disagree with that approach. The overall labor cost that Bloomberg estimated was $8.75 million,[28] of which the 17% would be $1.5 million. Yet FINRA thinks those tasks amount to less than $650 thousand (accounting for "half of the $1.3 million" alongside several other significant projects). FINRA has given the Commission no information, evidence, or argument that could justify disagreeing with Bloomberg's figures, even as FINRA acknowledges this one task, the "user interfaces," must be done. FINRA's underestimate of this cost by itself shows the overall total is baseless.

Second, regarding "support costs," which FINRA says will be $700,000 per year, FINRA admits it will be "hiring a very small number of additional staff," and then asserts that it will otherwise "rely on existing, experienced staff to support the Service" so that there are no additional costs. Both of these propositions are inviting the Commission into error.[29] FINRA acknowledges it will need to hire new personnel. If each additional hire costs roughly $200,000—an underestimate for skilled technical personnel to support a sophisticated data submission and management system—just three of them, a "very small number," would consume nearly the entirety of FINRA's $700,000 estimate. Yet, as Bloomberg noted a year ago, ongoing operating costs would also include extensive non-labor costs "such as for software licenses and cloud computing fees."[30] FINRA's new submission confirms that it has failed to count those costs. Moreover, "rely[ing] on existing" employees is not cost-free.

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[27] See Bloomberg Remand Letter, Appendix B, at 3.

[28] The actual number would be higher today and in the foreseeable future, because labor costs have generally increased since February 2023. Bloomberg does not contend the labor cost would specifically be $8.75 million. That figure is a floor, and the actual labor costs are surely higher just as the total costs are higher than Bloomberg's conservative estimate last year.

[29] Strangely, FINRA then elaborates by describing certain tasks within the $1.3 million upfront cost that it says will be carried out by existing personnel. FINRA April 23 Letter at 7. That does not explain anything about the continuing operating cost.

[30] See Bloomberg Letter, February 21, 2023, Appendix B, at 4.

As Compass Lexecon notes, even if FINRA is repurposing infrastructure and personnel for the new service, that is still a cost that should be assessed – assessing these costs was an area the Commission and Staff devoted a considerable amount of thought to in their 2019 Staff Guidance on SRO Rule Filings Relating to Fees and the Commission with IEX's fee change in early 2022.[31] Personnel time that is devoted to the new project is a resource not available for the work that those employees were previously doing with such time, or would otherwise do.

FINRA attempts to address outside analysis by affirmatively deciding not to address it. Rather than substantively rebut the analysis of Compass Lexecon, Bloomberg, or the diverse array of market experts who have been repeatedly challenging FINRA's assessment for the better part of a decade, FINRA asserts it need not address non-FINRA experts at all. As FINRA puts it:

> "FINRA—a not-for-profit self-regulatory organization that currently operates a variety of technology-based services—is better situated to estimate the incremental costs associated with the Service than is any other third-party including commercial parties like Bloomberg with presumably significantly different operations and profit-based approaches."[32]

This attitude is simply a refusal to provide the information that the Commission needs. The Commission should see this obstruction for what it is. The D.C. Circuit long ago explained that the Commission cannot simply "rely on . . . the 'self-serving views of the regulated entit[y].'"[33] It must "critically review" the SRO's analysis.[34] Yet FINRA demands that the Commission give FINRA the unquestioning credence that the D.C. Circuit forbids. FINRA insists that the cost will be $1.3 million up front and $700,000 per year. Bloomberg provided specific details, data, and analysis to show those estimates are at least seven times too low. FINRA has not disputed *any of those details*. Yet FINRA says the Commission must accept FINRA's numbers because the Commission simply must trust FINRA. That demand is contrary to the precedents of the D.C. Circuit and of the Commission. That FINRA would demand that unquestioning trust, without even attempting to engage on the substance of Bloomberg's estimate, further undermines FINRA's credibility.

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[31] See Bloomberg Letter February 21, 2023, at 4.

[32] See FINRA April 23 Letter, at 6.

[33] *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017) (citation omitted). The Court rejected a particular *Susquehanna*-based argument about whether FINRA had adequately shown a market information problem. 45 F.4th at 473-74. The basic principles of *Susquehanna* and of *NetCoalition* (on which *Susquehanna* relied) remain valid, and generally applicable as the Commission assesses FINRA's proposal.

[34] *Id.*

FINRA suggests it is better-placed to estimate the costs because it is a non-profit that currently operates "a variety of technology-based services."[35] Operating a variety of technology-based services does not distinguish FINRA from Bloomberg; Bloomberg operates an even wider variety of technology-based services. So do many of the market participants who supported the criticisms last year from SIFMA, the Bond Dealers Association, and many others. Compass Lexecon also has significant experience analyzing a variety of technology-based services. Perhaps what FINRA means is that its nonprofit status significantly reduces the costs. It is hard to see why that would be so. Do the engineers carry out IT development seven times faster at nonprofits? Does FINRA manage to pay them seven times less than for-profit employers pay to retain skilled engineers? FINRA provides no explanation why its estimate as a nonprofit would be different from Bloomberg's.

One difference is that FINRA is a self-regulatory organization. Bloomberg has previously observed that in Bloomberg's data collection, Bloomberg engages actively with underwriters to validate their data submissions. Perhaps FINRA can avoid that cost for itself because, as a self-regulatory organization, it will force underwriters to ensure the accuracy of their own data submissions, under threat of enforcement. Bloomberg's submission last year had already made this assumption, this difference cannot justify FINRA's underestimate. But even if it could, that FINRA might minimize its work on data integrity and accuracy by shifting the cost to underwriters does not make the cost disappear. The Commission's task is to assess the overall cost to the market.

Which brings us to FINRA's core assertion that – despite evidence to the contrary – the FINRA build is "incremental" and painless:

> "…because the new Service will largely expand upon existing systems and processes, FINRA's costs are not comparable to costs that would be incurred in connection with a top-to-bottom build, which may be a key misunderstanding underlying commenters' unsupported assertions that FINRA has underestimated costs."[36]

We are not alone in our supposed "misunderstanding" of the non-incremental nature of this project. FINRA's representative on the Fixed Income Market Structure Advisory Committee ("FIMSAC") – who clearly has a deep understanding of the FINRA systems and access to the data that has not been shared with the public or the Commission – appeared to share these same "misunderstandings".

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[35] FINRA April 23 Letter, at 6.

[36] Id.

The most informative statement from FINRA on the question of whether the Proposal realistically entails a modest, "incremental" build remains that of FINRA's Senior Vice President of Transparency Services, who is responsible for all business, technology and operational aspects related to FINRA's fixed income and equity trade reporting and quotation facilities, including TRACE. A few FIMSAC members had discussed the reference data project as if it were an incremental addition to TRACE. FINRA's official corrected those misimpressions and explained that the new service and data system are actually a novel undertaking for FINRA and a heavy lift. Needless to say, that assessment is not reflected in FINRA's unsupported cost estimates, just as the acknowledged but unaddressed costs to underwriters is not addressed.

> "[S]peaking for FINRA, we would have some work to do. The technology today does not lend itself very well to this. We would need to create the ability for underwriters to come in, give us partial information and have the ability to edit their own records, et cetera. Today, that is a – as I said, it is a bit of a one-way street. It is set up on TRACE and anything that changes from there, we either source from a vendor or the underwriter calls us up to correct it. So, we would need to do that. We would also need to create a separate distribution channel for this. And the reason being, today, since the only thing that really matters is that the security gets on TRACE… this would have to be a service that would be a service that would be entirely sourced from underwriters we know common link vendor data, and then we would have to build that obviously, the amounts of fields. I think one thing to consider, depending on how many fields we end up with, there may still – obviously timeliness of TRACE reporting can't be compromised."[37]

FINRA has not explained why this assessment, by its senior executive responsible for the very operation that would encompass new reference-data service, was mistaken. It is a mistake for FINRA to ignore internal assessments of cost and degree of difficulty, just as it is a mistake for FINRA to ignore external assessments of cost and degree of difficulty. Bloomberg concurs with the original 2018 assessment that this is a heavy build. Unlike FINRA – Bloomberg has created and run a new issue reference business data. Our testimony – including depositions from senior business leaders – describes the resources and iterative labor and communication which is

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[37] See ("Persson FIMSAC Testimony"), "Ola Persson, Senior Vice President of Transparency Services, FINRA Testimony" from the transcript of the U.S. Securities and Exchange Commission Meeting of the Fixed Income Market Structure Advisory Committee, Monday, October 29, 2018, 9:30am, Amended 11-8-2018, with excepts starting at 0088-02 to 0089-09, available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt.

in our experience necessary to ensure quality assurance in this space.[38] Likewise, if FINRA had opted to concur with the Court's directive to provide costs to market participants, the submissions of those participants – including SIFMA and the Bond Dealers of America – would have been extremely informative.

C. COST TO FINRA.

The information that the Commission requires now to approve the Proposal is the same information that the Commission also will need to evaluate whether the fees (to pay for the buildout, maintenance and operation of the service) that FINRA will seek approval for at some future date conform with the Exchange Act. FINRA has the burden to share extensive details with the Commission so that Commission, on its own, can draw the similar conclusions, independently. That was the entire point of the May 21, 2019 "Staff Guidance on SRO Rule Filings Related to Fees" (the "2019 Staff Guidance") and the Commission's application of law and guidance to its initial suspension of the Investors Exchange (IEX) filing of November 2021, leading to IEX's more detailed (and successful) proposal in April 2022 (collectively the "IEX filings", and together with the 2019 Staff Guidance, "the Comparative Materials").

The Court cautioned the Commission that allowing FINRA to separate approval of the fees for the New Issue Bond Reference Data Service from the Proposal's approval introduces a key "problem":

> "…if FINRA's data service ends up being unreasonably expensive, then the agency ***cannot protect market participants*** from footing the bill for it at the fees stage. To be sure, the Commission is right that it could suspend and disapprove FINRA's proposal at the fees stage, see id., but at that point, FINRA will have already incurred the financial burden of building the service. That cost—which could be millions, or even tens of millions, of dollars—must be paid by someone, whether the subscribers of the service or the broker-dealers who make up FINRA. In short, the Commission approved FINRA's proposal without responding to comments that urged it to assess not only the financial impact of the service on FINRA, but also the entities that fund FINRA. That is not reasoned decisionmaking."[39]

If FINRA's unsupported aggregate estimate proves inadequate, FINRA asserts broker-dealers should not be concerned because FINRA can dip into "its" $2 billion strategic reserve for

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[38] See Motion of Bloomberg, L.P. for Leave to Adduce Additional Evidence ("Petitioner Motion") and Declaration of Mark Flatman and Declaration of David Miao (collectively, "Declarations") available at https://www.sec.gov/files/rules/sro/finra/2020/34-88214-motion-adduce-additional-evidence.pdf.

[39] See Bloomberg L.P. v. SEC, 45 F.4th 462 (D.C. Cir. 2022), at 26 (emphasis added).

whatever the cost overruns might be. Of course, that reserve is also paid for by FINRA's broker-dealer members. So, the costs to be borne by FINRA's members start at $1.3 million but could then also include some undisclosed portion of the FINRA members' $2 billion strategic reserve. FINRA does not estimate how large those overruns might be.

Bloomberg presented an extensive and detailed framework that informed the Commission of the types of workstreams, expertise, resources, and potential overruns ("project contingency") necessary for FINRA to build its New Issue Bond Reference Data Service.[40] This is the type of detail that IEX provided the Commission and that FINRA has for years failed to provide in its submissions. Like IEX, FINRA is an SRO that should be held to the same standards.

Bloomberg Estimate. Bloomberg acknowledged in its Remand response that it does not know the full scope of FINRA's costs. The detailed estimates addressed the software development labor effort alone. Operating with that subset of actual costs, Bloomberg was able to conclude that the direct costs for a commercially accurate service would be well over $8.75 million to build and $2.5 million per year to operate – and likely substantially more.[41] Insufficient data has been provided to guide the Commission in assessing FINRA's costs and FINRA's most recent submission does nothing to address that deficiency. FINRA's new descriptions, however, provide Bloomberg with some added insight into the tasks and processes FINRA is planning on (direct costs) and which costs may be shifted onto underwriters and potential consumers of the data (indirect costs).

Among the areas the Commission should have concerns over are the development of "data quality control" processes, not only because costs of getting this right aren't accounted for, but also because the cost to the market of an incorrect "golden copy" are potentially massive. FIMSAC stressed the importance of accurate data in their recommendation five times. And, FINRA said that it would create a high-quality service. The Commission's acceptance of that representation was important in its prior approval of FINRA's proposal. As the government mandated "gold standard" for new issue corporate bond reference data, FINRA, despite its "non-profit" status, will still need to achieve levels of accuracy approaching the best commercial enterprises.

It was market structure analyst and FIMSAC member Larry Tabb, then founder and research chairman of TABB Group, a research and strategic advisory firm focused exclusively on capital markets, who originally raised the data quality concerns in March 2019. FINRA TRACE's master corporate data file carries three critical fields of reference data (coupon rate, maturity date and the 144A status) and about 20% of new issues had at least one error in one of

[40] See Bloomberg Remand Letter, Appendix B.

[41] As noted above, all these costs would be higher today than in the February 2023 estimate.

those bond reference fields.[42] A subsequent examination of those three fields in FINRA TRACE's master corporate data file of new issues during November 22 to 28, 2022, showed no signs of improvement.[43] The Proposal requires more fields to be submitted to FINRA with some fields requiring the underwriters to perform calculations in order to report accurate values.

Updating the existing record, Bloomberg analyzed the new issue reference data for corporate bond issues priced during April 2024. Using a static snapshot of FINRA TRACE's master corporate database from April 30, 2024, Bloomberg found that 13% of the new issues in FINRA's master corporate bond database that were priced in April 2024 had an error in at least one of the three reference data fields (coupon, maturity date, and 144A status).

FINRA also distributes an update file during the day. This update file is apparently the distribution process that FINRA is now planning on using to distribute the New Issue Bond Reference Data Service information.

Unfortunately, this update file also suffers from an enormous error rate. Bloomberg found that over the month of April 2024, 18% of new issues had an error in at least one of the three reference data fields (coupon, maturity date, and 144A status) in the last update file published on the day that the new issue was priced. The Proposal is more complex, requiring more data to be reported to FINRA, including demands for underwriters to calculate some fields. FINRA's plan to incorporate the new data into existing processes provides little comfort that the reported information will be accurate.

Indeed, this issue of quality control is no doubt among the reasons why FINRA's Senior Vice-President of Transparency Services observed that "we would have some work to do. The technology today does not lend itself very well to this. We would need to create the ability for

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[42] See Tabb Study. Also see Statement of Bloomberg, L.P. in opposition to approval of the proposed rule change, March 16, 2020 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6977254-214392.pdf, "Bloomberg and other commenters submitted substantial and unrebutted evidence that FINRA's existing data service, TRACE, features an unaccountably high error rate. Errors affect about 20% of the three entries reviewed in this far simpler system (the proposed system would feature more than 30). See Order at 14 nn. 52–53 (citing comments and evidence, including Tabb Study). FINRA did not refute that evidence. In fact, FINRA said it was unable to provide a "meaningful response," and merely speculated about what might have caused some of the inaccuracies. Order at 19 ("FINRA believes a number of the differences found in the analysis may have resulted from data fields that are not currently system validated.")."

[43] See Bloomberg Remand Letter, at 13, "An examination of current data shows no improvement. Analyzing the 67 new issues with issue sizes $2 million or more priced from November 22 to 28, 2022, Bloomberg found that about 25% of the new issues in FINRA's daily end of day corporate bond file had a discrepancy with Bloomberg in one of those three basic pieces of reference data. Examining a cohort of just fixed rate new issue corporate bonds, the error rate was over 15%. While there are some discrepancies in the maturity date and 144A status, the vast majority are differences in the coupon rate. New issues with floating rate coupons tend to be populated with zero in FINRA's data. A similar error rate was found when examining the cohort of 38 new issues with issue sizes $250 million or more – those most conducive to electronic trading."

underwriters to come in, give us partial information and have the ability to edit their own records, etc…We would also need to create a separate distribution channel for this."

Today, the method deployed as best practices relies on a continuous iterative process that permits underwriters to constantly update and correct filings. The use of an update file – instead of a continuous iterative process for underwriters to correct filing – will have profoundly negative consequences for data quality, which is no doubt why FINRA testified to FIMSAC that such a two-way system of communication must be created under the Proposal.

Will FINRA simply incentivize broker dealers with an escalating series of fines? What costs does that impose on FINRA members? Can FINRA ultimately obtain sufficient quality to match commercial quality in the existing market? If so, how long will it take? What are the direct and indirect costs of reliance on inaccurate "golden copies" of reference data during the period of time it takes for FINRA to compel the market to upgrade its standards to the level of existing commercial quality?

To the extent that FINRA has existing data validation processes, these don't appear to be effective – FINRA's characterization that the data validation is a minor enhancement seems to mischaracterize the substantive requirements and costs of the new reporting regime. In Bloomberg's prior submission to the Commission, the development of "data quality control" processes represented over 20% of the estimated costs.[44]

FINRA contends that it has an established quality control and data validation process. Although FINRA has not described what this process is, or how it is designed to ensure that the reported information is accurate, it nevertheless contends that its controls are effective and it can be trusted to extend this current process to a significantly larger set of new issue reference data points, with minimal additional effort. By contrast, Bloomberg has demonstrated that there is currently a significant error rate in FINRA's existing data collection, and that FINRA does not appreciate the effort and resources that are required to ensure reported data is accurate. As evidence of the absence of current meaningful quality control, Bloomberg notes that FINRA has levied just *one* fine in the past *five* years over inaccurate reporting of new issue data.[45] And the inaccuracies were actually brought to FINRA's attention by a firm that *self-reported* the inaccurate data. In light of the significant error rates demonstrated by Bloomberg, and the inadequacy of FINRA's efforts to ensure the industry complies with FINRA's reporting rules, we find it highly unlikely that the current quality control and validation processes are particularly effective in detecting inaccuracies in the reported data, as this *one instance*, which was not even uncovered by FINRA, went undetected for quite some time until brought to FINRA's attention.

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[44] See Bloomberg Remand Letter, Appendix B.

[45] See Credit Suisse Securities (USA) LLC, Financial Industry Regulatory Authority Letter of Acceptance, Waiver, and Consent No. 2018060924101 (June 12, 2023), available at https://www.finra.org/sites/default/files/fda_documents/2018060924101%20Credit%20Suisse%20Securities%20%28USA%29%20LLC%20CRD%20No.%20816%20AWC%20gg%20%282023-1690158072457%29.pdf.

Bloomberg has demonstrated significant error rates in FINRA's current offering. FINRA has demonstrated a failure to devote resources to quality control regarding reporting rules. Ensuring a viable bond reference data product will likely require both substantial direct costs to FINRA and substantial indirect costs for FINRA members. FINRA has not addressed any of those costs. In short, whatever FINRA's established process—FINRA's letter does not describe it—it is manifestly ineffective. Something more will have to be done. FINRA's assertion that it plans to use its established process is an admission that FINRA does not know the actual cost for a real, effective quality control and validation system for the reference data service it wants to undertake.

Bloomberg supported its estimate with additional evidence and argument in its letter last year. FINRA, despite taking another opportunity, after another 14 months, to argue for its reference data service, offers no response. FINRA does not deny the error rate in TRACE or offer any substantive explanation of what it will do to make the reference data service more accurate or reliable. Accordingly, the Commission has no information from FINRA about what it would *cost* for FINRA to achieve a more accurate data service.

FINRA continues to think the Commission can proceed without real information because the costs can, it says, ultimately come out of FINRA's strategic reserve. Bloomberg's letter last year observed that funding a project from reserves is not cost free. As Bloomberg pointed out, FINRA has been funding its operating budget from reserves, and in 2022 had an operating loss of $164 million funded from reserves.[46] Indeed in 2020 FINRA announced an increase in member fees precisely to address the structural deficit in FINRA's budget that it was covering from its reserves.[47] FINRA's new submission does not address or resolve any of those criticisms. FINRA says commenters misinterpreted FINRA to be saying that it planned to pay for the new data service out of its reserves, when really, FINRA says, it plans to charge fees to cover the service.[48] It is FINRA that has missed the point. Bloomberg takes for granted that FINRA will eventually attempt to charge fees to users of the reference data service. The Commission promised, in its original decision, that it would conduct a full review of those proposed fees under section 15A, and the Court accepted that promise.[49] But as the Court observed next, the fact that the Commission might reject the fees as unreasonable does not make the costs disappear. The Court specifically asked the Commission to assess where the costs would fall if not on users of the data service via fees.[50]

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[46] See Bloomberg Remand Letter, at 18.

[47] *Id.*

[48] See FINRA April 23 Letter, at 4.

[49] See 45 F.4th at 476.

[50] See *Bloomberg L.P. v. SEC*, 45 F.4th 462 (D.C. Cir. 2022), at 26.

FINRA's response, last year, was that that the strategic reserve would cover the cost. Bloomberg pointed out that the strategic reserve is a finite pot of money that ultimately comes from members, and the pot of money is already dwindling to the point that FINRA needs to increase member fees to top it up. Funding another cost, that of the data service, out of the same finite pot will make it decrease faster—that is simple math. FINRA does not deny any of the facts that Bloomberg presented on this point. FINRA just asserts that the cost of the data service will not have a "material impact" on the reserves,[51] a proposition for which it provides no evidence and no explanation. Yet again, FINRA insists the Commission should just trust the SRO's soothing claims even when they are contrary to the evidence.

D. COST TO MARKET PARTICIPANTS.

In the most recent submission, FINRA – while failing to follow the Court's directive to identify costs to FINRA members and market participants of implementing this Proposal – did make clear that it will use its fee-levying enforcement powers to outsource the costs implementation:

> "It is also important to note that, from a validation perspective, unlike voluntary data submission to non-self-regulatory organization entities, FINRA members are required to report to the Service in accordance with FINRA rules, which we largely expect to result in timely and accurate reporting with a relatively small percentage of submissions requiring follow-up."[52]

FINRA thus acknowledges openly that it expects the costs of data validation to shift to underwriters. The Commission previously concluded that the cost of FINRA's rule to underwriters would be small because they are already reporting to private vendors the 32 fields of data that they would be required to submit to FINRA.[53] Yet Bloomberg had explained that to achieve an accurate data system using submissions from underwriters requires Bloomberg to engage in substantial follow-up work, using a trained staff that reaches out to underwriters to verify and correct the data[54]—work that somebody has to do, whether at the data service or the underwriters. Now FINRA acknowledges its data system will be different and "***unlike*** voluntary data submission" to private vendors, precisely because underwriters will be "required" to provide "timely and accurate reporting." As noted, somebody has to do the work of ensuring the data submitted are accurate and complete. FINRA does not deny that the work has to be done. And

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[51] *Id.*

[52] See FINRA April 23 Letter at 8.

[53] See 86 Fed. Reg. at 6,939.

[54] See Mot. of Bloomberg, L.P. to Adduce Additional Evidence, Miao Decl., ¶¶ 7-9 (Apr. 17, 2020).

FINRA now admits that, unlike in the current environment, underwriters will have to this work themselves. This is, indeed, a new cost to underwriters that will be created by FINRA's reference-data rule.

The Commission must count that cost. The Court demanded an accounting of the financial impact of the Proposal on "the entities that fund FINRA" and on "market participants."[55] FINRA does not even attempt to address the costs and burdens that the Proposal places on its members to comply with the Proposal's reporting requirements and end users seeking to use the data provided by the Service. FINRA also has made no effort to inform the Commission what infrastructure and other costs are being forced downstream on FINRA members.

In fact, since the FIMSAC meeting in October 2018, FINRA's responses have always been "Speaking for FINRA, not the effort on behalf of the underwriters, but speaking for FINRA…."[56] It is clear that FINRA plans to shift significant costs onto the underwriters and is characterizing development of many tasks as "incremental" when the record, including testimony from FINRA itself at the October 29, 2018 FIMSAC meeting and FINRA's persistent error rate, clearly suggests otherwise.

There are other costs that underwriters will incur from the data submission process – SIFMA and the Bond Dealers of America have repeatedly asked for more details so that they could estimate the cost to underwriters.[57] Specifically, SIFMA in their response to the "Order

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[55] See Bloomberg L.P. v. SEC, 45 F.4th 462 (D.C. Cir. 2022), at 26, "In short, the Commission approved FINRA's proposal without responding to comments that urged it to assess not only the financial impact of the service on FINRA, but also the entities that fund FINRA. That is not reasoned decisionmaking" and at 27, "In sum, we find that the Commission's approval of FINRA's proposed reference data service was arbitrary and capricious in one respect: the Commission 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."

[56] See Persson FIMSAC Testimony at FN 18.

[57] Consider: (1) The Bond Dealers of America summed up, (Letter from Michael Decker, February 21, 2023) "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."
(2) SIFMA's repeated requests for additional information to comment on the burden to underwriters: In the first comment letter (Letter from Christopher Killian, April 29, 2019), SIFMA said, "given the additional data proposed to be required by this rule, the ability to use an API becomes much more important, if not necessary, to deliver this information in a more efficient, timely, and accurate manner. FINRA should expedite the exploration of business requirements for the development of such an interface**"**, reiterated in its Comments to FINRA's amendment (Letter from Christopher Killian October 24, 2019, "We remain concerned that some of the required fields are unclear and suffer from overlap, and that there is no discussion of a modernization of the process through which information is submitted to FINRA for TRACE set up. Each concern places unnecessary burdens on FINRA-member broker-dealers" and in response to the Order, (Letter from Christopher Killian February 21, 2023) "We reiterate our July 2019 comment that FINRA should publish a more specific proposal (including specific fee levels and the basis for and justification of those fees, and more details on the data submission requirements as discussed in our previous comment letters)…"

Scheduling Filing of Statements" in February 2023 complained that FINRA still has not provided enough information for underwriters to assess what the burden of the new service would be on them – noting that FINRA had not responded to their concerns for "more details on the data submission requirements" originating in their first April 2019 letter and every subsequent letter.[58]

Following FINRA's response to the Order, the Bond Dealers of America communicated that FINRA was still not addressing concerns that "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."[59] Bloomberg noted several times in the record that mid and small underwriters are critical participants responsible on average over the past five years for over 30% of deal volume and over 40% of the total deals.[60] And, most of those deals cater to smaller-sized issuances.[61]

Updating the data from 2019, Bloomberg analysis shows that in 2023 and through Q2 2024 mid and small dealers represented over 34% of deal volume and 42% of deals. FINRA also did not respond to Bloomberg's illustrative list of six costs that "'will be borne by market participants' to comply with the rule."[62]

FINRA indicated in October 2018 that "The technology today does not lend itself very well ... for underwriters to come in, give us partial information and have the ability to edit their own records, et cetera. Today, that is … a bit of a one-way street."[63] Bloomberg believes that building a new "two-way" API, API and cloud-based modification system and cloud web-based

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[58] See Letter from Christopher B. Killian, SIFMA, February 21, 2023, at 2 https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20157730-325807.pdf.

[59] See Letter from Michael Decker, Bond Dealers of America, February 21, 2023 at 1 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20157748-325815.pdf.

[60] See Bloomberg Letter October 24, 2019 at 5 and FN 10, Bloomberg Remand Letter February 21, 2023 at 21-22.

[61] See Bloomberg Remand Letter, Table 1 at 22.

[62] See Bloomberg Remand Letter Appendix B at 4. "An illustrative list of some of the costs that the Commission may consider, but FINRA provides no insight into, are: • Infrastructure costs associated with connecting to the cloud provider with an API. This cost will also depend on how many connections an underwriter would be required to maintain. • Information technology costs associated with automated submission, error corrections and feedback loop integration. • Costs to assemble 41 fields of data for underwriters to transmit to FINRA prior to the start of trading. Underwriter costs related to quality assurance and policies and procedures updates and compliance oversight. • Costs to member broker-dealers to locate, assemble and transmit 41 fields of data on foreign debt securities that are underwritten by non-US broker-dealers (non-FINRA members) but that are TRACE eligible (and thus also subject to reporting under the Proposal). • Costs of IT licenses necessitated by the rule."

[63] See Persson FIMSAC Testimony, FN 18.

data submission is more intricate than FINRA is estimating. While FINRA has accounted for its costs of testing the new system, it isn't clear that the costs of underwriters testing, which is critical to uncovering undesirable software features and ensuring smooth-functioning submission processes, is considered. Bloomberg's detailed estimates suggests that the development of the API schema, the two-way communication to accept/reject and modify submissions and the development of a business rules engine to detect input errors exceeds the $1.3 million estimate for the system.

E. CIRCUMVENTING THE REGULATORY NOTICE PROCESS.

One of the reasons why we face an unclear and unworkable proposal that is not consistent with the Act is because of the Proposal's unique genesis. The New Issue Bond Reference Data Service was the only FIMSAC proposal that by-passed FINRA's typical Regulatory Notice process and went directly to the Commission for consideration. FINRA may not be able to provide the Commission with certain information that the Court requires because its members did not have the opportunity to provide feedback prior to drafting a final rule for Commission approval. That feedback could have informed FINRA of the burdens and other indirect costs. Regulatory Notice 22-17 "FINRA Requests Comment on a Proposal to Shorten the Trade Reporting Timeframe for Transactions in Certain TRACE-Eligible Securities From 15 Minutes to One Minute"[64] is an example of how effective the Regulatory Notice process can be. In this Proposal, FINRA members[65] discussed the burdens that the proposed rule would introduce and requested limited exceptions for manual trades because securities may not be in a firm's security master (given that there are 1,600,831 CUSIPs for debt securities). Members sought an exemption for firms that have limited activity. Taking Member comments of the burdens and indirect costs into account, FINRA ultimately substantially modified its proposal prior to submitting a final rule for Commission approval.[66]

The Regulatory Notice process could also have provided FINRA's membership with the opportunity to opine on some questions that FINRA's Senior Vice President of Transparency Services asked at the October 2018 FIMSAC meeting. For example, the senior FINRA official pondering whether there would be a reduced burden on underwriters submitting an expanded number of data fields currently required, if FINRA created a new issue reference data reporting structure similar to the MSRB's NIIDS where "certain trade eligibility fields are set up on a very

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[64] See FINRA Regulatory Notice 22-17, August 02, 2022, at https://www.finra.org/rules-guidance/notices/22-17#notice.

[65] See Regulatory Notice 22-17 comment file at https://www.finra.org/rules-guidance/notices/22-17#comments.

[66] See SR-FINRA-2024-004, "Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 6730 (Transaction Reporting) to Reduce the 15-Minute TRACE Reporting Timeframe to One Minute", January 19, 2024 available at https://www.sec.gov/files/rules/sro/finra/2024/34-99404.pdf.

timely basis but then complemented later with more descriptive fields…"[67] He also thought that FINRA should "… maybe go out and talk to different user groups of reference data to Alex's point, some primary and some secondary. And understand if there is a bigger scope or if this would satisfy a majority of the constituents that would consume it."[68] In recognition of the cost of demanding all of the data fields in one submission, it was noted by another FIMSAC member that "I don't think we need the full terms and conditions to be able to set up an instrument on a trading platform. And we have to consider also the challenge on the issuer side to be able to provide the information. So, we have to find a balance between the two."[69]

The Regulatory Notice process could also have provided FINRA with the opportunity to discuss some of the still outstanding questions raised by participants that FINRA has not to this day addressed. Some of these questions strike at the very heart of how the data could be disseminated. For example, one panelist asked, "…the big question that the underwriting community is going to have is as that list [of data fields] expands, where is there issuer confidentiality that is breached or an inappropriateness or intellectual property from the underwriter side where it is detrimental to their business advantage or insight to borrowers" and "to whom you are disseminating the data. Where is too far? When we think of munis, retail is an extraordinarily large component of distribution. In corporates, it is not. The media. We have some restrictions on ensuring we don't trigger a need for disclosure to the SEC. If we are unsold on certain positions, which does happen, we have some restrictions on 144As in terms of being able to disseminate and comment. And so to whom we disseminate would be a second consideration."[70]

FINRA's "outreach" cited to support the Proposal featured anonymous participants responding to unrevealed questions in non-public discussions that produced no written record. The few concrete assertions emerging from this standardless process – for example assertions about clearing difficulties – were demonstrated to be empirically wrong.

Opting to pursue a standardless process – rather than FINRA's Regulatory Notice process – is why FINRA is so challenged in assessing the need for or costs of this Proposal. Following

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[67] See Persson FIMSAC Testimony at 0089-05 to 09.

[68] Id., at 0087-20 to 0088-01.

[69] See ("Demesy FIMSAC Testimony"), "Frederic Demesy, Refinitiv, Testimony" from the transcript of the U.S. Securities and Exchange Commission Meeting of the Fixed Income Market Structure Advisory Committee, Monday, October 29, 2018, 9:30am, Amended 11-8-2018, with excepts starting at 0092-02 to 08, available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt. .

[70] See ("LoBue FIMSAC Testimony"), "Bob LoBue, Head of Global Fixed Income Syndicate and Managing Director, JPMorgan Chase, Testimony" from the transcript of the U.S. Securities and Exchange Commission Meeting of the Fixed Income Market Structure Advisory Committee, Monday, October 29, 2018, 9:30am, Amended 11-8-2018, with excepts starting at 0090-02 to 25, available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt. .

FINRA's Regulatory Notice process would have informed both FINRA and the Commission of the salient indirect cost information that the Court now demands on Remand.[71]

F. FULL COST BENEFIT ANALYSIS.

Bloomberg's letter a year ago pointed out that in this remand, the Commission has important issues to think about besides the direct costs to FINRA from building and operating the system. First, the Court expressly instructed the Commission to consider both "the direct and the indirect costs" of the Proposal, and not just the direct costs of the program but also how "those costs . . . will be borne by market participants."[72] Reporting parties (chiefly underwriters) will indeed face costs from the Proposal, particularly given that FINRA has now admitted that its plans rely on the compulsory nature of the submissions to ensure that underwriters do the work of ensuring data integrity and accuracy. Users will face costs as well. FINRA has not given the Commission any information for assessing any of these costs, even as its new letter undermines the Commission's original rationale that underwriters face little cost because they will submit to FINRA the same way they do to private vendors. The Commission must conduct its reconsideration using the record before it now, which demonstrates further cost to underwriters than it realized in its original decision.

Second, the Commission must carry out a full cost-benefit analysis of FINRA's Proposal. Like any cost-benefit analysis, that assessment must be quantitative, and must describe the benefits, in a quantitative sense, from the Proposal, compared to the quantitative costs. Presumably the Commission would not approve a rule with net negative economic effects. Contrary to FINRA's views, the Court did not settle this issue. Rather, the Court expressly declined to rule on this aspect of Bloomberg's case, because the Court found the Commission's consideration of cost alone to be so deficient that it needed reconsideration anyway.[73] Thus, this issue remains quite live and important.

As the Court noted, the reference data system might, for all the Commission or the Court could tell, cost tens of millions of dollars. Is that too much? It all depends on what is the economic benefit to be gained by building and running the system. The purported inefficiencies

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[71] Bloomberg continually noted deficiencies in the "outreach" process in its October 24, 2019 letter at 5, Statement in Opposition to the Approval of the Proposed Rule Change at 24, "FINRA engaged in supposed "outreach" to traders whom it did not identify and whose actual input it did not provide" and at 27, "FINRA's report of anonymous anecdotes is another sort of information that Susquehanna criticized. See 866 F.3d at 446-47 (criticizing SEC's reliance on an SRO's report of input from anonymous "independent experts"). Thus, FINRA's framing its position as a curated summary of "outreach" to preferred respondents renders it no more reliable."

[72] 45 F.4th at 477-78.

[73] "Although Bloomberg has raised the issue of whether Section 3(f) of the Exchange Act, 15 U.S.C. § 78c(f), imposed on the Commission a requirement to include costs incurred by FINRA in a ***cost-benefit analysis of FINRA's proposed rule, we need not reach that question*** because the Commission's failure to respond adequately to Bloomberg's comments rendered its decision arbitrary and capricious under the Administrative Procedure Act." 45 F.4th 462 (emphasis added).

are, at best, marginal. How much would transaction costs be reduced, if at all, if market participants had access to the FINRA reference data service? How much would spreads decrease, if it all? The Commission must answer these questions before it can approve FINRA's Proposal against the knowledge that it will cost tens of millions of dollars over the years.

Bloomberg provided significant evidence and argument demonstrating that transaction efficiency has been increasing steadily over the years since FINRA announced its Proposal, all without having access to the proposed system. The baseline against which the Commission would have to measure the benefit from FINRA's proposed system—if there were any actual economic benefit—is getting tougher as time goes by. The market has demonstrated ample ability to increase electronic trading and improve efficiency without FINRA's proposed system, and FINRA must demonstrate that its Proposal would have economic benefits, greater than the costs, against the *current* baseline.

FINRA makes no effort to quantify the economic benefits. Instead, it asserts that all such issues are settled because the D.C. Circuit rejected an arbitrary-and-capricious challenge to the Commission's previous finding that the Proposal does not unduly burden competition.[74] That assessment by the Court related to Bloomberg's argument that the Proposal would improperly reduce competition in the market for reference data.[75] The assessment of costs and benefits is a distinct issue, which the Court discussed separately. And, as noted, the Court did not address the larger failures in the Commission's decision, because the failure to consider the costs already necessitated a remand.[76] FINRA has chosen not to give the Commission any information or argument on the substance, but its abstention does not lessen the Commission's obligation to understand the cost-benefit tradeoff before approving the Proposal.

FINRA asserts that the Commission can approve the Proposal regardless of whether the benefits outweigh the costs, because the Commission's task is only to "weigh costs and benefits"[77]—as though it does not matter how large the costs are as long as the Commission recites them. The Commission should not be led astray. The Supreme Court has said that "[n]o regulation is 'appropriate' if it does significantly more harm than good."[78] The case FINRA cites is not to the contrary, because it simply observed that a benefit in one area can justify a harm in another.[79] Here, the Commission cannot reach the necessary conclusion that the benefits justify the costs, because FINRA has not provided any information to quantify benefits at all.

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[74] See FINRA April 23 Letter, at 3.

[75] See 45 F.4th at 474-75.

[76] *Id.* at 476.

[77] See FINRA April 23 Letter, at 4-5.

[78] *Michigan v. EPA*, 576 U.S. 743, 752 (2015).

[79] *Nasdaq Stock Market LLC v. SEC*, 34 F.4th 1105, 1113 (D.C. Cir. 2022) (reduced transparency can be justified by beneficial impacts on competition).

In fact, the quantitative economic benefits from the Proposal are essentially zero. There were supposedly three benefits from the Service: (1) advance the growth in electronic trading and electronic trading of new issues; (2) increase settlement and clearing efficiency; and (3) enhance competition in new issue bond reference data services.

i. Electronic Trading: In at least five separate letters, Bloomberg provided the Commission with data showing that the fixed income market structure was evolving rapidly toward electronic trading of new issues. Data was leading the conventional wisdom that begat the FINRA Proposal. FINRA had based its Proposal off a FIMSAC recommendation that hypothesized that – in the absence of a FINRA new issue bond reference data service – "some of the leading e-trading venues are not able to offer trading in newly issued bonds on a timely basis, harming liquidity and competition in the corporate bond market."[80]

It was clear to many at the time – and is certainly clear to all now in hindsight – that when FIMSAC proffered the recommendation for FINRA to form a new issue bond reference data service, the market was at an inflection point. The data clearly indicates that in Q2 2018 when FIMSAC began considering their New Issue Bond Reference Data Service recommendation, secondary market electronic trading was stuck at 19% and electronic trading of new issues was around 12%.[81] After the recommendation was approved on October 29, 2018, electronic trading began a dramatic ascent.

In fact, before FINRA submitted their Proposal to the Commission, a short five months after FIMSAC's recommendation, the number of new issues that traded in the secondary market and completed a trade electronically on the day it was priced had nearly tripled to 32% (Figure 3). During the same period, secondary market electronic trading had increased to 27%. Around the time that the Commission approved the Proposal, the number of new issues that traded in the secondary market and completed a trade electronically on an ATS on the day it was priced had increased to almost half with over 60% of the largest new issues trading electronically and 35% of the secondary market trading electronically.

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[80] See FINRA Letter, Response to Comments, October 29, 2019 at 5, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6366404-196429.pdf.

[81] See "Summary of Minutes of the March 29, 2018 Call", Fixed Income Market Structure Advisory Committee — Technology and Electronic Trading Subcommittee ("The Subcommittee then discussed matters concerning access to bond reference data. The members discussed the cost of accessing such data, methods for providing access to reference data, and potential related areas for further Subcommittee consideration."), available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-technology-and-electronic-trading-subcommittee-032918.htm.

	**** Electronic Trading on an ATS ****						
	Q2 2018**	March 12 to April 11, 2019*	May 13 to June 12, 2019*	Sept 3 to Oct 3, 2019*	Nov 14, 2019 to Feb 13, 2020*	July 1 - 28, 2022	April 2024
Total New Issue population (Issue size > 250MM)	12%	32%	29%	31%	45%	68%	71%
"Jumbo" sized New Issues (1BN +)	16%	43%	34%	45%	63%	76%	75%
"Benchmark" sized New Issues (500MM to 1BN)	9%	28%	28%	28%	44%	60%	73%
"Medium" sized New Issues (250MM to 500MM)	12%	11%	26%	20%	27%	50%	59%
Coalition Greenwich IG Electronic Trading Total Secondary Market	19%	27%	29%	33%	35%	41%	45%

* Analysis of new issues identified using Bloomberg's SRCH<Go> and the TRACE prints on QR<Go>
** Analysis of new issues identified using Bloomberg's SRCH<Go> and prints from FINRA's Historic Data File

Source: Bloomberg Finance L.P.

Figure 3: Exponential Growth in Secondary and New Issue Electronic Trading.

Updating the record based on 2024 data, the Commission must consider that, according to Coalition Greenwich Associates, 45% of the secondary market now trades electronically. Moreover, Bloomberg's analysis of TRACE data shows that of the new issues that are most conducive to trading electronically (issue sizes greater than 250MM), over 70% that traded in the secondary market also completed a trade electronically on an ATS on the day they were priced (Figure 3). The record shows that this percentage has grown steadily since 2019. It is hard to imagine how a FINRA new issue corporate bond reference data service could push the number of new issues that trade electronically on an ATS much beyond 60-70 percent.

To summarize – during the period in which FINRA has alleged (without a scintilla of evidence) that a lack of new issue corporate bond reference data was thwarting electronic trading of new issue corporate bonds, the number of new issues trading electronically ***had risen from 12% to 71%***. This six-fold increase in electronic trading is not consistent with FINRA's thesis that anything – let alone a lack of reference data – is impeding electronic trading. The empirically demonstrated lack of benefit – unaddressed by FINRA – is certainly relevant to the cost-benefit question which the Court failed to address only because of the Commission's failure to include cost data as required by the Administrative Procedure Act.

ii. Settlement and Clearing Efficiency: Dating back to our first letter in April 2019, Bloomberg has not heard customer complaints about settlement and clearing issues. This is consistent with the discussion held at FIMSAC's final meeting. At that time, amid record new issue corporate bond issuance during COVID, Committee members as well as the Director of Trading and Markets all praised the fixed income market's ability to pass COVID-19's tests without incident "in terms of price discovery, liquidity, trading volumes, clearing and

settlement." [82] There are typically very long lead times between pricing and settlement for new issues. There appears to be plenty of time to correct errors before they enter the settlement and clearing process, and "no data to the contrary" has been presented. [83] Bloomberg noted that "Prior to filing the Proposal with the Commission, 'FINRA talked to four data providers, three underwriters, two trading platforms, and two clearing firms.' FINRA has still provided no direct evidence to support the claim that new issue data "would benefit trading platforms and clearing firms by reducing broken trades and errors in trading due to inconsistent information." [84] The Court concluded that FINRA had provided evidence of "information asymmetries and inefficiencies in the market" [85] but the Court did not identify what those were, and FINRA has never provided evidence of trading errors or failures related to the supposed reference data problem.

	New Issues January 2, 2018 to April 11, 2019					New Issues April 2024			
	T+1	T+2	=>T+3	=> T+4	T	T+1	T+2	=>T+3	=> T+4
All	0%	8%	91%	66%	5%	0%	15%	80%	49%
Jumbo	0%	4%	96%	81%	0%	0%	22%	78%	59%
Benchmark	0%	7%	93%	74%	0%	0%	2%	98%	81%
Medium	0%	7%	93%	77%	0%	0%	6%	94%	75%
Small	1%	10%	89%	76%	4%	0%	11%	85%	70%
Micro	0%	10%	90%	59%	9%	1%	21%	69%	21%

Figure 4: Settlement date – Percentages by new issue size

Updating the record based on 2024 data, Bloomberg's analysis of new issue first settlement dates shows that since 2019, issuers have shifted their preferred new issue settlement to T+2 settlement (Figure 4). There is still no sign of settlement and clearing problems.

Settlement and clearing issues have been recently under the Commission's microscope. The Commission in February 2022, proposed and in March 2023 adopted a rule to shorten the

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[82] See FIMSAC October 5, 2020 meeting, Comments from Trading and Markets Director and the Committee's Designated Federal Officer, Brett Redfearn, at 13, 15 to 21 available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-100520-transcript.pdf. Also see Bloomberg Remand Letter at 31.
"Amid Record New Issuance, No Noteworthy Outages or Settlement Issues Emerged: Another FIMSAC member observed that during the COVID period, especially during the period of heavy new issuance, March-June 2020, "there was no noteworthy outages or issues for the electronic bond markets despite record updates, record transactions, settlements, that was an excellent outcome for the overall market ecosystem..." citing "FIMSAC October 5, 2020 meeting" transcript, at 54.

[83] See Bloomberg Letter April 29, 2019, at 10 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5426948-184629.pdf.

[84] Id.

[85] See 45 F.4th at 473.

securities transaction settlement cycle to T+1. [86] Rule 15c6-1 applied to equities, corporate bonds, unit investment trusts, mutual funds, exchange-traded funds, American Depositary Receipts, security-based swaps, and options. [87]

The Commission received extensive public comment – 351 comments to be precise – during this proceeding. The Commission would have certainly heard from the public that a change from T+2 to T+1 settlement in new issue corporate bonds would be difficult if there existed for any reason settlement and clearing issues – including if that were due to a lack of New Issue Corporate Bond Reference Data.

Instead, none of the 351 commenters – including MarketAxess, a major proponent of the Proposal, and DTCC – raised concerns over the impact of shortening the settlement cycle for new issue corporate bonds. [88] The only "new issue" concern was raised by SIFMA who persuaded the Commission not to subject new issue equity securities to T+1 but allow them to remain at a standard T+2 settlement cycle or if arranged prior to pricing, extended settlement

Would the Commission have imposed shorter settlement times if there already existed—as FINRA claims – serious trading and settlement issues? Of course not. If there were clearing and settlement issues, wouldn't one of the 351 commenters – covering all facets of the industry – noticed it and raised concerns? Of course they would. The Commission was correct to find the 351 public commenters to be credible on the subject of clearing and settlement.

To summarize, there has never been any empirical data offered to suggest problems with settlement and clearing of new issue corporate bonds. Certainly, there has never been any evidence that an alleged lack of access to reference data has created settlement and clearing issues. If there were remotely a problem, the reduction in clearing and settlement time would have brought forth volumes of complaints. It hasn't. This is not, and never has been, a problem. The lack of benefit is relevant to the cost-benefit analysis which the Court initially did not address because of the Commission's failure to include cost data as required by the Administrative Procedure Act.

iii. Greater Competition in New Issue Bond Reference Data Services: FINRA argues in the Proposal that the Commission needs FINRA to intervene and use their SRO powers to level the playing field among data vendors for new issue bond reference data. FINRA said

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[86] See "Shortening the Securities Transaction Settlement Cycle", adopting release, 88 FR 42, March 6, 2023 available at https://www.govinfo.gov/content/pkg/FR-2023-03-06/pdf/2023-03566.pdf.

[87] Id., at 13874, FN 13.

[88] See Comment File for "Shortening the Securities Transaction Settlement Cycle", Release Nos. 34-94196, IA-5957; File No. S7-05-22, at https://www.sec.gov/comments/s7-05-22/s70522.htm.
Neither MarketAxess, a lead FIMSAC proponent of the Proposal, in their letter (April 11, 2022, available at https://www.sec.gov/comments/s7-05-22/s70522-20123571-279780.pdf), notably did not mention new issue bond reference data as still being an issue for new issue settlement nor did DTCC (September 30, 2022, available at https://www.sec.gov/comments/s7-05-22/s70522-20144651-309416.pdf).

explicitly that the "purpose of the Proposal as to establish a rival data service that would serve as an alternative to the existing services"[89] displacing competitive market participants.

In 2019, Bloomberg noted that there was healthy competition for the provision of new issue bond reference data among ICE Data Services, LSE Refinitiv and others. The record shows that competition is fierce – since 2019, several new issue bond reference data service providers have solidified operations. For example, the record includes references to DirectBooks' press release on October 11, 2019, that it had formed a broker consortium to develop a new issue underwriting system.[90]

Updating the record based on 2024 data, DirectBooks has since expanded its offering, delivering new issue reference data directly to OEMSs such as Charles River and Blackrock's Aladdin.[91] LSE Refinitiv sources new issue bond reference data from "direct deal submissions from global dealmakers coupled with rigorous sourcing of regulatory filings, newswires, and company press releases to gather timely and detailed debt issuance information."[92] The data is available through electronic distribution on a Debt New Issue Data Feed, Eikon, the LSEG Workspace and an LSE On Demand delivery channel.

To summarize, the record demonstrates that the new issue corporate bond reference data was competitive in 2018 and is even more competitive now. There has been no demonstrated benefit supportive of having a government-sponsored enterprise displace private sector competitors. This lack of benefit is relevant to the Court's questions regarding cost-benefit analysis. Moreover, an increase in competition, in the abstract, is not a quantitative benefit. For this purported benefit to justify imposing on the market the cost that FINRA wants to undertake, the Commission would need to have some estimate of how much the cost of data services would

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[89] See Statement of Bloomberg, L.P. In Opposition to Approval of the Proposed Rule Change, March 16, 2020 at 24, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6977254-214392.pdf.

[90] See Bloomberg Letter October 24, 2019, at 6, FN 11, "Press Release, Global Bank Consortium Creates Capital Markets Syndication Platform, DirectBooks™ (Oct. 11, 2019)."

[91] "DirectBooks is now working with BlackRock's Aladdin and StateStreet's Charles River Development – two of the largest providers of order management systems (OMS) to other investors – to adopt new enhanced versions of application programming interfaces (API). The API would enable communication, exchange of data and functionality between these systems easily and securely. See Shankar Ramakrishnan, "Three years after DirectBooks, US bond market still phoning it in", Reuters October 20, 2023 available at https://www.reuters.com/markets/rates-bonds/three-years-after-directbooks-us-bond-market-still-phoning-it-2023-10-30/.

[92] See LSEG, "Debt – Debt New Issues", "An overview of Deals – Debt New Issues: We provide industry-leading debt transaction information and league tables to the global deal-making industry, comprising over 1.19 million global debt new issues since the early 1960s. **We rely upon direct deal submissions from global dealmakers coupled with rigorous sourcing of regulatory filings, newswires, and company press releases to gather timely and detailed debt issuance information**." (emphasis added), Available at https://www.lseg.com/en/data-analytics/financial-data/deals-data/capital-raising-new-issuance/debt-new-issues-deals.

decrease due to an increase in competition. FINRA has given the Commission no information from which to make that estimate.

V. CONCLUSION.

From 1996 to 2022, the SEC approved more than 1,500 rules proposed by FINRA or its predecessor, the NASD. None have been vacated. This Proposal is the only rule to be remanded.

How defective must a rule be to make this short list? Very defective.

As the Court observed in finding the Commission's initial approval of the Proposal arbitrary and capricious:

> "…the Commission failed to respond 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."

In December 2022, the Commission afforded FINRA another opportunity to attempt to cure the legal defects highlighted by the Court. On January 19th, 2023, FINRA filed a cursory three and on-half page letter – one paragraph of which purported to respond to the court's demand for data on the costs not only to FINRA and FINRA's members but also other impacted market participants.

The FINRA response was, in the eyes of the market, grossly inadequate and totally unresponsive to the Court's demands, particularly as it related to cost data. No meaningful cost data was provided as to costs to FINRA. No cost data at all was provided relative to FINRA members or the broader market. A diverse array of market participants – including Healthy Markets, the Committee on Capital Markets Regulation, the Heritage Foundation, the U.S. Chamber of Commerce, and the Bond Dealers of America – urged disapproval on this basis.

On April 28, 2024 – 16 months after its initial cost submission, and 14 months after the market with one voice yet again highlighted FINRA's failure to satisfy the Exchange Act – FINRA made an additional filing "to respond to comments submitted in response to the Commission's December 20, 2022, Order…"

Like its January 2023 predecessor, it provides no meaningful new data and is totally unresponsive to the Court's directive.

The Exchange Act doesn't envision the Commission approving a rule change based on data the SEC and the public aren't provided. Particular concerns should be raised when – as here – FINRA experts have publicly offered guidance to the Commission that is precisely the opposite to that attested to in FINRA's most recent submission, where the lack of cost data has thwarted

efforts to provide a cost benefit analysis, and where changes in the marketplace have underscored that the illusory benefits offered to justify the Proposal are entirely non-existent.

FINRA has had six years – the last two of those years under the spur and directive of a Court Order -- to provide the meaningful cost data. It hasn't. The Commission has both the authority and the obligation to protect investors and issuers by disapproving the Proposal.

We sincerely appreciate the opportunity to share our thoughts on this issue and would be pleased to discuss any questions you may have with respect to this letter.

Thank you.

Very truly yours,

Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.

Gary Stone
Regulatory Analyst and Market Structure Strategist, Regulatory Affairs, Bloomberg L.P.

APPENDIX A

Response to FINRA's Additional Comment Letter Re Support for Cost Estimates of Proposed New Issue Reference Data Service

July 12, 2024
Privileged and Confidential

1 Introduction and Background

On February 20, 2023, Compass Lexecon submitted a report titled "Attempt to Ascertain Cost of Proposed New Issue Bond Service via Reference to Other FINRA Platforms" that was filed as Appendix A to Bloomberg's February 21, 2023 comment letter "Re: Remand of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (Release No. 34-85488; File Number SR-FINRA-2019-008)."[1] Our submission addressed the Financial Industry Regulatory Authority's (FINRA) January 19, 2023 letter to the SEC, stating that to establish a corporate bond new issue reference data service (New Issue Reference Data Service), it would incur initial costs of approximately $1.3 million and ongoing annual costs of approximately $700,000.[2] In our submission, we concluded that we could not ascertain the empirical basis, if any, for the costs provided in the January 19, 2023 FINRA letter; that the information provided was not sufficient to evaluate the reasonableness of the cost estimates; and that FINRA's asserted estimates seemed understated compared to publicly available data about the costs likely to be incurred for such a data service.

On April 23, 2024, FINRA submitted another comment letter in which, among other things, FINRA provides additional details on "the likely costs of the New Issue Reference Data Service."[3] In essence, in the new submission, FINRA states that FINRA is better positioned to estimate incremental costs associated with the New Issue Reference Data Service than any other third-party and that costs associated with TRACE system are not comparable to the New Issue Reference Data Service. FINRA says it does not propose to build the New Issue Reference Data Service from "top-to-bottom" and any initial development and ongoing costs will be incremental.

We reviewed FINRA's new submission and find that FINRA's additional details about the incremental costs associated with initial development and the ongoing annual costs do not include any meaningful empirical analysis and are therefore not sufficient to evaluate the reasonableness of the cost estimates. FINRA does not provide any benchmark or additional data details as to how

1 Bloomberg comment letter, February 21, 2023, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20158673-326598.pdf.

2 FINRA comment letter, January 19, 2023, (January 2023 FINRA comment letter), available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20155240-323579.pdf.

3 FINRA comment letter, April 23, 2024, (April 2024 FINRA comment letter), available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-462011-1209274.pdf.

these costs are estimated. FINRA's statement that it is better positioned to estimate these costs than any other third-party does not imply that any other third-party is unable to assess the reasonableness of these estimated costs.

2 Overview of FINRA's Additional Support for Cost Estimates

The most recent FINRA submission states that:[4]

- FINRA is in a better position than any other third-party to estimate the costs associated with the New Issue Reference Data Service.
- FINRA's costs associated with the New Issue Reference Data Service are not comparable with a "top-to-bottom" build of the TRACE system.
    - Costs are incremental expenditures from a personnel, technology, and financial perspective as "FINRA already collects and distributes certain information when a TRACE-eligible security is set up." *E.g.*, CUSIP number, issuer name, coupon rate, maturity, whether Rule 144A applies, and bond description are fields that are already provided to FINRA, and only additional field would need to be collected.
        - The development of cloud-based user interface is thus more limited in scope to intake new filings and only an enhancement of the Application Programming Interface (API) is needed.
        - Costs related to the cloud-based user interface represent half of the $1.3 million initial development estimate and the remaining costs are split between building out the new API and other development projects and "more minor undertakings."
- FINRA's staffing support costs represent a relatively minor additional cost of less than $75,000, as FINRA will leverage the existing support infrastructure.
- FINRA's estimate of $700,000 ongoing annual costs are also incremental personnel costs for data vendor support, billing support, project management support and other internal systems support, among other things.
    - FINRA plans to utilize the existing TRACE support structure to benefit from "significant efficiencies".

3 FINRA's Additional Support for Cost Estimates Is Insufficient and Cannot Be Ascertained

We reviewed FINRA's additional submission and find it unevidenced and deficient:

- FINRA states that it is in better position than any other third-party to estimate the costs, however this does not imply that any other third-party is unable to validate these estimated costs.
    - FINRA provides no benchmarks or any other information to help ascertain whether its cost estimates are reasonable.

[4] April 2024 FINRA comment letter, at 6-8.

- FINRA's claim that all costs (initial development and ongoing annual support costs) are incremental is opaque, unsupported by adequate empirical analysis and based on inaccurate assumptions.
    - Unclear methodology/rationale:
        - FINRA does not provide any explanation as to how it arrived at its cost estimates. *E.g.*, while it states that it only needs to expand the existing systems, it still does not provide any detail as to why these particular costs would be associated with the expansion and how they were derived.
    - Lack of detail/empirical analysis:
        - FINRA's cost estimates submission continues to lack sufficient detail of what costs are associated with each more detailed item that it lists. *E.g.*, FINRA states that approximately half of the $1.3 million estimate for the initial development would be used for the development of the cloud-based platform and the remaining costs will be split between the build out of the new API and other development projects related to programming changes to the existing reference data system to support the New Service, but it does not assign the amounts of the split or provide any backup to its estimate as to why the cloud-based system would take up approximately half of the $1.3 million estimated initial development cost.
        - The only additional detail on costs that FINRA provides in the new submission is its estimate of less than $75,000 for staffing support. This number is included in its $1.3 million estimate for the initial development and consists of "project management support [that] will be required to launch the system and coordinate onboarding, QA, and UAT with market participants."[5] FINRA does not provide any detail on how it determined this "relatively minor additional" cost.
        - FINRA also provides no empirical analysis for its statement that it "expects to realize significant efficiencies by modifying and leveraging existing staffing and processes…"[6]
    - Inaccurate assumptions:
        - FINRA's incremental cost estimates assume that leveraging existing infrastructure and personnel is costless. There would be costs associated with the New Issue Reference Data Service even if FINRA use existing infrastructure and personnel should be reallocated from TRACE to the New Issue Reference Data Service. These resources are finite, and commitment of them partly to the new service makes them less available for what they were doing. The new tasks have costs, and those costs do not become smaller just because FINRA chooses to pay them in kind.
        - FINRA's cost estimates seem to be static regardless of the date at which they are estimated. That is, FINRA's estimates of costs remained the same between the January 2023 FINRA comment letter and the April 2024 FINRA comment letter. FINRA's static cost estimates do not seem to reflect any increases in costs, such as increasing FINRA's operating

5 April 2024 FINRA comment letter, at 7.
6 April 2024 FINRA comment letter, at 7.

expenses or inflation. For example, FINRA projects that its operating expenses for 2024 will be 7% higher than its 2023 operating expenses.[7] FINRA explains: "Operating expense increases since 2021 are partially driven by annual compensation increases due to wage inflation and competitive labor markets, technology growth for new applications in production, and hiring additional staff to meet our increased regulatory responsibilities."[8] FINRA's static cost estimates further cast doubt about the reasonableness of its estimates.[9]

- FINRA's claims that all costs are incremental and insignificant is inconsistent with FINRA's own public statements:
    - As mentioned in our prior submission, Ola Persson, FINRA's Senior Vice President of Transparency Services, at the October 29, 2018 meeting of the U.S. Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee commented, "Speaking for FINRA, not the effort on behalf of the underwriters, but speaking for FINRA, we would have some work to do. The technology today does not lend itself very well to this."[10]

4 Conclusions

We conclude that we could not ascertain the empirical basis, if any, for the costs provided in the April 23, 2024 FINRA letter and that the information provided was not sufficient to evaluate the reasonableness of the cost estimates. In addition, FINRA's estimate continues to be understated compared to publicly available information pertinent for estimating FINRA's new data service, and FINRA's April 23 submission does not provide sound justifications for the understatement.

7 FINRA 2024 Annual Budget Summary, at 7, available at https://www.finra.org/sites/default/files/2024-06/FINRA-2024-Annual-Budget-Summary.pdf.

8 FINRA 2024 Annual Budget Summary, at 7, available at https://www.finra.org/sites/default/files/2024-06/FINRA-2024-Annual-Budget-Summary.pdf.

9 FINRA also does not incorporate any changes in inflation. See Consumer Price Index data showing continued inflation in the U.S. See U.S. Bureau of Labor Statistics, available at https://www.bls.gov/charts/consumer-price-index/consumer-price-index-by-category-line-chart.htm.

10 See "Testimony of Ola Persson", FINRA's Senior Vice President of Transparency Services, 0088-2 to 0089-5, available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt.

APPENDIX B

Bloomberg's Cost Estimates for the FINRA Reference Data System

Compass Lexicon, in its February 2023 and July 2024 analysis concluded that FINRA has provided insufficient data to permit a meaningful empirical analysis that would enable an evaluation of the reasonableness of FINRA's cost estimates. In February 2023, and again below, Bloomberg attempts to at least devise some benchmarks for costs.

As there are very substantial costs that Bloomberg cannot assess, the only costs we have compiled are estimated software development labor costs. For example, cloud services have real costs, but from outside of FINRA we can't estimate them, so we count them as zero. Infrastructure and potential upgrades have real costs, but from outside of FINRA we can't estimate them, so we count them as zero. Diverting existing staff from other tasks has real costs, but we can't estimate them from outside of FINRA, so we count them as zero, etc. Other cost considerations not estimated include, but are not limited to, back-up and Regulation SCI compliance capabilities, if applicable, and technology service provider fees, etc.

Given the range of real costs that can't be assessed by those outside of FINRA, our estimate of $8.75 million to build and $2.5 million annually to operate the project – numbers that only reflect direct software labor costs – is surely a vast underestimation of the Proposal's real costs.

FINRA's cost analysis presentation gives the impression that FINRA does not appreciate what is necessary to build a commercial-grade New Issue Bond Reference Data Service. FINRA's suggestion that as a non-profit its operation of the service would be significantly different from those of for-profit vendors is inaccurate. The data disseminated is either correct or incorrect. "Commercial-grade" means that FINRA needs to build an accurate system with real-time dissemination so that market participants receive, in a timely manner, data that are accurate and reliable so that market participants can genuinely use the data when new issues begin to trade in the secondary market, after being priced. The Commission cannot lose sight that FIMSAC's repeated requirements were accuracy and real-time dissemination.

FINRA's observation that it operates many technological solutions, and it is an SRO with the ability to compel its members into compliance should not provide the Commission with any comfort. Those conditions exist today - under the Obligation to Provide (TRACE) Notice, Rule 6760, FINRA requires members (underwriters) to provide data to FINRA to set up TRACE's transaction reporting and dissemination systems. Despite this, data quality is abysmal. The assertion that operating a New Issue Bond Reference Data Service is an "incremental" change from the activities FINRA currently performs is incorrect.

FINRA currently operates a significantly slimmed down, non-critical "service." FINRA requires a limited amount of data to be reported – as the Vice President of Transparency Services at the October 29, 2018 FIMSAC meeting explained.

FIMSAC stressed five times the importance of accurate data in their recommendation.[93] As far back as May 15, 2019, FIMSAC member Larry Tabb, at the time the founder and research chairman of the TABB Group, a research and strategic advisory firm focused exclusively on capital markets, warned that:

> "Any mistakes in capturing fixed income reference data create not only front-office challenges but back-office nightmares. While ensuring the front-office platforms have the correct information enables investors and traders to trade these bonds, getting the information right in the back office saves firms from trade breaks and fails. In addition, if these issues are not discovered/resolved by the time these bonds pay interest, coupon payment problems will cause investors either to not get their appropriate interest payments, or not get them on a timely basis."[94]

For new issues, FINRA records certain reference data that underwriters report to it including the new issue's coupon, maturity and the 144A status. If there are any corrections, FINRA also logs a correction update. FINRA currently disseminates that data in an "update" file. Bloomberg uses the CUSIP in this intraday update file to confirm the "TRACE-eligible" status of new issues in its New Issue Reference Data Service.[95] Bloomberg performed an analysis using the update file data as of the close of TRACE operations. FINRA also provides at the beginning of the next day a "master file" of all the data that is in the Corporate Bond Database. Bloomberg performed an additional analysis of the data in the master file that reflected the data values in FINRA's Corporate Bond Database at the close of business on April 30, 2024. The analysis of FINRA's update (at the close of operations each day) and master files (at April-month end) shows that there are high and persistent error rates in the only three fields of new issue bond reference data (coupon, maturity and the 144A status) FINRA currently provides.

Commenting on the error rate analysis previously, FINRA complained that it is not clear "what TRACE data was used for the analysis [or] which point in time during the trading day was used."[96] Above, Bloomberg specifies which TRACE data, from which time points, it used. FINRA also previously contested which data are accurate, i.e. if there is a difference between TRACE data and another source, which source has the error?[97] Bloomberg's analysis above compared TRACE data to Bloomberg's own data.[98] There are substantial reasons for assuming that Bloomberg's data are more reliable than TRACE. First, market participants have been

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[93] See Bloomberg Remand Letter at 15.

[94] See Letter from Larry Tabb, May 15, 2019 at 2 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5520715-185208.pdf.

[95] It is important to note that none of the commenters said that they rely on FINRA's intraday update or its "master" file for reference data.

[96] See FINRA letter, October 29, 2019, at 10-11 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6366404-196429.pdf.

[97] Id.

[98] Id.

relying on Bloomberg's data to carry out their trading activity. Errors in Bloomberg's data would manifest in settlement or clearing errors, which as noted above are not a significant occurrence. Market participants do not use TRACE reference data for those purposes, so no comparable inference can be drawn about TRACE. Second, because of that use, Bloomberg faces commercial pressure to be accurate, and would receive vociferous complaints or lose subscriptions if its data had a significant error rate. Bloomberg noted that "neither FINRA nor any other commenter contests that the concern is with the inaccuracy of FINRA's data were it to become a sole-source provider." [99] The Miao and Flatman declarations that Bloomberg previously provided observed that Bloomberg's new issue bond reference data service has a well-deserved reputation for accuracy, a critical feature for a reference-data service. [100] Indeed, at the FIMSAC meeting, the underwriter representative said his company chooses to provide reference data consistently to Bloomberg to "ensure it is accurate." [101] Mr. Tabb, whose original analysis identified the FINRA's data quality issues, cautioned that he was concerned that FINRA's service would not be subject to the "competitive pressure needed to push industry service providers to get this data right, delivered on time, and at a cost-competitive price."[102] FINRA's latest letter confirms this concern was legitimate, because FINRA's excuse for its low quality is precisely that it is not operating commercially.[103]

If it were simply a matter of implementing "incremental" data quality assurance controls, backed by fines, we imagine corrections would already be in place. The reality is these aren't incremental changes, as FINRA noted in its FIMSAC testimony. There is little in the record to suggest why the error rate for the 36 fields in Exhibit 3 in Amendment 2[104] fields of often complicated data (because some fields will need to be calculated) will be vastly improved from the current abysmal error rate for three fields of simply data.

In his analysis in 2019, Larry Tabb "found reconciliation differences in more than 20% of new issues"[105] and Bloomberg's subsequent analysis throughout the record and updated again in this letter for the new issues priced during April 2024 illustrates that data quality continues to be a persistent issue in the three new issue reference data fields (coupon, maturity date, and 144A flag). Comparing the last daily update file and the month-end compilation reveals that there are changes between them, suggesting there may be some data error correction process. But those corrections are occurring *between* pricing day and month-end, far too late for the vast majority of

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[99] See Bloomberg Letter, November 27, 2019, at 2, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6487249-199507.pdf.

[100] See "Motion of Bloomberg L.P. to Adduce Additional Evidence", at 8.

[101] Id., Mr. Flatman, at 15.

[102] Id., Mr. Miao, at 19.

[103] FINRA April 23 Letter at 6.

[104] See FINRA, "Partial Amendment No. 2" Letter at 6-17 available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-6252424-192827.pdf.

[105] See Tabb Study at 8.

trading in a given bond issue. Data quality is required <u>on</u> pricing day. Given these persistent errors, the Commission has to question whether FINRA has the ability to assess when reported information is, in fact, inaccurate in order to use its SRO power to attempt to force compliance.

Under the Proposal, FINRA is proposing to require significantly more data to be reported (and disseminated). FINRA is to become the golden copy on pricing day. Incorporating the new data fields into the existing processes – processes that themselves have serious quality problems – will be comparably inaccurate (or worse). About 20% of Bloomberg's cost estimate was for data quality assurance controls. Data validation for a commercially-accurate New Issue Bond Reference Data Service is not a minor enhancement especially in light of the substantive requirements of the new reporting regime.

The contrast between FINRA's January 19, 2023 original cost analysis, the scant additional information provided in its April 23, 2024 submission and Bloomberg's February 21, 2023 cost analysis is striking. FINRA listed broad, generic categories that might generate ***direct*** costs to develop a New Issue Bond Reference Data Service while Bloomberg provided a detailed methodology complete with line-item analysis of the functional components needed to build a commercially accurate and real-time new issue bond reference data service.

WORKSTREAM	ROLE TYPE CLASSIFICATION (ENGINEERING, QUALITY ASSURANCE, PROJECT MANAGEMENT)	EFFORT IN PERSON DAYS	FULL-TIME EQUIVALENTS	CONSIDERATIONS
Create a new Web-based Manual (form) new issue entry	Engineers	340	1.4	Consider design, build, test for web development, data modelling, Integration with cyber and info security authentication & authorization framework
Create a New API interface	Engineers	420	1.8	
Rules-based Submission Validation	Engineers/Business Analyst	280	1.2	Implementation of business rules
Data Modification Dealer Error Correction	Business Analyst /Engineers	360	1.5	Error and Data recovery, Integration with cyber and info security authentication & authorization framework
Quality Control	Engineers/QA (Testing)/Business Analysts	320	1.4	Error handling for rules engine errors or notifying sources for data issues
Dissemination	Engineers/QA (Testing)	840	3.6	New Architecture supporting **Push** mechanism to be introduced along with Cloud setup
Industry Wide Testing (Setup of Beta and other Env.)	Business Analyst /Business Users /Engineer	300	1.3	Prod, Non-Prod environment set up, test scripts, initial go-live
Warranty	2 Engineers/1 QA/1 Business Analyst for two months	160	0.7	
QA Defect test and fixing, UAT, Project Management, DevOps, Performance testing.	QA/Project/Product Manager /Business Users	1,706	7.2	
Total Efforts		**4,726**	20.0	
Project Contingency	25%	1,181	5.0	Accounts for unknowns and overflows
Grand Total		**5,907**	25.0	
Other costs		**?**	?	(Hosted) Infrastructure estimates & startup-fees, Redundancy & resiliency, audit

In its January 2023 letter, FINRA segmented its costs into five broad categories:

"Specifically, the New Issue Reference Data Service involves a combination of costs, including:
(1) the development of a cloud-based user interface for intake of new filings, an application programming interface submission process, and submission validations;
(2) system requirements maintenance, quality assurance, and user acceptance testing of

system implementation;
(3) development of the reference data files for subscribers;
(4) enhancements to regulatory programs; and
(5) necessary infrastructure upgrades, among other things."[106]

At that time, FINRA had provided only a top line cost figure void of any details.

> "Additional ongoing associated costs relate to personnel costs for data vendor support, billing support, project management support and other internal systems support, among other things. FINRA currently estimates initial costs of approximately $1,300,000 and ongoing annual costs of approximately $700,000."[107]

In its April 2024 letter, FINRA reiterates the five development categories but continues to bundle the different categories together and aggregate its costs in a manner that makes it impossible to analyze the estimates. But to the extent anything can be gleaned from FINRA's recent letter, it is evidence that FINRA's estimates are still far, far too low.

FINRA separates its prior $1.3 million estimate into three groups which is confusing because the three cost groups do not naturally align with its five identified development areas. The inability to assess costs to each development area is the part of the problem that Compass Lexecon identified – FINRA has not provided enough information to be able to conduct an independent assessment that FINRA costs are reasonable. Providing such clarity is FINRA's burden.

Its First Cost group includes $75,000 for existing support infrastructure which may or may not be development category "(5) necessary infrastructure upgrades, among other things";

> "However, these efforts will leverage existing support infrastructure at relatively minor additional cost (less than $75 thousand) to FINRA. For example, FINRA has existing processes to track any software bugs and fixes identified during UAT, and such technology support related to the Service will be integrated into these existing processes" [108]

FINRA's Second Cost Group is $650,000 for only part of development category "(1) the development of a cloud-based user interface for intake of new filings, an application programming interface submission process, and submission validations":

> "Efforts related to the new cloud-based user interface for intaking new filings represent ***approximately half of the $1.3 million estimate*** for the initial development and deployment of the New Issue Reference Data Service. These efforts include development of the cloud-based platform and related user interfaces as well as development related to reference data

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[106] See "FINRA Remand Letter", January 19, 2023, at 3, available at https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-20155240-323579.pdf.

[107] Id.

[108] See FINRA April 23 Letter at 7.

management, such as programming FINRA's existing reference data system to interact with, and validate data from, the new cloud-based intake platform."[109]

FINRA's Third Cost Group is the remaining $575,000 of the budget, it includes the cost to develop from category "(1)" a two-way application programming interface (API) and all of "(2) system requirements maintenance, quality assurance, and user acceptance testing of system implementation; (3) development of the reference data files for subscribers; (4) enhancements to regulatory programs." It is not clear how FINRA validates the quality of data submitted by the two-way API.

"The majority of the remaining costs related to the initial development of the Service are split between development work related to building out the new API and other development projects that are more minor undertakings. To build out the new API, FINRA will make enhancements to the existing application infrastructure that it currently uses to manage entitlements and data subscriptions, and FINRA's estimate includes costs for quality assurance ("QA") and user acceptance testing ("UAT"). The other development projects are related to programming changes to the existing reference data system to support the Service (e.g., programming to implement the new data fields, enhancements to automated data validation processes, and other infrastructure upgrades). With respect to support costs, FINRA is similarly not staffing initial and ongoing support for the New Issue Reference Data Service from scratch. While FINRA's estimates include hiring a very small number of additional staff, FINRA will largely rely on existing, experienced staff to support the Service. Specifically, FINRA's cost estimate of $1.3 million for the initial deployment of the Service considers that project management support will be required to launch the system and coordinate onboarding, QA, and UAT with market participants."[110]

These costs are unreasonably low estimates. For example, for the work that includes "building out the API," FINRA offers no explanation why it estimates a cost so far below what Bloomberg presented. Presumably FINRA's cost per hour of labor is the same as industry norms that Bloomberg gleaned from public data. So FINRA must think it can carry out these software developments for just a fraction of what Bloomberg thought. FINRA offers no reason why.

Moreover, FINRA's cost categories are incomplete. It:

(1) Does not provide any insight into how it is accounting for the seconding and diverting those existing staff and "support costs". This was an area that that the Commission, Staff and IEX painstakingly analyzed so that IEX could assess personnel costs in their model.

[109] Id.

[110] Id.

(2) "FINRA is similarly not staffing initial and ongoing support for the New Issue Reference Data Service from scratch", that it will be "hiring a very small number of additional staff" and "largely rely[ing] on existing, experienced staff to support the Service."[111]

(3) Does not account for cloud service provider costs, even though these are well-known to scale with the amount of computing resource used, so that FINRA cannot conceivably be simply repurposing existing resources.

(4) Appears to be narrowing the scope of the tasks that would be performed in running the New Issue Reference Data Service - particularly in the areas devoted to data quality assurance.

(5) Fails to consider the indirect costs on underwriters by only assessing its costs of ***coordinating*** with market participants onboarding, QA, and UAT activities.

Given the precedent set by the Commission with IEX, it is clear that the cost transparency and analysis that FINRA has provided to date would not satisfy the basic requirements that FINRA would need to provide for the Commission to approve a fee filing. Commission expectations in a fee filing must be the same as the requirements in Remand to avoid what the Court called "The Key Problem".

The "Key Problem"

The Court cautioned the Commission that allowing FINRA to establish fees by filing a "separate proposed rule change … at a future date" introduced a key problem:

> "….if FINRA's data service ends up being unreasonably expensive, then the agency ***cannot protect market participants*** from footing the bill for it at the fees stage. To be sure, the Commission is right that it could suspend and disapprove FINRA's proposal at the fees stage, see id., but at that point, FINRA will have already incurred the financial burden of building the service. In short, the Commission approved FINRA's proposal without responding to comments that urged it to assess not only the financial impact of the service on FINRA, but also the entities that fund FINRA. That is not reasoned decisionmaking."[112]

FINRA has not helped the Commission resolve this problem. In order to resolve this problem, FINRA should have provided the Commission with information consistent in detail with what it would be required to file at a later date for fee approval because: (1) FINRA repeatedly stated that it "will provide subscribers with access to the New Issue Reference Data

[111] See FINRA April 23 Letter 2 at 7.

[112] See Bloomberg L.P. v. SEC, 45 F.4th 462 (D.C. Cir. 2022), at 26 (emphasis added).

Service for fees determined on a ***utility basis, using a cost-based formula***";[113] and (2) The Court recognized that because FINRA is a non-profit that is funded by its members, all of its direct expenditures for this new commercial venture are funded by its members. Any losses, whether covered by FINRA's strategic fund or budget directly impact its members.[114]

The presentation and explanation of costs that FINRA has provided to date would be deficient if submitted in a fee filing context. Combined, both opportunities are far from what (1) the "Staff Guidance on SRO Rule Filings Related to Fees"[115] and (2) the Commission's application of law and guidance to its initial suspension of the Investors Exchange (IEX) filing of November 2021, leading to IEX's more detailed (and successful) proposal in April 2022 expect.[116] For example, FINRA provides no discussion on indirect costs which was not only a specific requirement of the Court[117] but also is a component of the Staff guidance.[118] While FINRA sheds some light on the new ways that underwriters will be able to comply with their obligation (to provide notice) to submit the new issue bond reference data, FINRA fails to address the repeated concerns from SIFMA and the Bond Dealers of America over underwriters costs associated with aggregating the significant amount of data and reporting it to the new cloud-based system.

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[113] See FINRA Remand Letter, at 3, citing See FINRA's Statement In Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service (SR-FINRA-2019-008), https://www.finra.org/sites/default/files/2020-03/SR-FINRA-2019- 008_Reference-data-response-brief.pdf; (emphasis added). Also see Proposal, supra note 2.

[114] The Court identified the key problem with FINRA's direct costs. Bloomberg respectfully reminds the Commission that the ***indirect*** costs start relatively quickly and potentially could begin before the fee issue is settled. The Proposal is clear that "If the Commission approves the filing, FINRA proposes to announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following publication of the Regulatory Notice. The effective date will be no later than 270 days following Commission approval." See "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 FR 197 October 10, 2019 at 54714.

[115] 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.

[116] See Release No. 34-93883, 87 Fed. Reg. 523 (Jan. 5, 2022) (suspending IEX's November 2021 proposal); Release No. 34-94630, 87 Fed. Reg. 21,945 (Apr. 13, 2022) (IEX's resubmission with additional information).

[117] See Bloomberg L.P. v. SEC, 45 F.4th 462 (D.C. Cir. 2022) at 15 "…we find that the Commission's approval of FINRA's proposal was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), because the Commission failed to respond to significant and relevant concerns Bloomberg raised in its comments objecting to FINRA's proposal. Specifically, the agency did not provide a reasoned response to Bloomberg's comments that FINRA failed to quantify the direct and indirect costs of its proposed data service..."

[118] See Staff Guidance on SRO Rule Filings Relating to Fees, "A Fee Filing must also address all relevant statutory requirements, including the requirements that the fees (including rebates) are reasonable, that they are equitably allocated, that they are not unfairly discriminatory, and that they do not unduly burden competition."

Bloomberg Methodology

Bloomberg's February 2023 analysis segmented software development into categories (system workflows) and workstreams (tasks/functionality) within the categories. Software labor costs were estimated only in areas where Bloomberg had insight. Areas where Bloomberg did not have knowledge, such as the commercial relationship that FINRA has with its Cloud Service Provider, its infrastructure and potential upgrades it would need to undertake were not estimated. These represent additional costs above the amounts that Bloomberg estimated.

While FINRA claims in its recent submission that Bloomberg suggests that FINRA "omitted costs for cybersecurity entirely",[119] that is not accurate. Bloomberg said that "FINRA has not provided any information concerning the additional cybersecurity and information security costs it will face to implement a system in the cloud that allows user feedback and interaction."

Indeed, FINRA had not provided such information, and it still hasn't. FINRA's latest filing says that for cybersecurity, "the New Issue Reference Data Service will utilize existing security operational, technical, and managerial controls provided by FINRA's broader Cyber and Information Security program. This includes the security of the supporting infrastructure and the security of operations processes." But the existing controls were presumably not built for the new cloud-based web-like user interface that FINRA acknowledges it has to develop and the new API for real-time submission of complex data.

Bloomberg's framework included estimates based on system workflows:[120]

(1) "Receiving Data" – manual cloud web-based form and API;

(2) "Quality Control" – a new Business Rules Engine to validate integrity of submissions and Data Modification Dealer Error Correction;

(3) "Data Dissemination" - Create infrastructure to push (real-time) new issue bond reference data to subscribers and redistributors. Create web interface/query form for subscribers to query new issue reference database (e.g., by identifier, by submission time range, etc.). Results need to be displayed on a results page and exportable to a machine readable (.CSV) file; End of day batch file;

(4) "Internal testing and Industry wide testing - Create Beta environment, Create process to establish and test connectivity to beta and production systems, Develop preferred test script(s), Initial Go Live - Implement production test script; Web Interface and API Connection Security testing plan; Industry-wide testing, fixes; and

(5) "Project Contingency".

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[119] FINRA Remand Letter at 8.

[120] See Bloomberg Remand Letter, Appendix B at 1-2.

Bloomberg utilized the metrics articulated in the "2019 Staff Guidance" and the Commission's IEX precedent to attempt to isolate some of the workstreams, expertise and hours to be expended, which it would be necessary to partially advance the FINRA New Issue Corporate Bond Reference Data System.

WORKSTREAM	ROLE TYPE CLASSIFICATION (ENGINEERING, QUALITY ASSURANCE, PROJECT MANAGEMENT)	EFFORT IN PERSON DAYS	FULL-TIME EQUIVALENTS	CONSIDERATIONS
Create a new Web-based Manual (form) new issue entry	Engineers	340	1.4	Consider design, build, test for web development, data modelling, Integration with cyber and info security authentication & authorization framework
Create a New API interface	Engineers	420	1.8	
Rules-based Submission Validation	Engineers/Business Analyst	280	1.2	Implementation of business rules
Data Modification Dealer Error Correction	Business Analyst /Engineers	360	1.5	Error and Data recovery, Integration with cyber and info security authentication & authorization framework
Quality Control	Engineers/QA (Testing)/Business Analysts	320	1.4	Error handling for rules engine errors or notifying sources for data issues
Dissemination	Engineers/QA (Testing)	840	3.6	New Architecture supporting **Push** mechanism to be introduced along with Cloud setup
Industry Wide Testing (Setup of Beta and other Env.)	Business Analyst /Business Users /Engineer	300	1.3	Prod, Non-Prod environment set up, test scripts, initial go-live
Warranty	2 Engineers/1 QA/1 Business Analyst for two months	160	0.7	
QA Defect test and fixing, UAT, Project Management, DevOps, Performance testing.	QA/Project/Product Manager /Business Users	1,706	7.2	
Total Efforts		**4,726**	20.0	
Project Contingency	25%	1,181	5.0	Accounts for unknowns and overflows
Grand Total		**5,907**	25.0	
Other costs		**?**	?	(Hosted) Infrastructure estimates & startup-fees, Redundancy & resiliency, audit

Serious Flaws in FINRA Approach

"Receiving Data" - The work included in the two-way API is bundled into FINRA's other cost bucket which includes all the other costs associated with developing the New Issue Bond Reference Data Service. If FINRA projects that ½ of the remaining $575,000 is for the two-way API, that represents less than 1 software engineering FTE[121] to create a new two-way API to submit, but also include the messaging to correctly identify who can modify the data, interact with the database to modify previously submitted information and communicate rejections (and reason codes). This seems unrealistic. It isn't clear if FINRA is going to include in the API data quality assurance reason codes (e.g., "sniff test" data reactions that the submitted values do not seem accurate and should be validated) or if that such concerns will kick off a manual FINRA process to confirm values with an underwriter. Bloomberg estimated that the work to create the API included business analysis to create robust FIX specs and testing scripts and software engineer labor to develop and internally test the API was double FINRA's estimate.

The Receiving Data workstream is an area where there are also surely ***indirect costs*** that need to be accounted. FINRA has not provided the Commission with any information to address the concerns of SIFMA and the Bond Dealers of America's. Perhaps a reason that FINRA is not able to provide insight into the indirect costs is because this Proposal was never presented to the FINRA membership in the Regulatory Notice Process – it went directly to the Commission for consideration. FINRA's Regulatory Notice Process is extremely valuable, in part because it

[121] For the FTE to cost conversion, see Bloomberg Letter February 21, 2023, Appendix B at 3.

forces an articulation of implementation details – including costs -- and a testing of the feasibility of the project and the practical workability of the implementation plan. None of that happened with this Proposal.

As an example, of the functioning of the FINRA Regulatory Notice Process, we refer the Commission to another FIMSAC proposal that FINRA first proposed to its membership for feedback in Regulatory Notice 22-26, "Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot Trades".[122] FINRA received detailed feedback directly including a letter from the Financial Information Forum that informed FINRA, not only on areas of implementation ambiguity that needed attention but also on the Proposal's indirect costs.[123]

The Court was clear that the indirect costs needed to be addressed. To assist in the remand process, Bloomberg submitted in February 2023 an illustrative list of some of the costs that the Commission may want to consider – but FINRA does not help the Commission because it did not provide any insight into these six areas of concern:

- Infrastructure costs associated with connecting to the cloud provider with an API. This cost will also depend on whether the reference data service falls under Regulation SCI, and on how many connections an underwriter would be required to maintain.
- Information technology costs associated with automated submission, error corrections and feedback loop integration.
- Costs to assemble 30 fields of data for underwriters to transmit to FINRA prior to the start of trading.
- Underwriter costs related to quality assurance and policies and procedures updates and compliance oversight.
- Costs to member broker-dealers to locate, assemble and transmit 30 fields of data on foreign debt securities that are underwritten by non-US broker-dealers (non-FINRA members) but that are TRACE eligible (and thus also subject to reporting under the Proposal).[124]

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[122] See Regulatory Notice 22-26, November 29, 2022 available at https://www.finra.org/rules-guidance/notices/22-26.

[123] See Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, January 27, 2023 available at https://www.finra.org/rules-guidance/notices/22-26#comments.

[124] The obligation to provide such notice on foreign debt securities is on member broker-dealers rather than underwriters. See Regulatory Notice 22-28, "TRACE Reporting of Foreign Sovereign Debt Securities", December 13, 2022, available at https://www.finra.org/sites/default/files/2022-12/Regulatory-Notice-22-28.pdf. "Question 1: Can firms add a U.S. dollar-denominated foreign sovereign debt security to TRACE where a CUSIP or CINS is

- Costs of IT licenses necessitated by the rule.

"Quality Control" – FIMSAC member Larry Tabb summed it up - quality of data is paramount in this endeavor. FINRA is solely relying on the data that underwriters submit either through the API or cloud-based web portal. FINRA's Senior Vice President of Transparency Services said relying solely on underwriter submission would be the strategy - "if we were to create the service, it would be exclusively underwriter data. So, clearly, what some of the fields we consider optional today couldn't be considered optional going forward. So, it would increase the burden a little bit on the underwriters for sure."[125] Despite commenter concerns over the burden on underwriters and FINRA's current persistent error rate with a much narrower bond reference dataset from relying on just underwriter submissions, FINRA has not provided the Commission with any comfort that it has policies, procedures and is developing technology to address these concerns. Rather FINRA has suggested that it will be able to address it with basic formatting checks and "(4) enhancements to regulatory programs."

In their recent filing, FINRA says that to produce commercial quality data all they need to do just need to make "incremental" enhancements to their automated processes:

> "… existing data validation processes, both automated and related to reporting compliance. The additional information fields submitted as part of the new issue notification will be incorporated into these existing processes, with minor enhancements, and will not require new systems to be built or significant added resources to validate."[126]

To claim that data validation is a minor enhancement misunderstands the substantive requirements of the new reporting regime.

FINRA claims that it has *existing* data validation processes that just need to be "enhanced." That does not appear to be credible because the TRACE data error rate analysis demonstrates that these current efforts do not appear to be effective.

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unavailable? Yes. Firms may submit through the FINRA Gateway a TRACE New Issue Form requesting a symbol for a U.S. dollar-denominated foreign sovereign debt security where only an ISIN or a FIGI is available for the security." Also, "FINRA intends to make the updated TRACE security master list available to members at least three months in advance of the effective date. Members are reminded of their obligations under TRACE rules to have systems and processes in place to determine whether a transaction in a TRACE-eligible security has occurred, even if the security was not included on the TRACE security master list at the time of the transaction.[6]… [6] "See FINRA Rule 6730(a)(7); and Trade Reporting Notice 7/19/19 (FINRA Reminds Firms of Their Obligations Regarding TRACE Reporting). Any member who disagrees with the current classification of a security on the master list should contact FINRA Market Operations."

[125] See ("Gallagher FIMSAC Testimony"), "Spencer Gallagher, Director of Product Management, ICE Data Services, Testimony" from the transcript of the U.S. Securities and Exchange Commission Meeting of the Fixed Income Market Structure Advisory Committee, Monday, October 29, 2018, 9:30am, Amended 11-8-2018, with excepts starting at 091-13 to 17 available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt.

[126] FINRA Remand Letter at 8.

As noted, FINRA currently disseminates its values for a new issue's coupon, maturity date, and 144A status in two files. The "update" is a file that is created during the day and represents all actions that FINRA has taken in its corporate bond database – such as adding a new issue, correcting data values, etc. FINRA also provides a "master file" representing the values of its corporate bond database at the close of business.

Bloomberg analyzed the "update file" at the close of business each day during the month of April 2024 comparing FINRA's values for the coupon, maturity date, and 144A status for the new issues that were priced that day - 18% of new issues had an error in at least one of the three reference data fields (coupon, maturity date, and 144A status) on the day that the new issue was priced. The update file is the closest proxy to the quality of the data that would be distributed by the New Issue Bond Reference Data Service (if the service only had to distribute coupon, maturity date, and 144A status) if it went live today. With an 18% data error rate in new issues during the end of the day they were priced, FINRA needs to devote more resources for data quality assurance/accuracy. Of course, dealing with 36 fields many of which are calculated – rather than three simple fields – one would reasonably expect the error rate to skyrocket to a ceiling well over the 18% floor.

FINRA's primary method of data quality assurance appears to be a reliance on their SRO enforcement engendered in development category "(4) enhancements to regulatory programs." The regulatory program would rely on the values in the "master file". Bloomberg analyzed the "master file" as of the close of business on April 20, 2024 and found that 13% of the new issues that were priced during April 2024 had an error in at least one of three reference data fields (coupon, maturity date, and 144A status) at the end of the month. So, FINRA appears to have a "pricing date + x" correction process – the Commission has to decide if FINRA's representation that improving a ***persistent*** 13% error rate is "incremental" or rather requires significantly more resources than budgeted for data quality assurance and accuracy. Moreover, incorporating the extensive number of new data fields into the existing processes provides no comfort that the reported information will be accurate or particularly useful.

Rules-based submission validation is needed. Basic format checks, such as assuring that dates are inputted as MM/DD/YYYY, are not going to improve quality – it is not currently. A business rules validation engine would be needed to look at the relationships between the data points and other data. It's an automated "smell-test" that kicks-off exception procedures to revalidate the accuracy of certain data-points. For example, reference data dates are in the correct chronological order, coupons are reasonable, etc. This is not a trivial cost.

Task	Functions	Role	New Comment
Rules-based submission validation	NEW: Rule development and vetting	Business Analysts, Engineering & QA	
	NEW: Rules Coding	Engineering	
	NEW: Rules script development and testing	Business Analysts, Engineering & QA	

Data Modification for API and web-based submissions supports the correction mechanism. While FINRA appears to have budgeted for data modification processes in its web-based Issue Management System these would need to be included in the specifications and development for an API submission process. As discussed before, these costs are not budgeted.

Task	Functions	Role	Comment
Web-based Query & Modify for resubmission to validation workstream	NEW: Dealer Error Correction via web portal	Business Analysts & Engineering	
NEW: Cancel/Modify via API for resubmission to validation workstream	NEW: Define and publish a FIX API for underwriters to report data (cancel) correction.	Business Analysts, Engineering & QA	

Quality Control Feedback Loop is a set of business rules seeking to detect data integrity inconsistencies that help to identify data values submitted in real-time that may have been reported in error. Submitted values are compared to documents and other sources of data to confirm input accuracy, error handling for rules engine errors and notifying underwriters of data issues. A solution to assure accuracy is for FINRA to develop processes, like other New Issue

Reference Data Service providers have – for example, combine electronic "direct deal submissions" from underwriters with the ingestion of certain "paper documents" like term sheets or "sourcing of regulatory filings, newswires, and company press releases to gather timely and detailed debt issuance information."[127]

Task	Functions	Role	New Comment
Web-based error monitor	Web-based monitor of submitted data requiring quality control attention (typically from rejected submissions from bulk mode insertion and as a manual compliment from API submission)	Business Analysts, Engineering & QA	
Automated alerts	Automated alerts of rejected submissions	Business Analysts, Engineering & QA	A better description of this function is producing automated alerts (email or other alerting mechanism) for suspected data integrity submission issues
Bond Researchers	Quality assurance from confirmation of accuracy of submitted data with bond reference data documents; Managing error detection resolution process by coordinating manual interaction with underwriters and monitoring timely corrections from automated rejections; Manage T+1 accuracy checks and issue notices of correction to the public	Quality Assurance	This is not a software labor cost so it was not included in the estimate.
T+1 validation and correction	Source secondary information sources T+1 for quality assurance and issue correction and update notices	Business Analysts & QA	

[127] See LSEG, "Debt- Debt New Issues", supra n.92.

FINRA is relying heavily on the assumption that real time data quality can improve from its SRO powers.

> "…from a validation perspective, unlike voluntary data submission to non-self-regulatory organization entities, FINRA members are required to report to the Service in accordance with FINRA rules, which we largely expect to result in timely and accurate reporting with a relatively small percentage of submissions requiring follow-up."[128]

The Commission cannot simply assume that FINRA will be able to face-down its persistent data error rates using its function as an SRO with enforcement power. While FINRA may be able to clean-up their real-time reported data and improve the accuracy of their service "*over-time*", as discussed earlier, FINRA has not provided any insight into how it is planning to assess when reported information is, in fact, inaccurate. There is little discussion of the costs associated with this strategy or how incremental changes to a system that currently is failing with three fields of simple data can drive vast improvements in quality for 30 fields of more complicated data. The declaration from Bloomberg executive David Miao explained that real-time data quality (assurance) for new issues is not a trivial process.[129] It is iterative and labor-intensive.

This introduces another area of concern for the Court – ***cost shifting***. FINRA's sole quality assurance is a reliance on underwriter submissions. If FINRA is not planning on building tasks to assist underwriters to check certain inputs, this just pushes what would have been a FINRA direct data quality cost on to underwriters. These costs include policies and procedures and, possibly, additional new staff.

Bloomberg estimated that the "Quality Control" system workflow represent about 20% of the estimated $8.75 million in direct software labor costs to build the New Issue Bond Reference Data Service. If FINRA isn't building workflow, then these direct costs are going to be shifted in some form to underwriters. With all of the underwriters dedicating resources to data quality control for 36 required data fields, the indirect costs may be far higher than the costs to FINRA had it just incurred those costs directly.

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[128] Id.

[129] See Mot. of Bloomberg, L.P. to Adduce Additional Evidence, Miao Decl., ¶¶ 7-9.

WORKSTREAM	ROLE TYPE CLASSIFICATION (ENGINEERING, QUALITY ASSURANCE, PROJECT MANAGEMENT)	EFFORT IN PERSON DAYS	FULL-TIME EQUIVALENTS	CONSIDERATIONS
Create a new Web-based Manual (form) new issue entry	Engineers	340	1.4	Consider design, build, test for web development, data modelling, Integration with cyber and info security authentication & authorization framework
Create a New API interface	Engineers	420	1.8	
Rules-based Submission Validation	Engineers/Business Analyst	280	1.2	Implementation of business rules
Data Modification Dealer Error Correction	Business Analyst /Engineers	360	1.5	Error and Data recovery, Integration with cyber and info security authentication & authorization framework
Quality Control	Engineers/QA (Testing)/Business Analysts	320	1.4	Error handling for rules engine errors or notifying sources for data issues
Dissemination	Engineers/QA (Testing)	840	3.6	New Architecture supporting **Push** mechanism to be introduced along with Cloud setup
Industry Wide Testing (Setup of Beta and other Env.)	Business Analyst /Business Users /Engineer	300	1.3	Prod, Non-Prod environment set up, test scripts, initial go-live
Warranty	2 Engineers/1 QA/1 Business Analyst for two months	160	0.7	
QA Defect test and fixing, UAT, Project Management, DevOps, Performance testing.	QA/Project/Product Manager /Business Users	1,706	7.2	
Total Efforts		**4,726**	20.0	
Project Contingency	25%	1,181	5.0	Accounts for unknowns and overflows
Grand Total		**5,907**	25.0	
Other costs		?	?	(Hosted) Infrastructure estimates & startup-fees, Redundancy & resiliency, audit

"Internal (UAT) Testing" and QA Defect test and fixing, UAT, Project Management, DevOps, Performance testing estimates differ because FINRA is developing less technology - particularly in the areas devoted to data quality assurance, new issue reference data distribution and potentially the two-way API. More components and complexity, more testing costs and the larger need for an interactive beta environment detailed testing script, and more testing cost. FINRA is also not accounting for the indirect costs for underwriters and their vendors interacting with the new system.[130]

[130] See Bloomberg Remand Letter, Appendix B "Internal (UAT) Testing", "QA Defect test and fixing, UAT, Project Management, DevOps, Performance testing" and "Industry wide testing" for more detail.